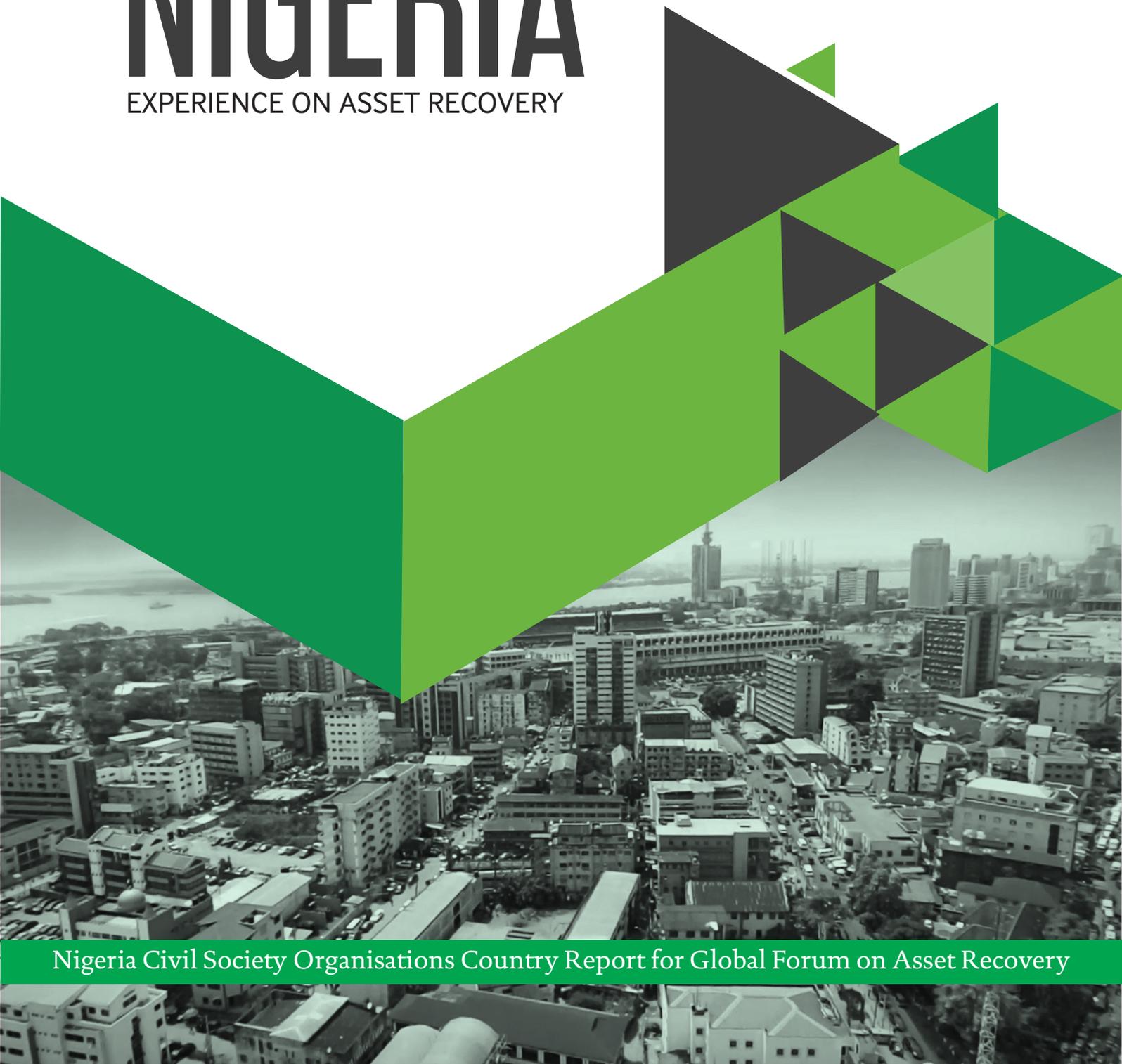


December 2017, Washington DC

NIGERIA

EXPERIENCE ON ASSET RECOVERY



Nigeria Civil Society Organisations Country Report for Global Forum on Asset Recovery

REPORT JOINTLY AUTHORED BY

Africa Network for Environment and Economic Justice (ANEEJ)



The Africa Network for Environment and Economic Justice, ANEEJ was established in 1995 but was registered with the Corporate Affairs Commission in Sept, 2006. Specifically, ANEEJ implements projects relating to governance and democracy, peace building and conflict resolution, human rights, anti-corruption and environmental issues. ANEEJ worked with over 100 Civil Society Organisations as the pioneer host of Publish What You Pay (PWYP) Nigeria Campaign and formed the Nigerian Network on Stolen Assets (NNSA).

In 2004-2005, ANEEJ led CSOs monitoring of repatriated Late General Sani Abacha loots under the Public Expenditure Management and Financial Accountability Review (PERMFAR) in a tripartite agreement between the World Bank, Nigerian Government and Civil Society. ANEEJ is currently engaging the Nigerian government, development agencies, multilateral financial institutions, international community as well as local and international Civil Society organisations on recovery of stolen assets to finance development.

For more information please contact:
The Rev David Ugolor
Africa Network for Environment and Economic Justice, ANEEJ
39 Oyaide Street,
Off Benoni, GRA,
Benin City,
Nigeria.

Advocacy Office: Plot 208, Zakariyah Maimalari Road
Off Herbert Macaulay Way,
Central Area, Abuja
info@aneej.org, www.aneej.org
+2348187674339, +234(0)8059880550

Socio-Economic Rights & Accountability Project (SERAP) NIGERIA



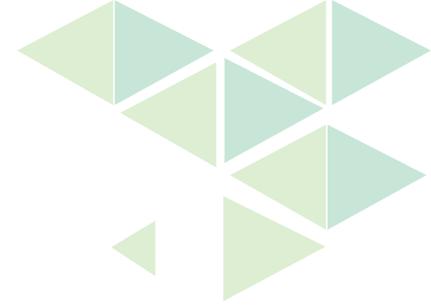
SERAP was created in 2004 and registered as a non-governmental, non-profit organization under Nigerian laws. It has worked to hold the government to account through the framework of human rights and anti-corruption laws and standards. SERAP has continued to offer free legal advice and services for victims of corruption and economic and social rights. It helps those whose economic and social rights are violated to obtain redress. SERAP has been working on asset recovery issues in Nigeria since inception.

Timothy Adewale
SERAP Nigeria
9 Akintoye Street, Off John Olugbo Street, Ikeja
www.serap-nigeria.org
0802 341 5427
info@serap-nigeria.org

Special thanks to UNCAC Coalition for the technical support for the production of this report

This report is supported by





BACKGROUND

In resource-rich developing states such as Nigeria, one of its greatest impediments, which has generated so much debate, is the issue of corruption in the form of stolen wealth.

Every Naira that is stolen in Nigeria from the public coffers is denying citizens access to good drinking water, primary health care, basic education, good roads and adequate housing. These are not simply the abstract indices of development; they are the necessities of life. The absence of these necessities represents more than just a lack of basic needs, it is the withholding of economic and social rights.¹

These are the devastating repercussions of the crime of public finance theft that are causing poverty and depriving ordinary Nigerians of their fundamental human rights.

So much of Nigeria's resources have been looted over the years by Politically Exposed Persons and their collaborators in the past three decades. Sadly, much of the looted assets are stashed in secret offshore destinations and in the vaults of western banks sharing the guilt of corruption and theft of Nigeria's public resources.

Since the death of General Sani Abacha in 2004 believed to have stolen over \$4.3 billion, Switzerland has repatriated close to \$1 billion to the country and a large part of this loot are still stashed in Switzerland, United States of America and other offshore destinations. Nigerian CSOs led by Africa Network for Environment and Economic Justice have been campaigning since 1998 for the repatriation of all Nigeria's looted assets stashed in secret destinations in offshore and other western jurisdiction to finance development, popularising

the "it takes two to tango" theory in the global war against corruption.

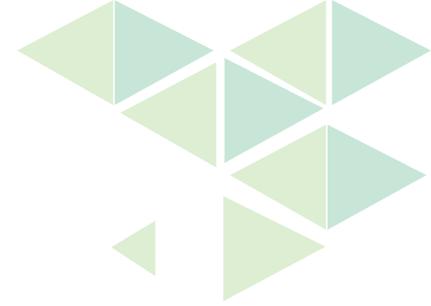
Development agencies have made international commitments to combat corruption and recover the proceeds of corruption at the Third High-Level Forum on Aid Effectiveness: Accra Agenda for Actions, held in Accra (2008); and Fourth High-Level Forum on Aid Effectiveness: Partnership for Effective Development Co-operation, in Busan (2011). The Nigerian government and CSOs had taken up the gauntlet campaigning and calling on powerful nations and development agencies to meet their commitments.

Only in August 2016, the United Kingdom signed a Memorandum of Understanding (MoU) with the Nigerian government for the repatriation of the country's looted assets. The British minister stressed that 40 jurisdictions, including British Overseas Territories and Crown Dependencies, have stated that they would automatically share beneficial ownership information relating to companies, trusts, foundations and other relevant entities and legal arrangements. Nothing more has happened since then.

According to Larisa Gray et al (2014), between 2010 and 2012, looted assets were frozen or returned to 15 developing countries, including Nigeria which comprised 80 percent of the total value of assets frozen and returned by the OECD countries.

About \$168.11 million was repatriated to the countries drop, which is a drop in the ocean compared to the huge fortune frittered away from Nigeria alone according to Co-Chairs, Jubilee

¹How Abacha \$500m Loot Was Spent, A shadow Report on the PEMFAR monitoring exercise by David Ugolor, Apollon Nwafor and John Nardine (2005). www.aneej.org/shadow-report-pemfar-monitoring-exercise



Movement Nigeria, Mr. Emeka Ogazi and Rev. David Ugolor².

A review of how far the OECD countries have implemented the AAA, established that "many donor countries have no criminal convictions for foreign bribery. Seventeen of the thirty OECD donor countries reviewed had not obtained a criminal conviction or acquittal in a bribery case against an individual or entity between the time³."

Effective coordination of local and global efforts to enforce UNCAC and deepen repatriation of looted assets is key to the attainment of the Sustainable Development Goals (SDGs) by 2030 in Nigeria. The international Community committed at the Second-High Level Meeting in November 2016 in Nairobi, committed to work purposely in ensuring repatriation of looted assets to countries of origin."

We will develop capacities for our national tax authorities, enhance accountability mechanisms for businesses and financial institutions, eliminate gender bias in tax systems, and to help combat illicit financial flows. We will strive to eliminate safe havens that create incentives for transfer abroad of stolen assets and illicit financial flows.⁴ It is incumbent on the CSOs engaged in the field of asset recovery, to work assiduously in holding governments accountable for their commitments.

Within the broad complexity of international asset recovery processes, Nigeria retains a somewhat ambiguous profile defined sometimes by bold reforms that have painfully failed to translate into any significant long-term and sustainable success. In most instances, therefore, Nigeria's efforts were constrained by various factors including: inefficient judicial systems; insufficient domestic political will; and limited international cooperation, especially from nation state and financial centers having custody of the stolen assets.

In all, this underscores the twin-track approach that is critical for an effective asset recovery intervention/task: bold reforms at home, complemented by sincere follow through at the international end.

With the current demonstration of political will by the current administration in the fight against corruption, this report charge the present administration to institute an affective framework for firm decision on assets repatriated presently and in the future recoveries and to monitor and ensure proper use of the funds for optimal compensation to Nigerians.

Challenges, Opportunities and Implication for Asset Recovery

The Nigeria Customs Service (NCS), the National Drug Law Enforcement Agency (NDLEA), the Nigerian Police Force (NPF), Independent Corrupt Practices and Other Related Offences Commission (ICPC) as well as the Economic and Financial Crimes Commission (EFCC) are the agencies empowered by their enabling laws to deal with the issues of Asset Forfeiture and Management in Nigeria.

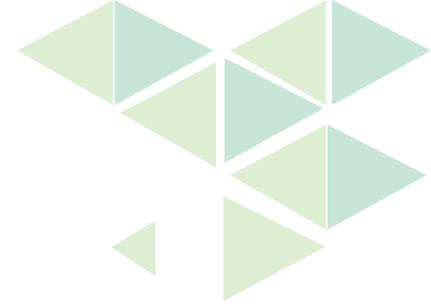
The Nigerian Police Force (NPF), the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC) are the main agencies responsible for tracing and confiscating the proceeds of crime. These three agencies are the main protagonists in the fight against corruption and assets recovery, forfeiture and confiscation in Nigeria. These Agencies functions, achievements, and challenges will be highlighted briefly in relation to assets recovery in Nigeria.

In the wake of political change to civilian rule in Nigeria, the issue of asset recovery became a front burner agenda and has since remained for each

²Interviews conducted with Executive Director of Africa Network for Environment and Economic Justice (ANEEJ), Rev. David Ugolor and Mr. Emeka Ogazi are co-chairs of Nigeria' Jubilee Movement which vigorously campaigned for debt cancellation for Nigeria. Ugolor is also chair of Nigerian Network on Stolen Assets (NNSA) that monitored the repatriated \$500million Abacha loot from Switzerland. www.aneej.org

³Tracking Anti-Corruption and Asset Recovery Commitments A Progress Report and recommendations for Action a report of OECD and the International Bank for Reconstruction and Development/The World Bank, 2011

⁴ Nairobi HLM2 Final Outcome document (2016), paragraph 39.



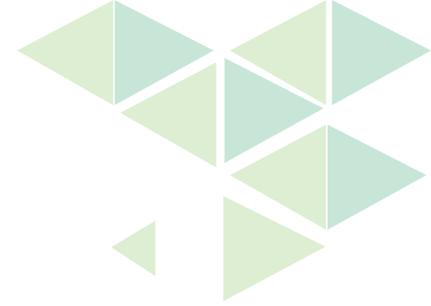
successful administration. Past and present Nigerian governments have made efforts to establish domestic measures as well as international alliances to enable competent authorities in the anti-corruption crusade, prevent the transfer of assets obtained through corruption and to return proceeds of crimes. Such measures include Financial Intelligence Units of CBN, EFCC, ICPC and financial institutions.

The primary legislation in relation to Asset Recovery in Nigeria includes the following:

- The Companies and Allied Matters Act 1990;
- The Constitution of the Federal Republic of Nigeria 1999;
- The Corrupt Practices and Other Related Offences Act 2000;
- The Economic and Financial Crimes Commission Act 2004 (EFCC Act);
- The Criminal Code Act, Laws of The Federation of Nigeria (LFN) 2007;
- The Criminal Procedure Act, LFN 2007;
- The Investment and Securities Act 2007;
- The Asset Management Corporation of Nigeria Act 2010;
- The Money Laundering (Prohibition) Act 2011;
- The Evidence Act 2011;
- The Administration of Criminal Justice Act, 2015

The major duties of these protagonist agencies deriving from these legislations are:

- Prevention and detection of transfers of proceeds of crime
- Enhanced scrutiny of high-level public officials
- Cooperation between national authorities and financial institutions
- Civil Proceedings as a method of recovery
- Confiscation, Freezing/Seizure of Property
- Third-party rights
- Return and disposal of assets



LEGAL FRAMEWORK FOR SPECIFIC ASSET RECOVERY ARTICLES FROM UNCAC

In relation to Article 53 of UNCAC which relate to direct measures, by section 113-117(a) of the Criminal Code Act, a Magistrate Court has power, when an enquiry or trial in any criminal case is concluded, to make such an order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person appearing to be entitled to the possession thereof, of any moveable property or documents produced before the court or which is in its custody or regarding which an offence appears to have been committed or which has been used for the commission of any offence.

Section 20 and 21 of the EFCC Act provides for forfeiture of illicit assets of convicted persons to the Federal Government.

The combined effect of Sections 20-22 of the EFCC Act and sections 113-117 of the Criminal Code Act enables the initiation of civil proceedings to actualize the rights of another State Party. In addition, the Administration of Criminal Justice Act 2015 Sections 314 (1) & (2), 319 and 320 also supports these provisions. Section 11 the Advance Fee Fraud and Other Fraud Related Offences Act 2006 also provides a legal framework for paragraph 3 of Article 53.

The following provisions apply to Article 54 of UNCAC Subparagraph 1 (a) & (b) with respect to confiscation.

1. Sections 20-22 EFCC ACT 2004
2. Section 17 Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006
3. Sections 46 and 47 ICPC Act

4. Section 17 Advance Fee Fraud and Other Fraud Related Offences Act 2006
5. Section 17 Money Laundering Prohibition Act 2011 As Amended

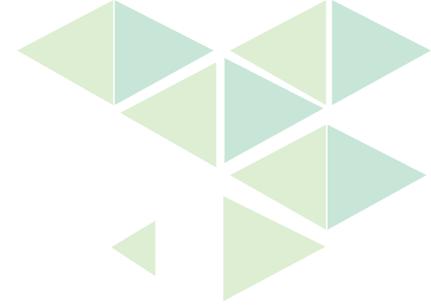
There are some provisions in legislations which will enable non-conviction based forfeiture in appropriate cases in compliance with Subparagraph 1 (c) Examples are as follows:

1. Section 17(1) Advance Fee Fraud and Other Fraud Related Offences Act 2006
2. Section 329 - 330 Administration of Criminal Justice Act (ACJA) 2015 and section
3. Civil Procedure Rules which provide for (Mareva injunctions)
4. The Proceeds of Crime Bill which is before the National Assembly will provide a comprehensive framework

Sections of the EFCC Act especially, Sections 6(d) and 6(j), provide for measures to identify, trace, freeze, confiscate and seize proceeds of crime as well as collaborate with institutions both within and outside Nigeria in carrying out these functions in compliance to Subparagraph 2(a). Again, Sections 25, 26 and 28 of EFCC Act 2004 also have provisions on forfeiture of assets which are proceeds of crime. Part v - forfeiture of assets of persons arrested for offences under the EFCC ACT.

The relevant laws to subparagraph 2(b), (c) of article 54 also include;

1. Sections 6(k), 28 and 29 EFCC (Establishment) Act 2004
2. Section 46 ICPC Act 2000



Sections 6 (k), 26, 28 and 29 (Establishment) Act 2004 (cited above).
Section 44 (2) (k) constitution of the Federal Republic of Nigeria (CFRN) 1999.

The relevant framework for paragraph 1 to 5 of article 57 include;

1. Section 17 Advance Free Fraud act 2006
2. Economic and Financial Crimes Commission (Establishment) Act 2004
3. Draft POCA bill before the National Assembly
4. Section 6(g), (j) and (k) of the EFCC Act
5. MOUs with law enforcement agencies of other countries
6. Part 33 Administration of Criminal Justice Act 2015 (section 33(a))
7. Mutual Legal Assistance Guidelines
8. Registration of Foreign Judgement Enforcement Act
9. Section 11 (1) Advance Fee Fraud Act 2006
10. Section 319 (1) Administration of Criminal Justice Act 2015

The combined effect of these provisions is that such properties vested in the Government of Nigeria and other State Parties who have interests in the properties can make requests using the channels for Mutual Legal Assistance which will be given subject to bi-lateral or multi-lateral treaties as appropriate. In addition, the Foreign Judgement (Reciprocal and Enforcement) Act permits the registration and enforcement of judgements obtained in other jurisdictions.

Also, Federal High Court and State High Court Rules also provide for registration of foreign judgements and enforcement. The Sheriff and Civil Process Act also provides for enforcement of judgements including foreign judgements.

INSTITUTIONAL STRENGTHS AND WEAKNESSES

Nature and number of institutions responsible for asset freezing, confiscation and repatriation and assessment of effectiveness (including resourcing,

coordination and levels of expertise). If there are various authorities, list them in order of importance, starting with the leading authority. Be as precise as possible (persons, functions, etc.) and outline the competencies of the various authorities.

Overview of The Nigerian Police, Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices and Other Related Offences (ICPC)

1. The Nigerian Police:

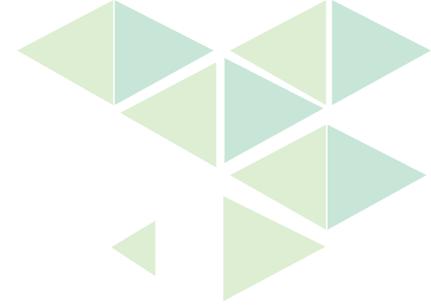
The police are empowered by several laws to arrest suspects, prosecute and investigate all forms of crime. It is also empowered to work with other agencies of government responsible for the regulation and enforcement of duplicity of laws of the Federal Republic of Nigeria.

In fulfilling this role, in the course of any investigation, the police are empowered by laws to seize or withhold any proceeds obtained by the suspect, directly or indirectly, until the final determination by relevant court of law.

The general legal framework for seized assets require that such assets be managed by the court, which then delegates authority as it deems fit or as provided by the relevant legislation. Where the court orders do not clearly state the person or institution to receive the proceeds, such proceeds shall form part of government revenue in accordance with section 263(2) of the Criminal Procedure Act 2004.

2. The Economic and Financial Crimes Commission (EFCC):

Under the EFCC Act 2004, a person convicted of an offence shall forfeit to the federal government all assets or property derived from any proceeds the person benefited, directly or indirectly, as a result of such offence.⁵⁵ In practice the commission or any



authorized officer may apply to the court for an order of confiscation and forfeiture of assets and properties acquired or obtained as a result of offences convicted under the EFCC Act.

Assets forfeited under the EFCC Act are to be disposed of by the secretary to the commission, and the proceeds paid to the federal government. Under the Criminal Procedure Act every article, not pecuniary, forfeited in respect of an offence or the seizure, forfeiture or disposal of which may be enforced by the court may be sold or disposed of in such a manner as the court may direct, and the proceeds of such sale shall be applied in a like manner as if the proceeds were a penalty imposed under the written law on which the proceeding for forfeiture is founded.⁶

Where the proceeding is initiated by the EFCC, section 31 of the EFCC Act provides that upon the delivery of a final order of forfeiture, the secretary to the commission is expected to take all steps to dispose of the property concerned by sale or otherwise and the proceeds of sale of such property shall be paid into the Consolidated Revenue Fund of the Federation.⁷

There are identifiable gaps associated with the EFCC Act in relation to its compliance with international treaties and standards including UNCAC and AU Convention. For instance, Folashade Okeshola (2012), posited that the EFCC Act should be amended in line with the AU Convention by incorporating the following:

- The requirement for minimum Guarantees of Fair Trial as prescribed in Article 14 of the Convention.
- Article 5 (3) of the Convention which provides for meaningful protection of reporting persons, witnesses and victims;
- Article 6 of the Convention which provides against money laundering of the proceeds of corruption;
- Article 8 of the Convention which provides

against illicit enrichment; and Article 13 on jurisdiction.

In addition to the above, further steps need to be taken to bring the EFCC Act into compliance with the UN convention. Compliance with the UN Convention by incorporating the following:

- Article 5 on National Action Plan Against Corruption;
- Article 53 on measures for direct recovery of property;
- Article 57 of UNCAC on return and disposal of assets⁸

It has also been suggested in the proposed Proceeds of Crime Bill 2017 (passed by the Senate, 8th Assembly, yet to be passed by the House of Representatives) that a special Agency should be set up under the proposed Bill, charged with the primary functions of applying, managing and coordination the whole process of asset recovery, forfeiture and management of assets and that EFCC should be divested of these functions having failed in the proper management of these assets.

Furthermore, the controversy surrounding the confirmation of the Chairman of the EFCC by the Senate has brought the institutions into public odium and cynicism. The credibility of the Agency has thereby, be impugned dramatically, thereby affecting its effectiveness and opened its decisions or authority to various social, political and legal challenges. (optional review)

3. The Independent Corrupt Practices Commission (ICPC):

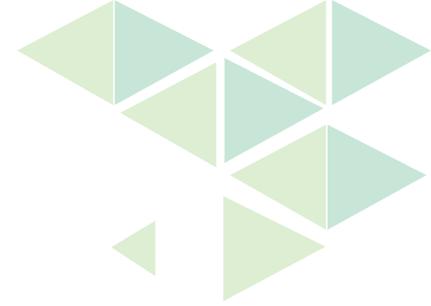
Likewise, the Corrupt Practices and Other Related Offences Act, the Court is empowered to issue a forfeiture order against the property of a convicted person. The Court may also issue grant an order of forfeiture against the property of a unconvicted person where there are reasonable grounds to believe that the accused person is not the true

⁶Ibid.Sofunde, Osakwe, Ogundipe&Belgore. Nigeria: Getting the Deal Through, Asset Recovery 2015

⁷Ibid.

⁸Ibid.

⁹http://www.ajicrnet.com/journals/Vol_2_No_7_July_2012/22.pdf



owner of the property or that the property was beyond the means of the accused person and that there are no other purchaser or value in good faith for valuable consideration an order of forfeiture if the offence is not proved against the accused but the court is satisfied that the accused is not the true and lawful owner of such property and that no other person is entitled to the property as a purchaser in good faith for valuable consideration.⁹

However, the preponderance of political partisanship, and powerful social networks of corrupt leaders have impacted greatly on the effective implementation and application of these laws to combat anti-corruption and asset recovery regime in Nigeria.

It is in the light of the above limitation that the proposed Proceeds of Crime Bill 2017 has provided for the taking over of these functions from the ICPC in the same vein as EFCC and the functions assigned to a Special Agency charged with Asset Recovery a, Forfeiture and Management.

OVERVIEW OF INTERNATIONAL INSTRUMENTS FOR ASSET RECOVERY

The adoption and ratification of the United Nations Convention against Corruption (UNCAC) Assisted in facilitating the return of assets derived from proceeds of crime amongst sovereign states in the recovery of assets derived from proceeds of crime and retained in any part of the world. It has been the binding legal framework for this crusade. This instrument empowered the Nigerian government to request for the return of stolen assets from any countries retaining such properties

Nigeria is also a signatory to the following international conventions on asset recovery:

- The Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth (including amendments made by law ministers in April 1990, November 2002 and October 2005);

⁹Sofunde, Osakwe, Ogundipe&Belgore. Nigeria: Getting the Deal Through, Asset Recovery 2015ibid.

¹⁰ANEEJ research report on UNCAC implementation in Nigeria (2017).

- The United Nations Convention against Transnational Organized Crime (signed 13 December 2000, ratified 28 June 2001);
- The London Scheme for Extradition within the Commonwealth (incorporating the amendments agreed at Kingstown in November 2002);
- The United Nations Convention against Corruption (UNCAC) signed by Nigeria on 9 December 2003 and ratified on 14 December 2004.

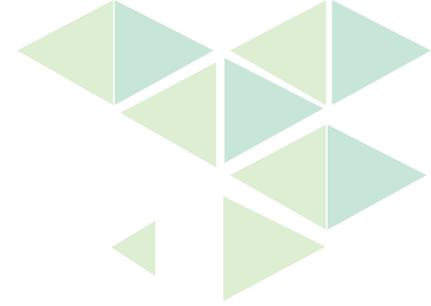
The UNCAC (adopted by the General Assembly Resolution 58/4 of October 31, 2003) is the most profound piece of legislation in the arsenal of the Nigerian government in the recovery of stolen assets from the western countries.

Nigeria is also largely compliant with the requirements of other continental and regional conventions such as; African Union Convention on Prevention and Combating Corruption (AUCPCC) and Economic Community of West African States Protocol on the fight against Corruption (ECOWAS Protocol), The structures, laws and institutions includes those already in existence prior to the adoption of the International Anti-Corruption instruments. Nigeria has indeed made a remarkable achievements from its position in the year 2000 in relation to the development of policies and institutional reforms on Anti-corruption.¹⁰

Overall Assessment of Political Will

The first demonstration of political will in repatriating stolen assets by Politically Exposed Persons was during the regime of General Abdulsalami Abubakar in 1999. He initiated the recovery of the \$88 million cash and assets from the Abacha family and associates domestically. His government was short-lived however.

The era of President Olusegun Obasanjo witnessed a great deal of political will been demonstrated in the fight against corruption and repatriation of stolen public assets.



Prior to the ascendancy of President Obasanjo to power, the Police and related agencies were the only law enforcement agencies championing the fight against corruption and public asset recovery. His regime established the EFCC and ICPC. These two Agencies became the harbinger in the fight against corruption and assets recovery. The limitations of these two agencies have been identified above.

The current administration under the leadership of President Muhammadu Buhari was elected into office on the back of a strong anti-corruption manifesto. In 2015, the Presidency constituted the Presidential Advisory Committee Against Corruption (PACAC) with a mandate to advise the government on the prosecution of the war against corruption and the implementation of required reforms in Nigeria's criminal justice system. The setting up of PACAC was an indication of a strong political will to fight corruption. PACAC has gone ahead to publish the National Anti-Corruption Plan for 2015 – 2019 that categorically points out their mission and vision, specific goals, and strategy. The plan is a roadmap and signals the commitment of the government in the fight against corruption.

At London Commonwealth event held May 11, 2016 tagged "Tackling Corruption Together: A Conference for Civil Society, Business and Government Leaders," President Muhammadu Buhari demanded that identified funds stolen from Nigeria And hidden away in foreign countries be repatriated without delay or preconditions.

He equally called for the establishment of an international anti-corruption infrastructure that would monitor, trace and facilitate the return of such assets to their countries of origin.¹¹

The government reinstated its commitment to enhance the demand element of governance through proactively engaging an open, transparent and accountable government. President

Muhammadu Buhari committed Nigeria to the Open Government Partnership (OGP) International initiative at the London Anti-Corruption Summit in May 2016. Nigeria became the 70th member state of this international initiative after signing in 2016. The OGP in Nigeria has developed and adopted a National Action Plan 2017-2019 covering four key thematic areas covering fiscal transparency, anti-corruption, access to information, and citizen engagement.¹² The commitments are concrete, ambitious but implementable. Some of the key deliverables are open budgeting, open contracting, revenue transparency, and a publication of a register of beneficial ownership especially in the extractive industry among others.

The OGP commitments on access to information and citizen engagement enhanced the participation of the Civil Society Organisations, for the first time, in the recovery of assets processes domestically and internationally.

TRANSPARENCY AND INVOLVEMENT OF CIVIL SOCIETY

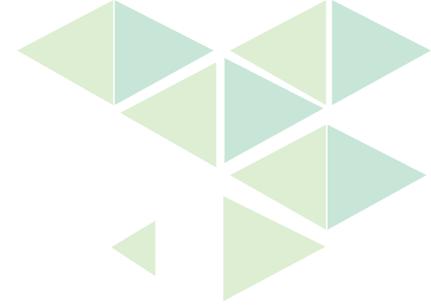
1. Openness to and Mechanism for CSO Engagement

The recognition of expertise of the Civil Society Organisation has been enhanced by their engagement in the assets recovery process. It is now a common feature to have CSOs participating actively along - side the Federal Government in discussions and negotiations with foreign counterparts.

Nigeria has been actively involved in the negotiations leading to the review of the UNCAC since 2004 including attendance at the COSP since the convention came into force. The review process comprises two five-year cycles: The first cycle (2010–2015) covers chapter III on criminalization and law enforcement and chapter IV on international cooperation. The second cycle (2015–2020) covers chapter II on preventive

¹¹<https://www.dailytrust.com.ng/news/general/buhari-demands-unconditional-repatriation-of-looted-funds>

¹²<https://www.opengovpartnership.org/country/nigeria>



measures and chapter V on asset recovery. The Nigerian government is robustly engaging CSOs in the second cycle review of UNCAC.

One of the joint reporters of this country report implemented the 'Civil Society Advocacy to Support Anti-Corruption in Nigeria' (CASAN) project, driven with support from the United Nations Development Programme under the European Development Fund (EDF).

The goal of the CASAN project include enhancing the capacity of CSOs and journalists to support anti-corruption effort by engaging the relevant arm/agencies of government on the implementation of OGP and UNCAC.

As part of the project implementation, the CSO involved in this project has assisted in building the capacities of selected CSOs and journalists to support anti-corruption effort by engaging the relevant arms/agencies of government on the implementation of OGP and UNCAC.¹³ One of the CSOs submitting this report led CSOs participation in the 2nd UNCAC review cycle. It facilitated meetings of focal persons involved in the implementation of OGP and UNCAC review process with Civil Society.

Over 30 CSOs have been meeting with officials of the EFCC, TUGAR and the Ministry of Justice, MOJ, and have attained a level of substantial knowledge on the OGP and UNCAC implementation and review in Nigeria. A number of CSOs are now applying the knowledge gained from CASAN project to support their policy advocacy around the issues. It is equally expected that the participating journalists should be able to use their platforms to report the issues, identify gaps in domestic laws in compliance with UNCAC and also report on the implementation of the OGP National Plan.

The OGP National Action Plan (Jan 2017-June 2019) was formulated with substantial input from

the Civil Society Organisations and private sector. The National Action Plan was launched and validated in Kaduna in 2016 and presented to the OGP International in France on the 7th December 2016.

The active involvement of the CSOs in governance is demonstrated by the composition of the OGP Steering Committee which is the high level decision making body for the implementation of OGP in Nigeria. The Civil Society Organisations are ably represented in the 17-member Committee including ANEEJ serving within the Anti-Corruption /Assets Recovery sub-committee.

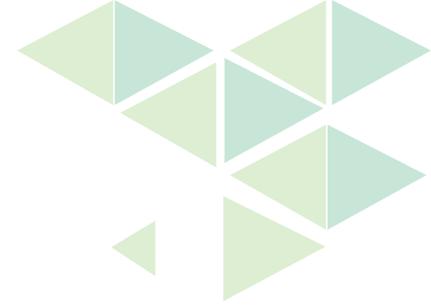
2. CSO Landscape and History of Involvement

CSO landscape and history of involvement including CSOs asks on asset recovery so far and response from government (e.g. asks from CSOs on asset return in relation to the country and response so far of government to these asks); kind of work CSOs are active in (lobbying, investigation, etc.) and other relevant information about CSOs landscape.

In 1998, West African Civil Society Organisations working on debt and Structural Adjustment in collaboration with the European Network on Debt and Development (EURODAD) with support from United Nations Development Programme (UNDP) and OXFAM GB met in Djregbe, Benin Republic at a conference to review the Highly Indebted Poor Countries (HIPC) debt initiative of the World Bank and IMF launched in 1996.

The meeting provided an opportunity for the flag off of the stolen wealth campaign in West Africa. The issue was again put forward at the Lome consultation of West African CSOs by the World Bank and IMF on HIPC and the impact of Structural Adjustment Programme on the West African people in 1999. Again, the issue of corruption was taken on board for campaigning by the civil society under the aegis of ECONDDAD, a sub-regional

¹³Abuja:<https://guardian.ng/news/aneej-stresses-journalists-csos-roles-in-anti-graft-campaign/>



network on debt and development. Following this, the issue was adopted at the Lusaka Declaration in late 1999 and Cologne CSO side event in June 1999. It was also adopted at the Cotonou consensus in October 1999 and at the Jubilee South Summit held in Johannesburg, South Africa in November 1999.

In consolidating the Pan-African and global coalition to campaign for a UN convention on the recovery of stolen funds, a public hearing was organized in Lagos, Nigeria in November 1999 to generate ideas and strategies to realize this goal.

In all these fora, it was stated in Clear terms that the sustainability of democracy and economic reform in Africa would largely depend on whether Africa's new democracies are able to deliver the goods in terms of poverty alleviation and human development. Causes of Africa's poverty were listed to include war, bad governments, and drastic decline in terms of trade, environmental degradation and some others. Most importantly, massive looting of Africans wealth by corrupt leaders and their western collaborators was recognized as the chief cause of poverty in the region which allegedly owes over \$560 billion as external debt and over 60 per cent of its population lives on less than \$1 per day.

At a recent review of EFCC's operations regarding asset recovery in the country, the issue of Asset Forfeiture and Management in the EFCC was raised by CSOs. This is captured in Sections 28, 29 and 30 of the EFCC Establishment Act (2004). Asset forfeiture under the EFCC Act is both at interim and final forfeiture basis. The final forfeiture of any asset which investigation reveals as proceeds of crime is upon the conviction of the defendant. The EFCC recently upgraded its unit on Asset Forfeiture to a Directorate. The CSOs present at the review meeting raised the following observations in relation to the powers of the EFCC of seizure and managing assets of proceeds of crime. These are:

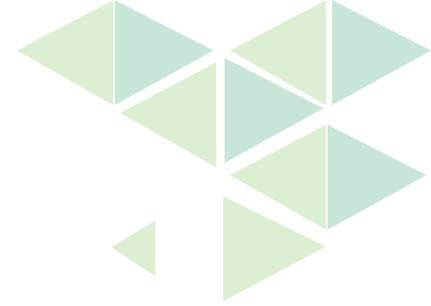
1. The criterion which the EFCC uses in selecting managers for seized assets which are forfeited in the interim.
2. Measures in place to ensure that the EFCC does not sell the asset back to the people from who the assets were seized in the first place.
3. The sale of the assets at the right price.
4. The lack of public record in terms of disclosure as to what has been seized and whether they are at final forfeiture or interim by the EFCC and the absence of newspaper advertisement on assets for sale seized by the Commission.
5. The placing of inscription on building by the EFCC which some believes will devalue the property, when they are to be sold eventually.

Summary of the EFCC Response to the Observations

The EFCC carefully select Asset Managers in relation to interim forfeiture assets. All final forfeiture assets are secured and handed over to the Federal Government through the Secretary of the Commission. The recovered cash from sales are paid subsequently into an Asset Recovery Account designated at the Central Bank. The management of the interim are carried out by the Secretary of the Commission based on prescribed guidelines in the enabling Act.

The point was made very clear that the EFCC does not sell asset recovered nor hold unto any cash recovered as widely held by members of the public. It was further explained that for perishable goods for example crude oil or petroleum products, the Commission with the collaboration of the relevant government agency for example the Department of Petroleum Resources (DPR) inspects the product, measure the quantity and after this seeks and received the necessary clearance to sell. Once this is done the money is deposited in the recovery account at the CBN. Should the Commission lose the case in court, the money is given back to the defendant. If it is a property, the Commission will

¹⁴⁴ From Africa Through Monterrey To Vienna: Seeking An International Treaty On Corruption " A story of a north-south partnership against corruption by Rev. David Ugolor.
<http://www.aneej.org/from-africa-through-monterrey-to-vienna-seeking-an-international-treaty-on-corruption/>



give it to estate managers who will collect rent on the property by the occupants. These rent is remitted to the recovery account until a final forfeiture is secured and should the Commission lose the case the defendant shall get back his/her property and the rents accruing thereof shall be paid.

Again, ahead of the repatriation of another \$321 million Abacha Loot, the NNSA engaged the Nigerian government and demanded full CSO participation in the process. This body demanded that the Memorandum of Understanding between Switzerland and our government be given to CSOs for input before it would be finalised. For the first time in Nigerian history, the Nigerian Government provided the draft MoU for CSOs input. Article 7 of the MoU expressly states that " As provided in the letter of intent between the Government of the Federal Republic of Nigeria and the Swiss Federal Council, civil society organizations operating under the **'Nigeria Network on Stolen Assets'** shall be part of the monitoring team for the purpose of reporting on the implementation of the returned funds applied to the NSSNP project.¹⁵" Civil Society also demanded that the money be spent on projects in the 2017 budget towards meeting the 2030 SDGs.

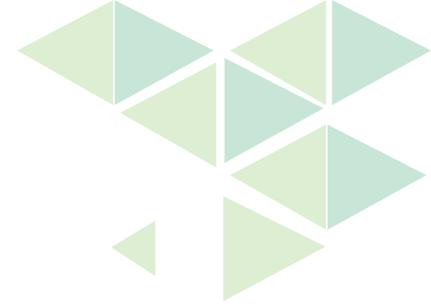
On 24 August 2016, one of the joint CSOs submitting this report was invited to meet US Secretary of State John Kerry in Abuja. Its representative presented an agenda on the return of stolen assets from the US, and stressed the need for the US to help speed the return of billions of dollars looted from the country's treasury. Secretary Kerry promised to work on SERAP's request, and his commitment received wide media coverage including the Associated Press.

As a general rule, CSOs engaging in Asset recovery related issues are able to readily access information relating to general policy issues with the passage of the FOI Act 2011. The required information by the CSOs are not often expeditious as the CSOs would require, however, there is an improvement in the

way this information IS disclosed to the CSOs over time. For example, following an information request to the World Bank on 21 September 2015 – the first in Nigeria using the Bank's Access to Information Policy – SERAP obtained 700 pages of documents related to the spending of recovered stolen assets. However, the information raises more questions than it answers and so the documents are currently under investigation by the Economic and Financial Crimes Commission. Also, the Attorney General and Minister of Justice obliged a CSO request for a copy of the MoU between Nigeria and Switzerland over the planned repatriation of \$321 million Abacha loot.

However, the successes referred above are truncated by other failures including failure to release to SERAP freedom of information request on the release of the names of suspected looters and the circumstances under which recovered stolen public funds were recovered. The case is pending before the Lagos High Court and a hearing is scheduled for April 2018.

¹⁵Memorandum of Understanding between The Government of the Federal Republic of Nigeria and The Swiss Federal Council on the return, monitoring and management of illegally-acquired assets forfeited in Switzerland to be awarded to the Federal Republic of Nigeria.



DOMESTIC ENFORCEMENT OF FOREIGN CORRUPTION CASES

Domestic Enforcement of Foreign Corruption Cases (Relating to Corruption in Origin Countries, Foreign Bribery, Money Laundering, Civil Forfeiture)

a. Resolved Cases in the past 3-5years

Completed Cases

1. Sani Abacha



There have been immense efforts to recover the assets stolen by the late General Abacha and his associates, hidden within and, especially, outside the country. He is estimated to have looted between \$3 billion and \$5 billion over the five years of his rule. General Abacha is alleged to have used four methods for plundering public assets: outright theft from the public treasury through the central bank; inflation of the value of public contracts; extortion of bribes from contractors; and

fraudulent transactions. The corruptly acquired proceeds were laundered through a complex web of banks and front companies in several countries and localities, but principally Nigeria, the UK, Switzerland, Luxembourg, Liechtenstein, Jersey, and the Bahamas.

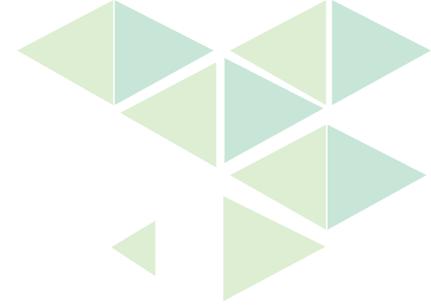
The first recovery process initiated during the era of General Abdulsalami Abubakar led to the domestic recovery of \$800 million in cash and assets from the Abacha family and associates.

In 2003, a sum of \$160 million was repatriated to Nigeria by the government of Jersey. According to Jersey Attorney General,

“2003 saw Jersey's long running investigation into Nigerian corruption approach its climax. Working closely with the Nigerian authorities, the U.S. authorities and countries across Western Europe, Serious Crime Group lawyers played a direct and crucial role in the repatriation of some U.S.\$160 million of money embezzled from the people of Nigeria and channeled through Jersey by the late Nigerian dictator Sani Abacha, and his henchmen. Further repatriations of stolen funds are expected to follow in the months ahead.”¹⁶

In September 1999, the then President Obasanjo' government engaged a Swiss legal firm, Monfrini and Partners, to assist with tracing and recovering of monies held abroad. The group was tasked with drawing from the existing Mutual Legal Assistance

¹⁶Source: Attorney General's Annual Review 2003, pp. 5-6, accessed at: <http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20LOD%20AR%202003%20TA.pdf>



(MLA) agreement, to get the Swiss government to freeze Abacha's assets with the condition that the Nigerian government would present the Swiss authorities with a final forfeiture judgment reached in the Nigerian courts. After a series of negotiations, which led to the selection of the World Bank as a bona fide third party for the monitoring of recovered assets, repatriation finally took place in September and November 2005 and early 2006, for a total of \$505.5 million.

According to reports, as at February 2012, the cumulative recovery of the Abacha loot, based on the MLA, stood at about \$1 billion.

“Representation of the Government of Nigeria in the Abacha case in Switzerland, and lead law firm in the recovery efforts initiated in twelve jurisdictions through mutual assistance and criminal proceedings to recover public funds embezzled over five years by former dictator Sani Abacha and his family, estimated between US\$ 3 to 5 billion. Approximately US\$ 2 billion have been frozen and more than US\$ 1 billion has been repatriated to Nigeria.”¹⁷

Another completed case of Nigeria's asset sunk into the Abacha loot was the Ajaokuta Steel Plant debt buy-back case. In this case, according to Attorneys Tim Daniel and James Maton, Russian debt had financed the construction of the massive Ajaokuta Steel Plant in Nigeria's Kogi State:

“Construction, mainly by Russian contractors, took place at substantial cost over a period of fifteen years but, by 1998, few products had been manufactured by the plant. In an effort to cut their losses, the Russians started selling off the debt...through the use of a British Virgin Islands company called Mecosta that was beneficially owned by

Mohammed Abacha and Abubakar Bagudu. Mecosta (indirectly) acquired the debt from the Russians and sold it to the Nigerian government for twice the sum it had paid, taking payment partly in cash and partly in Nigerian par bonds.¹⁸ From the frozen proceed sales; a sum of \$198,484,000 was returned to Nigeria as ordered by the Judge handling the civil proceedings for Nigeria against a number of parties in 2003”.¹⁹

Another victory added to the coffers of the Nigerian government is the return of funds hidden in some accounts at Liechtenstein, which resulted in the return of \$233,795,000 to Nigeria between 2013 and June 2014.

“The Principality of Liechtenstein announced that it was returning approximately \$225 million in Abacha-related assets to Nigeria. In its meeting on 17 June 2014, the Government approved repatriation to the Federal Republic of Nigeria of the last tranche of the assets associated with the family of the former president of Nigeria, General Abacha, in the amount of EUR 167 million. These assets had been declared forfeited to the Principality of Liechtenstein in a final judgment. At the same time, at the request of Nigeria and in accordance with Liechtenstein the World Bank declared its willingness to monitor the use of the repatriated assets.”²⁰

A similar case in the Abacha asset recovery is that involving Mr. Raj Arjandas Bhojwani, a contractor for the Nigerian government during Abacha's rule. This sum of \$36,016,200 was received by Nigeria government from the government of Jersey. The Minister of Justice also confirmed this repatriation, when he stated that £22.5 million confiscated in Jersey were repatriated.²¹

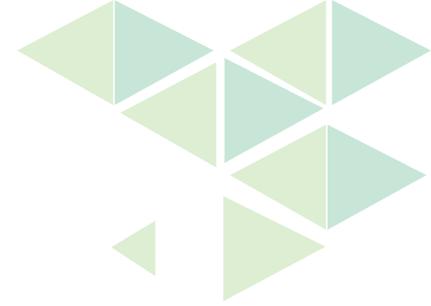
¹⁷<https://icc-ccs.org/component/content/article/108-flexicontent/experience/foreign-corruption/514-represented-foreign-governments> and <https://icc-ccs.org/component/content/article/66-fraudnet/our-case-experience/260-foreign-corruption>

¹⁸<http://star.worldbank.org/corruption-cases/node/18577>

¹⁹<http://star.worldbank.org/corruption-cases/node/18577>

²⁰http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Abacha_Switzerland_Monfrini_Art_2008.pdf

²¹<https://web.archive.org/web/20140609210326/http://www.nigeria.gov.ng/2012-10-29-11-09-25/news/429-fg-assures-speedy-prosecution-of-criminal-and-civil-cases-reveals-more-abacha-loots-are-being-recovered>



The impact of international cooperation and instruments of asset recovery are central in all the cases of recovery covered. The countries where the late General Abacha and his crime associates kept the loot cooperated and contributed in terms of investigation, prosecution, and repatriation of all the assets. However, the Nigerian government did not publicise that as much as two billion, four hundred and twenty-eight million, two hundred and ninety-five thousand, two hundred dollars (\$2,428,295,200) has been recorded by countries and international organizations who have aided the repatriation of the larger part of the funds. Some of the reported sums include:

- \$1,000,000,000 – Swiss' government Mutual Legal Assistance, up to 2012
- \$800,000,000 – General Abubakar-led domestic recovery, 1999
- \$233,795,000 – Principality of Liechtenstein's returned funds, June 2014
- \$198,484,000 – Ajaokuta Steel Plant debt buy-back case, 2003
- \$160,000,000 – Jersey's global asset recovery for Nigeria, 2003
- \$36,016,200 – Jersey's recovered funds from Mr. Bhojwani, 2012

The only available record for the management of the Abacha loot is in relation to \$505.5million repatriation completed in the first quarter of 2006 by the Swiss authorities to the Nigerian government. In a letter to the Ambassador of Switzerland to Nigeria dated January 9, 2005 the Federal Ministry of Finance (FMF) explained that the US\$500m (NGN 65 billion) of Abacha Looted Funds was programmed into and utilized in the 2004 budget. The FMF further clarified that, in line with its economic reform program (and NEEDS), the Government increased its outlays to the key MDG sectors in the 2004 budget,

“Out of a total sum of USD 505 million repatriated from Switzerland, and according to the agreement reached on priority pro-

poor sectors, the allocations were to power (USD 168.5 million), works (USD 144.5 million), health (USD 84.1 million), education (USD 60.1 million), and water resources (USD 48.2 million)”.

However, it should be noted first, that the Nigerian government indicated that the money was spent as part of its 2004 budget outlay even though the money had not arrived its purse. Secondly, the legal agreements that governed the return of the Abacha funds to Nigeria Did not provide that the Nigeria government should disclose to the public all the specific projects that benefitted from the recovered funds. Consequently, government MDAs were not “able to distinguish (ex post) between general capital releases and releases specifically obtained from recovered funds.”²²

With the foregoing, It is almost certain that successive governments including Obasanjo, Yar adua and Jonathan governments have not accounted properly and satisfactorily for over \$2.4 Billion of funds recovered from Abacha loot. This calls for immediate actions by the Buhari government towards transparency and accountability for the utilization of the funds.

²²UTILIZATION OF REPATRIATED ABACHA LOOT: Report Prepared by the World Bank with Cooperation from the Federal Ministry of Finance, Abuja, 2006.

\$1,000,000,000

Swiss' government Mutual Legal Assistance, up to 2012

\$233,795,000

Principality of Liechtenstein's returned funds, June 2014

\$800,000,000

General Abubakar-led domestic recovery, 1999



\$160,000,000

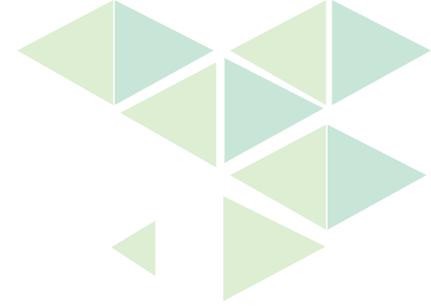
Jersey's global asset recovery for Nigeria, 2003

\$198,484,000

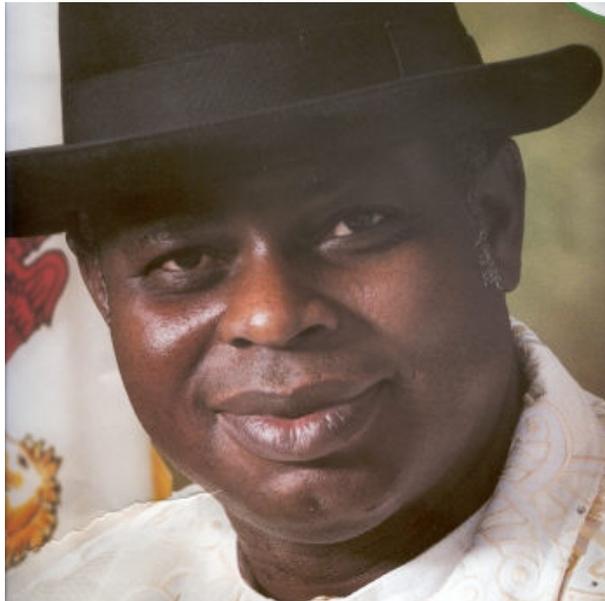
Ajaokuta Steel Plant debt buy-back case, 2003

\$36,016,200

Jersey's recovered funds from Mr. Bhojwani, 2012



2. Diepreye Alamieyeseigha



Between the start of his period of office in May 1999 and late 2005, Alamieyeseigha accumulated (outside Nigeria) known properties, bank accounts, investments, and cash exceeding £10 million in value. His portfolio of foreign assets included accounts with five banks in the United Kingdom and additional accounts with banks in Cyprus, Denmark, and the United States; four London properties acquired for a total of £4.8 million; a Cape Town harbor penthouse acquired at almost £1 million; possible assets in the United States; and almost £1 million in cash stored in one of his London properties. Some of the foreign assets were held in his name and the name of his wife, but the bulk were held by companies and trusts incorporated in various locations such as Bahamas British Virgin Islands, South Africa, Seychelles, Cyprus, and Denmark.

In the struggle to recover his loot, different legal and civil mechanisms were deployed. Alamieyeseigha asset recovery has been regarded as “a good example of coordinated international asset

recovery”²³. The cases involved the full set of criminal and civil asset recovery mechanisms: criminal proceedings in Nigeria and the United Kingdom, including criminal restraining orders over assets; requests for mutual legal assistance between these jurisdictions and others; criminal confiscation of assets in Nigeria, civil forfeiture of cash in the United Kingdom; private civil proceedings in the United Kingdom, including a worldwide freezing injunction; enforcement of the civil judgment in Cyprus and Denmark; and civil forfeiture proceedings in South Africa.

According to the Stolen Assets Recovery Initiative (StAR) Asset Recovery Handbook published in 2011, about \$17.7 million has been returned to the Nigerian government.

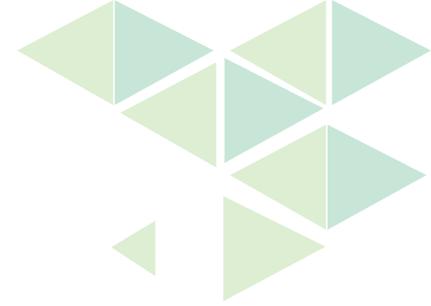
In the case involving Diepreye Peter Solomon Alamieyeseigha, former governor of Bayelsa State, Nigeria, this jurisdiction was able to recover \$17.7 million through domestic proceedings and through cooperation with authorities in South Africa and the United Kingdom. . . various reports acclaimed that the effective cooperation between Nigerian's Economic and Financial Crimes Commission (EFCC) and the United Kingdom's London Metropolitan Police has been able to source and return to the purse of Nigerian government over \$4 million of the loot by Mr. Diepreye Alamieyeseigha. The recovery consisted of one \$1.5 million in cash seized at the time of arrest and another \$2.7 million held in bank accounts and London real estate worth \$15 million [4 properties registered under Solomon & Peters Ltd. as sole proprietor].²⁴

The StAR handbook identified several factors that contributed to the successful asset recovery in the Alamieyeseigha proceedings, as follows:

- Thorough investigations into the corrupt activities of Alamieyeseigha in Nigeria by the

²³James Maton and Tim Daniel, "The Kleptocrat's Portfolio Decisions," in *Draining Development? Controlling Flows of Illicit Funds from Developing Countries*, Peter Reuter, ed., (The World Bank, 2012).

²⁴StAR Case Study, "Diepreye Alamieyeseigha accessed July 19, 2915 at <http://star.worldbank.org/star/publication/asset-recovery-handbook>



Economic and Financial Crimes Commission and by the Metropolitan Police in the United Kingdom

- Effective and quick execution of requests for mutual legal assistance, including the use of a criminal restraint order to secure assets
- Close cooperation between the Nigerian and U.K. authorities and, as far as was permissible, between the U.K. authorities and civil lawyers in Nigeria
- The availability of the documents gathered by law enforcement agencies for civil proceedings
- A package of civil and criminal efforts to recover assets
- Relentless pressure in the civil proceedings to force Alamieyeseigha to properly explain his defense, in particular, the alleged legitimate source of his wealth, coupled with the court's willingness to enter judgment following repeated failures to comply with orders for disclosure of information and documents

3. James Ibori



In September 2013 Mr. James Ibori, who was governor of Delta State between 1999 and 2007, was sentenced to 13 years imprisonment in Britain after pleading guilty to 10 counts of fraud and

money laundering worth tens of millions of pounds. Also, according to reports, out of the £80 million of Ibori's loot that had been temporarily frozen and confiscated in the UK, £1.2 million had so far been returned to Nigeria. In November 2014 it was reported that the UK government was preparing to return an additional £6.8 million while the rest awaited a confiscation hearing fixed for April 2015. The ongoing proceedings will be discussed in the following section.

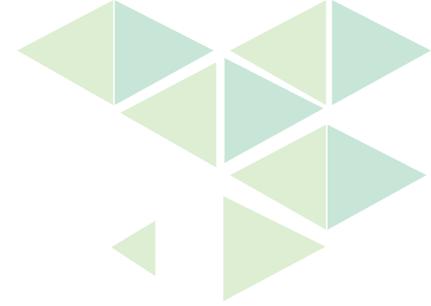
4. Joshua Dariye



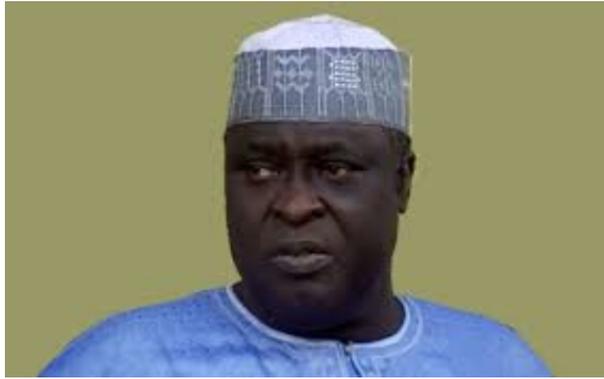
Joshua Dariye was the former Governor of Plateau State during which period he used his office to steal state funds. Mr. Dariye was arrested and interviewed by the Metropolitan Police in London and after skipping Police bail on December 14, 2004 and returning to Nigeria, a warrant was issued for his arrest on charges of money laundering and obtaining services by deception.

According to evidence presented to the United Kingdom Parliament's International Development Committee by the UK Department for International Development, £115,000 in the Joshua Dariye case and £185,000 in Mr. Dariye's associate Joyce Oyebanjo's case have been returned to Nigeria.²⁵

²⁵UK Parliament, International Development Committee, "Supplementary written evidence submitted by The Department for International Development (DFID)," June 2012.



5. Tafa Balogun



Mr. Tafa Balogun, while serving as the Inspector general of Police, was said to have incorporated some companies to loot the police treasury through bribes and kickbacks on contracts. Billions of naira were fraudulently withdrawn by him from the police account and transferred to the companies to buy shares, landed property and foreign currency.

Mr. Balogun was forced to resign in January and arrested in March 2005 to become the first senior official to be convicted in Nigeria's anti-graft drive after he pleaded guilty to graft. Aside the six months imprisonment and five hundred thousand fine on each of the eight-count charges against him, he was made to forfeit all his assets, shares and landed property acquired with the funds stolen from the police treasury. The assets totaled \$150 million, included money stashed in banks, shares in blue chip companies and 14 luxury buildings.

However, as at 2011, about 20 billion naira (about \$87 million, by 2015 dollar to naira rates) could not be accounted, thus substantiating the foregoing stance about lack of transparency and accountability in asset recovery by agencies responsible for asset recovery and forfeitures. In fact, this particular forfeiture became the subject of debate at the fifth legislative assembly where House and Senate committees on Police Affairs claimed:

[We have] looked for it everywhere. We have gone to the Central Bank of Nigeria (CBN), but the money is not there, we went to the Accountant General's Office, the money is nowhere; we went to the Police Accounts, and nothing was there. The money has just disappeared. So the EFCC and the police must produce this money, because it belongs to the police and must be returned to the police.²⁶

There are many more cases of completed asset recovery in Nigeria including the forfeitures of assets of former Governor Lucky Igbinedon, Chief Bode George, and others. Nevertheless, there is limited information about the status of these recoveries or forfeitures nor transparency and accountability on how the recovered funds have been spent.

b. Other Cases in the past 3-5 years

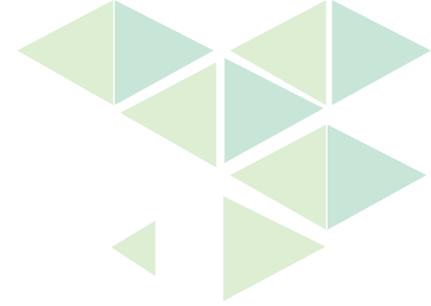
Some cases on Asset Recovery in Nigeria were settled through Plea-bargaining (settlements)

The options and nature of companies and persons that have agreed to make restitution payments in exchange for an end in state investigations provide a moral posture of asset recovery. In a typical plea bargain scenario, s/he offers to pay or relinquish a large sum to seek dismissal of the state's criminal charges and refrain from initiating any other criminal, civil, or administrative actions.

In addition, a plea of guilty will always be considered a mitigating factor; leading to a lower sentence than if that defendant had proceeded to trial.

With regard to settlements, Nigeria has concluded several out-of-court settlements against foreign companies that bribed Nigerian officials. Some are highlighted below with the main aim of identifying the amounts paid as settlements. Although the

²⁶nigerianvoice.com/news/46867/1/nzo-billion-recovered-by-ribadu-from-tafa-balogun.html



terms of many settlements 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.

A. TSKJ Consortium



In 2010, Nigeria entered into settlements with Halliburton Corporation, Snamprogetti Netherlands BV, JGC, and Technip, all of which held an interest in a joint venture known as TSKJ. The Attorney General of the Federation of Nigeria had investigated alleged improper payments to government officials in Nigeria in connection with the construction and subsequent expansion by TSKJ of a natural gas liquefaction project on Bonny Island, Nigeria.

Under the settlement agreements, the EFCC agreed to dismiss all lawsuits and charges against KBR, Halliburton, Snamprogetti, JCG, and Technip corporate entities and associated persons and agreed not to bring any further criminal charges or civil claims against those entities or persons.

Halliburton, Snamprogetti, JGC and Technip agreed to pay a total restitution of \$127.5 million, mostly in penalties. Notably, the agreement contained a cooperation provision, under which Halliburton agreed to provide reasonable assistance to Nigeria in its effort to recover amounts frozen in a Swiss bank account of a former TSKJ agent²⁷.

Details of each case of settlements involved in the TSKJ consortium are listed below with major emphases on the amount considered for settlements.

1. \$32.5 million Settlement - Bonny Island Liquefied Natural Gas Bribe Scheme (TSKJ Consortium)/ Snamprogetti b. Netherlands B.V. and ENI, S.p.A.

According to a Press Release by the ENI company, its subsidiary Snamprogetti Netherlands BV entered into a settlement and non-prosecution agreement with the Nigerian authorities to resolve an investigation into the activities of Snamprogetti, as member of the TSKJ consortium, in connection with contracts to build liquid natural [gas] facilities on Bonny Island, Nigeria. According to the company press release, pursuant to the agreement, Snamprogetti Netherlands B.V. agreed to the payment of a criminal penalty of \$30 million and of \$2.5 million as reimbursement for legal costs and expenses incurred by the Nigerian authorities. The Federal Government of Nigeria agreed to dismiss all charges against Snamprogetti Netherlands BV and to renounce to any civil claims and criminal charges in any jurisdiction.²⁸

2. \$28.5million - Bonny Island Liquefied Natural Gas Bribe Scheme (TSKJ Consortium) / JGC Corporation

According to the JGC Corporation's January 31, 2011 Notice of Loss and Revisions of Earnings Forecasts for Fiscal Year Ending March 31, 2011, JGC reached a settlement with the Nigerian authorities in January 2011. No other details were noted in the company's notice.²⁹

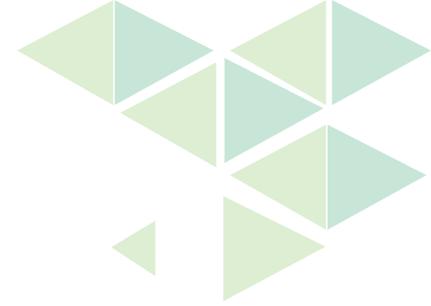
3. \$35million - Bonny Island Liquefied Natural Gas Bribe Scheme (TSKJ Consortium) / Kellogg Brown Root & Halliburton Co.

According to the Halliburton Company Press Release:

²⁷Ibid.

²⁸<http://star.worldbank.org/corruption-cases/node/19843>

²⁹JGC Corporation's January 31, 2011 Notice of Loss and Revisions of Earnings Forecasts for Fiscal Year Ending March 31, 2011



Pursuant to this agreement [with Federal Government of Nigeria (FGN)], all lawsuits and charges against KBR and Halliburton corporate entities and associated persons have been withdrawn, The FGN agreed not to bring any further criminal charges or civil claims against those entities or persons, and Halliburton agreed to pay US\$32.5 million to the FGN and to pay an additional US\$2.5 million for FGN's attorneys' fees and other expenses. Among other provisions, Halliburton agreed to provide reasonable assistance in the FGN's effort to recover amounts frozen in a Swiss bank account of a former TSKJ agent and affirmed a continuing commitment with regard to corporate governance. Any charges related to this settlement will be reflected in discontinued operations.³⁰

4. \$30 million - LNG Bribe Scheme (TSKJ Consortium)/Technip S.A.-Nigeria Settlement

According to secondary sources (including Marcus Cohen, David Elesinmogun&ObumnemeEgwuatu, "Will Nigeria Take Another Bite?" FCPA Blog, August 4, 2011), Technip agreed to pay \$30 million to Nigerian authorities as part of its settlement agreement.³¹

B. Siemens AG (\$46 million)

SIEMENS

The Economic and Financial Crimes Commission (EFCC) carried out its own investigation of suspected payments by Siemens to Nigerian officials and by October 2010, Nigeria filed foreign bribery scheme charges against Siemens AG, as part of the coordinated simultaneous settlements in the United States and Germany.

<http://star.worldbank.org/corruption-cases/node/19846>

³⁰Halliburton Company Press Release, "Halliburton Confirms Agreement to Settle with Federal Government of Nigeria," December 21, 2010

³¹<http://star.worldbank.org/corruption-cases/node/19849>

³²Siemens, "Legal Proceedings," May 4, 2011. <http://star.worldbank.org/corruption-cases/node/20149>

³³<http://star.worldbank.org/corruption-cases/node/19874>

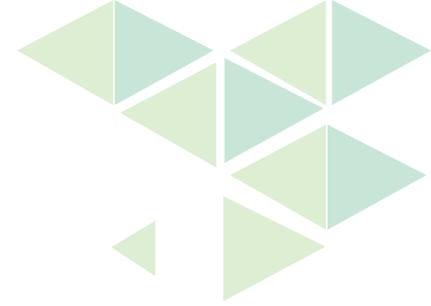
In November 2010, Nigeria entered into an out-of-court settlement with Siemens, agreeing to end all investigations and dismiss charges in exchange for millions of dollars in disgorgement and fines.

According to the May 4, 2011 Siemens Company Statement on Legal Proceedings against it around the world, the criminal charges filed against it by the Nigerian Economic and Financial Crimes Commission (EFCC) was dismissed in November 2010, pursuant to a settlement agreement between Siemens and the Nigerian authorities.³²

C. \$6,300,000 - Bribery by Oil Services and Freight Forwarding Companies / Tidewater, Inc.



Pursuant to a settlement agreement announced that day, Tidewater agreed to settle allegations that the Nigerian affiliate of a Swiss-based freight forwarder had made improper payments to government officials in Nigeria on behalf of Tidewater's foreign subsidiaries. The Nigerian investigation revolved around the same 2007 conduct detailed in Tidewater's settlements with the US Department of Justice and the Securities and Exchange Commission. Tidewater agreed to pay \$6 million to the Government of Nigeria and an additional \$300,000 for the Government of Nigeria's attorneys and other expenses.³³



D. \$2.5million - Bribery by Oil Services and Freight Forwarding Companies / Noble Corporation



According to a filing by the Noble Corporation with the US Securities and Exchange Commission,

Nigerian Customs Matter / In November 2010, Noble-Swiss reached a settlement with the U.S. Department of Justice and the Securities and Exchange Commission in connection with their investigation under the United States Foreign Corrupt Practices Act of certain reimbursement payments made by its Nigerian affiliate to customs agents in Nigeria. In January 2011, the Nigerian Economic and Financial Crimes Commission and the Nigerian Attorney General Office initiated an investigation into these same activities. A subsidiary of Noble-Swiss has resolved this matter through the execution of a non-prosecution agreement dated January 28, 2011. Pursuant to this agreement, the subsidiary will pay \$2.5 million to resolve all charges and claims of the Nigerian government."³⁴

c. Information

Overall assessment of availability and ease of access to information in relation to domestic enforcement of foreign corruption cases. See above.

Very often, information regarding domestic enforcement of foreign corruption cases are shrouded in secrecy. For instance, Civil Society Organisations (CSOs) Working on anti-corruption issues in Nigeria recently raised an alarm over the revelations that a United Kingdom-based company,

Rolls Royce paid millions of pounds in bribes to win civil and military deals in about a dozen countries, including Nigeria.

CSOs that sent a petition to President Buhari expressed deep concern that Rolls-Royce reached a provisional deal to pay almost £700m to settle bribery and corruption allegations in the UK, China, Indonesia, US and Brazil and other such countries where investigators' searchlights have been beamed on the company's activities since 2012 without a corresponding action going on in Nigeria.

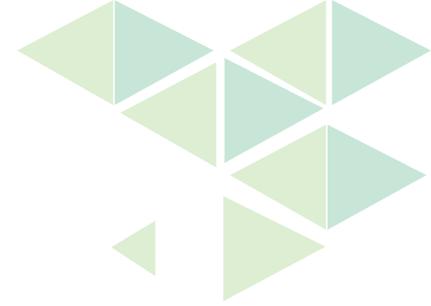
The issue of Halliburton, Siemens and others concerning high profile Nigerians and foreign companies enumerated above are several of other examples.

a. Overall Picture

Lately in Nigeria, the EFCC is very swift in freezing, seizing and confiscation of stolen assets. The main bottlenecks are the judiciary which puts a lot of hurdles on the way to attainment of justice. The Presidency have had to cry out that "the Judiciary is our problem in fighting corruption." This has led to infighting between the executive arm and legislative arms of government on the one hand as well as the executive and the legislature on the other. Nigeria's assets recovery laws as at now centres on conviction approach.

But CSOs and citizens are pushing strongly for the enactment of the Proceeds of Crime Act (POCA) which should empower ACAs to seize assets of suspects until they are able to prove that such seized assets are not proceeds of crime.

³⁴Noble Corporation, SEC Form 8-K, January 31, 2011 <http://star.worldbank.org/corruption-cases/node/19859>



EXPERIENCE IN RELATION TO FREEZING, SEIZING AND CONFISCATION OF ASSETS

b. Examples of Specific Proceedings

Ongoing Cases

1. Halliburton / Kellogg Brown & Root LLC



In this case about \$135 million of Nigerian funds remain frozen by the Swiss authorities due to the existence of a non-prosecution agreement between Government of Nigeria and Halliburton. According to a December 21, 2010 press release by halliburton, a settlement agreement with the Nigerian government has been pegged at US\$32.5 million to the FGN and an additional US\$2.5 million for the FGN's attorneys' fees and other expenses. Among other provisions, Halliburton also agreed to provide reasonable assistance for the FGN's effort to recover funds frozen in a Swiss bank account of a former TSKJ [the joint venture in development of the natural gas liquefaction project on Bonny Island, Nigeria] agent.

2. Sani Abacha



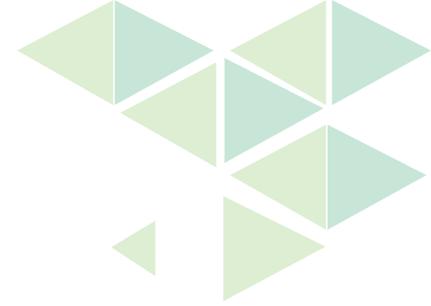
There is continued effort at recovering funds looted by the late General Sani Abacha. Multiple campaigns of asset recovery are ongoing to recover amounts close to \$400 million (in Luxembourg and the Bahamas);³⁵ \$628 million (in a United States civil asset forfeiture);³⁶ and over \$458 million (in United States, France and United Kingdom).³⁷ The full details as summarized by StAR's Asset recovery database is given below:

“In August 2014, the US Department of Justice announced that more than US\$480 million in Abacha corruption proceeds had been forfeited to the US: approximately US\$303 million in two bank accounts in Bailiwick of Jersey, \$144 million in 2 bank accounts in France [note: arrest in rem notes amount as US\$159,374,531.89], and at least US\$27 million in accounts in the UK and Ireland. ... The Department of Justice also

³⁵Abacha Luxembourg UK Anticorruption Newsletter Nov 2009.pdf; Abacha Monfrini Article 2008.pdf

³⁶<http://star.worldbank.org/corruption-cases/node/20317>

³⁷<http://www.justice.gov/opa/pr/2014/March/14-crm-230.html>

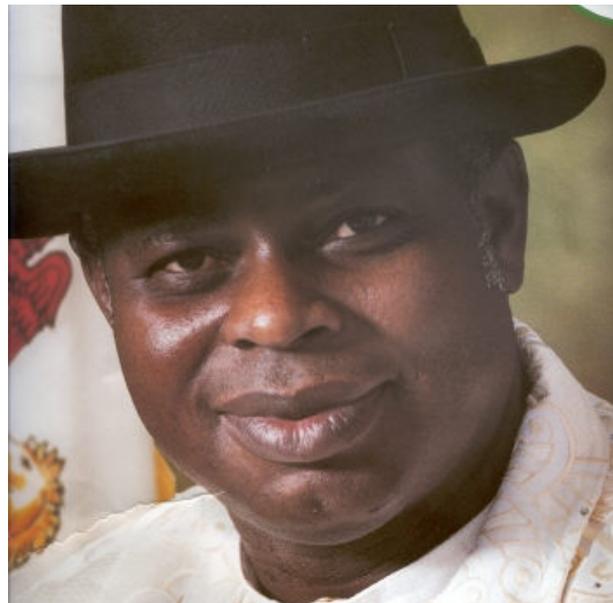


noted that claims against US\$ 148 million in four investment portfolios in the UK are pending. According to a Status Report filed by the US on August 18, 2014, the Government has until September 26, 2014 to respond to the claimants' (members of the Abacha family and others') Motion to Dismiss. (US v. All Assets Held in Account Number 80020796, in name of Doraville Properties Corporation, at Deutsche Bank International, et al, Case No. 1:13-cv-01832-JDB (D.D.C.), Status Report filed August 18, 2014.)”

“According to the Department of Justice, the restraint of funds includes approximately \$313 million in the name of Mohammed Sani and Doraville Properties Corporation in two bank accounts in the Bailiwick of Jersey and \$145 million in the name of Rayville International SA and Standard Alliance Financial Services Limited in two bank accounts in France. In addition, four investment portfolios (all assets held in name of Blue Holding traceable to Ridley Group limited) and three bank accounts in the name of Mecosta Securities and Mohammed Sani in the United Kingdom with an expected value of at least \$100 million have also been restrained [] [and] also seeks to forfeit five corporate entities registered in the British Virgin Islands (Doraville Properties Corporation, Mecosta Securities Inc., Rayville International SA, Ridley group Limited, Standard Alliance Financial Services Limited). (Source: US v. All Assets Held in Account Number 80020796, in name of Doraville Properties Corporation, at Deutsche Bank International, Limited in Jersey, Channel Islands, et al, Case No. 1:13-cv-01832-JDB (D.D.C.), Verified Complaint for Civil Asset Forfeiture). The complaint alleged that General Abacha, his son Mohammed Sani Abacha, their associate Abubakar Atiku Bagudu and others embezzled,

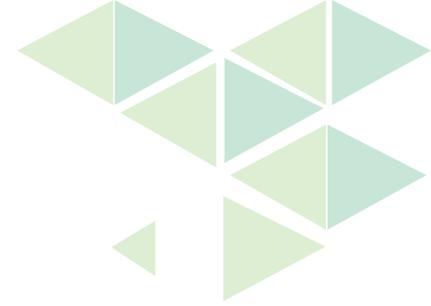
misappropriated and extorted billions from the government of Nigeria and the Central Bank of Nigeria on the false pretense that the funds were necessary for national security, then laundered their criminal proceeds through the purchase of bonds backed by the United States using U.S. financial institutions.”

3. Diepeye Alamieyeseigha (United States)



Part of the on-going case against Mr. Diepeye Alamieyeseigha is a forfeiture judgment on a property located in Rockville, United States with an estimated value of more than \$700,000 and regarded as part of his acquisition with corruption proceeds.³⁸ In the same manner, the content of his Massachusetts account with approximately \$400,000 in a Fidelity investment account, by a June 12 2012 order were forfeited “to the United States after all those parties with potential claims to the funds were notified but did not respond.” (Source: US v. The Contents of Account Number Z44-343021, Case No. 1:11-cv-10606-RWZ (D.

³⁸<http://www.justice.gov/opa/pr/2013/May/13-crm-628.html>

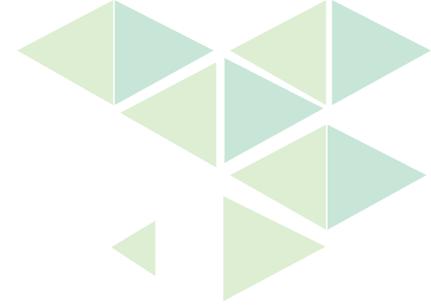


Mass.), Order Final Judgment and Forfeiture filed June 13, 2012; Verified Complaint for Forfeiture In Rem filed April 8, 2011.)

4. James Ibori (United States, United Kingdom)



The case of James Ibori also illustrates why there is reason for concern about the lack of accountability in Nigeria. As noted, Ibori had reportedly hidden some of his assets in the oil firm Oando and money passed from the company's accounts to Ibori's Swiss accounts. A lot of corruption and money laundering cases against Ibori are still pending. These include \$3,000,000 (approximate value of Houston mansion and Merrill Lynch accounts in United States) and unspecified amounts in different accounts in India, United Kingdom, etc.



EXPERIENCE OF REPATRIATION

a. Overall Amounts

The First Abacha Restitution Process to Nigeria

In 2004, ANEEJ, working with Civil Society partners in Switzerland got wind of discussions between the Nigerian and Swiss Governments on repatriation of seized Abacha loot. Several meetings were held and we demanded CSOs participation in the repatriation process.

The Nigeria Public Expenditure Management and Financial Accountability Review (PEMFAR) was initiated by the World Bank to execute reform in the budget spending of the Nigerian Government by analyzing the use of the repatriated Abacha Loot in implementing the National Economic Empowerment Development Strategy (NEEDS) in support of Millennium Development Goals' (MDG) priorities of education, health, and basic infrastructure (power, roads, and water) for poverty eradication involved CSOs participation.

It took the form of a physical inspection of a randomly selected representation of projects in these priority sectors listed by the Federal Government of Nigeria (FGN) as having incorporated funds from the recovered Abacha \$500million loot. It must be emphasised that a comprehensive list over all projects funded by the repatriated loot was not made available by the FGN. Thus, given the inherently selective nature of the sample pool, the randomness of the projects selected for monitoring can be said to be skewed at the outset. The Nigerian Network on Stolen Assets (NNSA) led by ANEEJ initiated and carried through the negotiations with the Swiss Government that made the repatriation of the Abacha Loot possible.

It was also the NNSA that, through cooperation with the Swiss Government, Swiss NGOs, and the World Bank, undertook the monitoring of the Nigerian government's proper use of these monies and to ensure the incorporation of Civil Society in this process. Thus it was the NNSA that the World Bank enlisted as the civil society component to enact the analyses of the Abacha Loot's application to NEEDS projects.

The repatriation of the small fraction of Nigeria's stolen assets represented by the Abacha Loot recovered from Switzerland is an unmitigated success. But the PEMFAR monitoring exercise has shown that recovering assets is only half the battle, their effective application towards poverty reduction is the real goal and lessons learnt shows that Civil Society monitoring of this follow-through is indispensable to the success of repatriation.

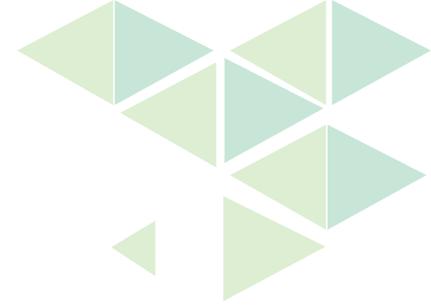
The monitoring of these development projects represents a first in Nigerian history: a joint verification of budget spending by Civil Society, represented by NNSA in tandem with representatives from the relevant ministries, departments and agencies (MDAs) of government.³⁹

b. Assets Not Repatriated

Nigeria presently stands to lose another \$550 million recovered from the Abacha family to the U.S., contrary to the earlier promise by the U.S. to return same to Nigeria. The amount represented a separate tranche from the earlier \$480 million forfeited to the U.S. following a court judgment in August 2014.

³⁹ 'How \$500million Abacha Loot Was Spent,' A shadow report of PEMFAR monitoring exercise by Rev. David Ugolor, Apollos Nwafor and John Nardine (2005). www.aneej.org/shadow-report-pemfar-monitoring-exercise

⁴⁰<http://saharareporters.com/2017/01/12/us-blocks-550m-abacha-loot>



CURRENT DEBATES

Nigerian Presidency says the stringent conditions for repatriation being given by the countries in which some of the nation's stolen wealth was stashed contradicted the earlier promises made.⁴⁰

There is a great need to revisit and challenge in court unfair Settlements in Bribery Cases by successive governments and repatriation agreement between the government of Goodluck Jonathan and the family of the late General Sani Abacha dated 14th July 2014 with a view to getting better deals and achieving justice for the Nigerian people.

Currently, SERAP obtained a judgement at the Federal High Court sitting in Lagos (per Coram Justice Idris) to compel the government to account and make public the Assets recovered since 1999. The government is yet to enforce the judgement while SERAP has commenced a committal proceeding against the Nigeria Minister of Justice and Attorney General for disobedience to the court judgment.

There is an unending debate for the government to establish and maintain a public income and asset declaration database for its Head of State and senior public officials (those who would qualify as politically exposed persons), to assist banks in identifying the proceeds of corruption and also the need to revisit and challenge in court unfair Settlements in Bribery Cases by successive governments and repatriation agreement between the government of Goodluck Jonathan and the family of the late General Sani Abacha dated 14th July 2014 with a view to getting better deals and achieving justice for the Nigerian people

There is also the debate on the setting up of a Looted Asset Fund in the Presidency or Ministry of Finance to provide a framework that would allow

the appropriate and transparent management of the proceeds of corruption recovered by the government and finally the need to Investigate the role and involvement of the World Bank in the repatriation, management and spending of repatriated Abacha stolen funds and other similar funds with a view to ensuring full transparency and accountability in these transactions.

Much more, there are debates around the following problems bedeviling asset Forfeiture and Management in the country:

1. Inter-agency rivalry among the law enforcement agencies.
2. Judges seems not to be conversant with the required guidelines in terms of the management of assets especially those on interim forfeiture.
3. The absence of a policy that makes it easy for the law enforcement agencies to trace and identify the owners of assets especially fixed assets in the country.
4. The lack of transparency in the asset management process in the country and absence of information on the status of forfeited assets.
5. Seized assets are not utilized for developmental projects; they are held up in some accounts or vaults at the CBN. This is a serious problem and it is at the core of the need for reform in asset management in the country.
6. Absence of a policy guideline on how to manage perishable assets for example petroleum products or crude oil.
7. The problem of absconded defendant.



CSO RECOMMENDATIONS AND EXPECTATION

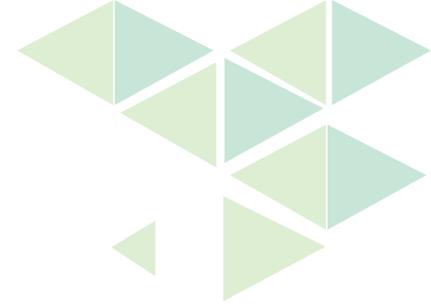
a. Key Asks

1. In line with Bussan commitments, donor countries should ensure criminal convictions for foreign bribery and harbouring of developing countries' looted assets. Tracing, tracking and repatriation of looted assets should be given accelerated attention and not bogged down with legal complications by harbouring countries as being currently experienced by Nigeria.

Switzerland, UK and United States should urgently repatriate all looted assets in their countries for the Nigerian government to finance development but ensure Civil Society participation in all the repatriation processes

2. GFAR should support and advocate for the consistent utilization of the crime of illicit enrichment (also called: “unexplained wealth,” or “inexplicable wealth,” or “disproportionate wealth.”) to facilitate recovery of stolen assets by high-ranking public officials. The illicit enrichment offense criminalizes the “unexplained increase in the wealth of a public official while in office.” This is against the backdrop that all the structures and laws on asset forfeiture in Nigeria are “conviction based.”
3. There should be transparency in the management of assets; law enforcement agencies should proactively disclose to members of the public the position of all assets under their custody.

4. Laws of the various anti-corruption enforcement agencies should be strengthened on asset management.
5. There is a need to push for the passage of Proceeds of Crime Act, POCA.
6. The Chief Justice of the Nigeria (CJN) should as a matter of urgency put in place guideline for judges on pronouncement when granting forfeitures just as members of the judiciary need to be sensitized on the issue of asset seizure and management in the country.
7. The government should put in place mechanism that shall allow for the forfeited assets to be used for the good of the people. It is not enough to have recovered asset or monies stashed in the CBN, they should be routed into the society following appropriation by the National Assembly.
8. Law enforcement agencies having the problem of absconded defendants should use laws of other agencies for example Section 17 of the Advance Fee Fraud Act 2006 to deal with the situation.
9. There should be a guideline on how to manage perishable goods like petroleum on how they should be managed in the interim.
10. There should be Property Verification Number for all properties in Nigeria, just like the Bank Verification Number, BVN. It would help in the easy identification of persons who own assets in the country.



b. Expectations

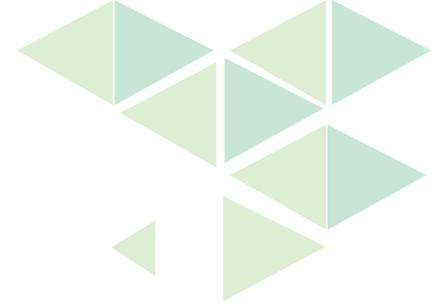
The political commitment to recover assets must start at the highest levels, backed by necessary resources, legislative and institutional changes, and determination to increase domestic coordination and international cooperation. These should be at the fore front of GFAR commitments.

Nigeria Government

1. Accelerate action on the passage of pending legislations to strengthen asset recovery framework in Nigeria. Critical among such bills is the Proceeds of Crime Act, PoCA. This Bill would address the unclear institutional responsibility and current overlapping mandates in asset recovery management. This is in line with the key commitment made during the London Anti-Corruption Summit in 2016, to pass legislation for transparent management of returned assets and non-conviction based approach to asset recovery. A National data base of all recovered assets should also be incorporated in the PoCA to engender transparency and accountability in the entire process
2. Strengthen the autonomy of the Nigerian Financial Intelligence Unit, NFIU through legislative action to ascribe more powers to operate in consonance with FATF standards and to meet the standard of the EGMONT group.
3. All recovered asset should be channelled to meeting the Sustainable Development Goals (SDGs) and to compensate the victims of corruption. Government should work closely with CSOs to monitor the use recovered asset through a transparent and accountable framework

International Community

1. Ensure effective implementation of the commitments made to fight corruption and recover the proceed of corruption, at the Third High – Level Forum on Aid Effectiveness, Accra (2008); Accra Agenda for Action; Fourth High-Level Forum on Aid Effectiveness; Partnership for Effective Development Co-operation, in Busan (2011) and the 2016 London Anti-Corruption Summit
2. There should be international cooperation to ensure full compliance with the provision of the United Nations Convention Against Corruption, (UNCAC) especially chapter 5 which deals with asset recovery. Poor data availability at the global level on recovered asset should also be addressed as a way of measuring the effectiveness of asset recovery globally
3. While we call for the strengthening of UNCAC implementation, they should provide the space for CSOs to initiate the asset recovery process in countries where the ruling government is directly involved in the looting of public fund



CIVIL SOCIETY ORGANISATIONS AT THE GLOBAL FORUM ON ASSET RECOVERY

- Rev David Ugolor,
The Africa Network for Environment and
Economic Justice (ANEEJ).
- Timothy Adewole,
Socio-Economic Rights & Accountability
Project (SERAP).
- Eze Onyekpere,
Centre for Social Justice (CSJ).
- Auwal Ibrahim Musa,
Civil Society Legislative Advocacy Centre
(CISLAC).
- Yusuf Shamsudeen,
Centre for Democracy and Development
(CDD).
- Olanrewaju Suraju,
Human and Environmental Development
Agenda (HEDA).
- Blessing Ogu,
Nigeria Network on Stolen Assets (NNSA).
- Tijah Bolton,
Policy Alert (PA).
- Dr. Otiveh Igbuzor,
African Centre for Leadership and Strategic
Development (Centre-LSD).



Produced by



Supported by

