

AFRICA NETWORK FOR ENVIRONMENT AND ECONOMIC JUSTICE, ANEEJ

The Extant Regime for Asset
Recovery and Management in Nigeria
Developments, Challenges and Prospects

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BACKGROUND

Efforts to address corruption has been a central theme of successive governments in Nigeria, especially since the country's return to democratic rule in 1999.¹ At the presidential poll in 2015, the fight against corruption became the one of the two key campaign messages on which President Muhammadu Buhari was elected to office.² Since then, several measures have been taken both at the national and international level to deal with the issue.

Some highlights of the measures taken include signing onto the Open Government Partnership and implementing same, the introduction of a central revenue management system through the use of a Treasury Single Account (TSA), the enactment of the Nigeria Financial Intelligence Unit Act and a marked increase in the recovery of looted assets from within and outside the country.³

In the latter respect, there have been significant repatriations of funds from foreign jurisdictions and related developments over the last few years. For instance, in December 2017, Nigeria signed a Memorandum of Understanding (MOU) with Switzerland and the World during the maiden Forum on Asset Recovery (GFAR) for the return of \$322.5 million dollars.⁴ And in August 2018, a further £70 million was returned from the United Kingdom.⁵

More recently, Nigeria also signed an MOU with the United States of America and the Island of Jersey for the return of \$311 million in February 2020.⁶ This was closely followed

¹ Matthew Ayibakuro, *The Approach Corruption in Law and Development Towards a Rights-Based Perspective in Sub-Saharan Africa* (Unpublished PhD Thesis, University of Birmingham, 2017) 128-137s

² The other being defeating the terrorist group, Boko Haram. See Adam Nossiter, "Nigerian President-Elect Muhammadu Buhari Sets Out His Agenda" *New York Times* (1 April 2015) <<https://www.nytimes.com/2015/04/02/world/africa/nigerian-president-elect-muhammadu-buhari-sets-out-his-agenda.html>> accessed 3 November 2020.

³ Centre for Democracy and Development, *Buhari's Anti-Corruption Fight: A Five-Year Assessment* (CDD, May 2020) 1-4.

⁴ BBC News, "'Abacha Loot': Switzerland to Return \$320m to Nigeria" (5 December, 2017) <<https://www.bbc.com/news/world-africa-42237752>> accessed 5 November, 2020.

⁵ Adelani Adepegba, "UK Repatriates £70m to Nigeria, Promises to Return More Loot" *Vanguard* (28 August, 2018) <<https://punchng.com/uk-repatriates-70m-to-nigeria-promises-to-return-more-loot/>> accessed 5 November 2020.

⁶ Libby George, "U.S, Jersey Sign \$300 Million Abacha Loot Repatriation Deal with Nigeria" *Reuters* (4 February, 2020) <<https://www.reuters.com/article/us-usa-nigeria-idUSKBN1ZY1W0>> accessed 5 November 2020.

by the return of \$5.5 million from the Republic of Ireland.⁷ As has been the case with most of the previous cases of looted assets repatriated to Nigeria, most of these funds are connected to the late military leader of the country, Gen. Sani Abacha.⁸

Internally, the erstwhile Chairman of the Economic and Financial Crimes Commission (EFCC) Ibrahim Magu disclosed that the Commission had recovered assets N980 billion in the last five years alone.⁹ This estimate excludes funds recovered by other anticorruption agencies (ACAs) and law enforcement agencies (LEAs) such as the Independent Corrupt Practices Commission (ICPC), the Nigeria Police Force and the Nigeria Customs Service.

Despite these positive developments, the legal and institutional regime for the return and utilisation of looted assets continues to be plagued by a range of issues and perennial challenges. These issues were recently highlighted by the suspension and corollary investigation of Ibrahim Magu over the management of looted assets recovered by the Agency under his watch.¹⁰ Other issues of note include President Buhari's refusal of assent to the Proceeds of Crime Bill in 2019,¹¹ the issuance of the Asset Tracing, Recovery and Management Regulations 2019 and their ramifications and the choice of projects to be funded by recovered assets.

The objective of this policy brief is to address these issues and other developments within the extant regime for asset recovery and management in Nigeria. It will also highlight challenges and examine the prospects for meaningful reforms to enhance effectiveness.

⁷ Victoria Ojeme, "Breaking: Ireland Returns €5.5m Abacha Loot to Nigeria" *Vanguard* (14 August 2020) <<https://www.vanguardngr.com/2020/08/breaking-ireland-returns-e5-5m-abacha-loot-to-nigeria/>> accessed 5 November 2020.

⁸ The only exception to this is the \$85 million returned from the United Kingdom which were funds from the Malabu Oil Loot. See Reuters, "Nigeria Recovers \$85 Mln Deposited in Britain in Oil License Deal Funds – Attorney-General" (29 August 2018) <<https://cn.reuters.com/article/instant-article/idUSL8N1N244M>> accessed 5 November 2020.

⁹ Yusuf Alli, "EFCC Recovered M980b Assets in Five Years, Says Magu" *The Nation* (12 June 2020) <<https://thenationonlineng.net/efcc-recovered-n980b-assets-in-five-years-says-magu/>> accessed 5 November 2020.

¹⁰ Kunle Sanni, "Ibrahim Magu Suspended as EFCC Chairman" *Premium Times* (July, 2020) <<https://www.premiumtimesng.com/news/top-news/401634-breaking-ibrahim-magu-suspended-as-efcc-chairman.html>> accessed 5 November 2020.

¹¹ NAN, "Buhari Declines Assent to 17 Bills" *The Guardian* (3 July 2020) <<https://guardian.ng/news/buhari-declines-assent-to-17-bills/>> accessed 4 November 2020.

SIGNIFICANT DEVELOPMENTS

Over the last few years – especially since the commencement of the tenure of the current government of President Muhammadu Buhari in 2015, the following represent key issues and notable developments in the asset recovery regime in Nigeria:

1. CONSIDERABLE INCREASE IN THE RECOVERY OF ASSETS: Since 2015, there has been a significant increase in the volume of looted assets recovered from foreign jurisdictions and within Nigeria. Between 2017 and 2020 alone, Nigeria signed MOUs for the return of a total sum of over \$724 million dollars from Switzerland, the United States of America, the Island of Jersey, the United Kingdom and the Republic of Ireland.¹²

TABLE 1 – Looted assets returned to Nigeria over the last three years

S/NO	DATE	SOURCE JURISDICTION	AMOUNT
1.	December 2017	Switzerland	\$322.5 Million
2.	August 2018	United Kingdom	\$85 Million
3.	February 2020	United States of America and Island of Jersey	\$311 Million
4.	August 2020	Republic of Ireland	\$5.5 Million
TOTAL			\$724 Million

Internally, as noted above, EFCC alone confirmed recovering N980 billion worth of assets in the five years from 2015 to 2020, whilst the ICPC noted that in just 2019 it recovered assets worth an estimated N77 billion. This is in consonance with a trend of increased recoveries of looted assets in recent times. However, as would be highlighted below, questions remain over the transparency of such recovery processes, disclosure by relevant agencies and the accountable utilisation of such recovered assets.

¹² See discourse on this in the background section of this paper above.

2. ACCOUNTABILITY CONCERNS IN ASSET RECOVERY AND DISPOSAL PROCESSES – THE

MAGU CASE: There are genuine and enduring questions concerning the lack of accountability in the framework for asset recovery in Nigeria. This is more pronounced with respect to the disposal of assets recovered within Nigeria. The trend in recent MOUs signed by Nigeria for the return of stolen assets from foreign jurisdictions indicate that there are often terms in the agreement stipulating what the returned assets would be used for.

However, for assets recovered within the country, there is a rather vague framework for the appropriate disposal of the assets. The 2019 the Asset Tracing, Recovery and Management Regulations provide that the proceeds of such assets are to be paid into the Federal Government of Nigeria Asset Recovery Account. Thereafter such funds are to be transferred into the Consolidated Revenue Account as government revenue.¹³ Even though the Regulations empower the Office of the Attorney General of the Federation (AGF) to have overall custody and management of forfeited assets, there is no clear provision on how tangible assets are to be managed or disposed of.

Moreover, prior to the making of the Regulations in 2019, each ACA and LEA dealt with such assets as it deemed fit, with limited disclosure and accountability. Corollary to this is the concern that the EFCC and other ACAs and LEAs lack the requisite capacity to manage and dispose of seized and confiscated assets.¹⁴

THE IBRAHIM MAGU CASE: The above stated issues were brought to the fore by the recent suspension of the ex-Chairman of the EFCC, Ibrahim Magu. The Investigative Panel established to investigate Mr. Magu and led by a former President of the Court of Appeal, Justice Ayo Salami, are reported to be looking at allegations levelled against him by the AGF involving the mismanagement of recovered assets.¹⁵ Whilst it is unclear

¹³ See Section 11 of the Regulations

¹⁴ UNODC, *Effective Management and Disposal of Seized and Confiscated Assets* (Vienna, 2017) 9 - 13.

¹⁵ Kunle Sanni, "Ibrahim Magu Suspended as EFCC Chairman" *Premium Times* (July, 2020) <<https://www.premiumtimesng.com/news/top-news/401634-breaking-ibrahim-magu-suspended-as-efcc-chairman.html>> accessed 5 November 2020.

whether the Panel has concluded its work and when its report will be made public,¹⁶ it is clear that the vague framework for the recovery and disposal of looted assets remain a major issue of concern in the asset recovery regime of Nigeria.

3. THE 2019 ASSET TRACING, RECOVERY AND MANAGEMENT REGULATIONS: On the 24th of October, 2019, the AGF enacted the Asset Tracing, Recovery and Management Regulations with the primary objective of prescribing procedures for all LEAs and ACAs to ensure effective coordination of the investigation, tracing and attachment, seizure, management and disposal of proceeds of crime within and outside Nigeria. The Regulations, amongst other things, provided the office of the AGF with wide ranging powers to centralise and coordinate asset recovery and management processes in the country,¹⁷ established a central database of recovered assets,¹⁸ bestowed on the AGF the exclusive jurisdiction to conduct all non-conviction based forfeiture of looted assets,¹⁹ provided for special accounts for the proceeds of disposed assets in the Central Bank of Nigeria,²⁰ and made provisions for dealing with recovered assets of states and local government areas.²¹

Despite the fact that the provisions of the Regulations were significant in terms of addressing gaps in the legal framework for asset recovery, they also raised concerns and issues with regard to implementation. For instance, they were silent on whether the database of recovered assets would be publicly accessible and the provisions on the utilisation of the recovered assets were grossly inadequate. In this respect, they provided little direction on what such assets or their proceeds should be used for apart from the provision that such funds be transferred into the Consolidated Revenue Fund for

¹⁶ Jonathan NDA-Isaiah, "93 Days After, Salami Yet to Submit Report on Magu's Probe" *AllAfrica* (8 October 2020) < <https://allafrica.com/stories/202010090096.html> > accessed 4 November 2020.

¹⁷ Section 3 of the Regulations

¹⁸ Sections 3, 6 & 7 of the Regulations

¹⁹ Section 5 of the Regulations

²⁰ Section 11 of the Regulations

²¹ *Ibid.*

necessary action.²² There are also inherent inconsistencies in some of the provisions of the Regulations.²³

Since the making of the Regulations there have been contrasting interpretations of their content and ramifications in the broader context of the legal and institutional framework for asset recovery and management in Nigeria.²⁴ The highpoint of this is a subsisting court order directing the AGF to scrap the Regulations, with civil society organisations calling on the AGF to obey the order.²⁵ It is yet unclear what the conclusive position on this would be in the long term.

4. THE PROCEEDS OF CRIME BILL: The Bill is a draft legislation that is intended to improve the legal framework for asset recovery by, amongst other things, establishing a Proceeds of Crime Recovery and Management Agency, providing for non-conviction based recovery of proceeds of crime, confiscation of proceeds of crime and address other obvious loopholes in the regime for asset recovery and management in Nigeria. Following the concerted advocacy efforts of civil society organisations and other stakeholders, the Bill was passed by both chambers of the 8th National Assembly. Unfortunately, it was refused assent by the President.²⁶ Notwithstanding, in October 2020, an updated version of the Bill has been transmitted back to the Senate as an Executive Bill for passage by the 9th National Assembly.²⁷ If passed, the Bill is expected to provide a much-needed clarity and robust provisions on asset recovery and management in the country, although there are

²² Ibid.

²³ For instance, there is an inherent inconsistency between Section 4 which declares that “the extant laws of all LEAs and ACAs as it relates to asset recovery remains in force”, and Section 5 which provides that “all non-conviction based forfeitures shall be conducted by the office of the AGF.” The implication of the implementation of Section 5 is to strip all LEAs and ACAs of their powers to pursue non-conviction based forfeitures

²⁴ The Punch, “Malami Reduces EFCC, ICPC Powers, Scraps Asset Recovery Committees” (3 November, 2020) <<https://punchng.com/malami-reduces-efcc-icpcs-powers-scraps-asset-recovery-committees/>> accessed 4 November, 2020; This Day, “Ibekaku-Nwagwu: There’s Nothing Arbitrary with New Assets Management Regulation” (3 November, 2020) <<https://www.thisdaylive.com/index.php/2019/11/14/ibekaku-nwagwu-theres-nothing-arbitrary-with-new-assets-management-regulation/>> accessed 4 November, 2020.

²⁵ ThisDay, “Malami Urged to Obey Court Order on EFCC, ICPC Powers” (3 November 2020) <<https://www.thisdaylive.com/index.php/2020/11/03/malami-urged-to-obey-court-order-on-efcc-icpc-powers/>> accessed 4 November 2020.

²⁶ NAN, “Buhari Declines Assent to 17 Bills” *The Guardian* (3 July 2020) <<https://guardian.ng/news/buhari-declines-assent-to-17-bills/>> accessed 4 November 2020.

²⁷ This Day, “Buhari Sends Proceeds of Crime Bill to Senate” (14 October 2020) <<https://www.thisdaylive.com/index.php/2020/10/14/buhari-sends-proceeds-of-crime-bill-to-senate/>> accessed 4 November 2020

also concerns about the current provisions of the Bill that need to be addressed before it is passed.

5. THE ROLE OF CIVIL SOCIETY IN MONITORING THE USE OF RECOVERED ASSETS

Although civil society organisations in Nigeria have been engaging asset recovery and management processes for decades, the last three years have witnessed a deepening of this role. In December 2017, a coalition of civil society organisations in Nigeria were part of the Nigerian delegation that participated in the GFAR Summit in Washington, DC and were part of the conversations leading up to the signing of the MOU for the return of return of the \$322.5 million Abacha loot from Switzerland. Following up on this, the Federal Ministry of Justice signed an MOU with the Nigerian Network on Stolen Asset – a coalition of civil society organisations led by the Africa Network for Environment and Economic Justice (ANEEJ) for the monitoring of the use of the funds.²⁸

As a result of the above, civil society organisations have been engaged in actively monitoring the use of the funds in the Federal Government’s National Cash Transfer Programme and have released several reports in the process.²⁹ ANEEJ and other civil society organisations continue to actively engage asset recovery and management processes in Nigeria and also contribute to global fora and discourses on the issue.

ISSUES AND CHALLENGES

In the midst of the developments discussed above, there are several discernible issues that bedevil the asset recovery and management regime in Nigeria. Whilst some of these challenges are long-standing issues with the legal and institutional regime for asset recovery and broader anticorruption efforts, others are issues that have become obvious in the light of recent developments in the sector.

A. Legal Gaps: The most obvious challenge with the extant regime for the recovery and management of looted assets in Nigeria remains the lack of robust legal provisions on the issue. Even though the laws establishing ACAs such as the EFCC and ICPC make provisions

²⁸ StAR Initiative, “GFAR Principles in Action: The MANTRA Project’s Monitoring of the Disbursement of Abacha II Funds in Nigeria” (October 2019) < <https://star.worldbank.org/content/gfar-principles-action-mantra-projects-monitoring-disbursement-abacha-ii-funds-nigeria>> accessed 4 November 2020.

²⁹ See for instance, ANEEJ, *Tackling Poverty with Recovered Assets: The MANTRA Model* (1 January 2019)

for the confiscation of the proceeds of corruption,³⁰ there are no detailed provisions on how these institutions and other LEAs should manage those assets or otherwise dispose them. This created room for each institution involved in the recovery of proceeds of crime – including the EFCC, ICPC, Nigeria Police Force, Department of State Services and the Nigeria Customs Service – to deal with the management and disposal of assets as it deems fit based on its internal policies and regulations. The outcome of this is a disorderly and deficient system for managing recovered assets that is inimical to efficiency and accountability.

B. Lack of Expertise: As ACAs and LEAs, the institutions currently involved in the management and disposal of recovered assets – including the Federal Ministry of Justice – lack the requisite capacity and expertise to adequately carry out this function. This is a function best performed by certified and professional asset managers who have the capacity to effectively manage and dispose of the relevant proceeds of crime in a manner that preserves the value of the assets and increases government revenue in the process. This is significant considering the repeated reports of the deterioration of valuable assets in the custody of various ACAs and LEAs.³¹

c. Lack of Transparency and Accountability in the Management and Disposal of Recovered Assets: Over the last few years, Nigeria has taken proactive steps to introduce transparency in governance through the implementation of mechanisms such as the Nigerian Extractive Industries Transparency Initiative and the Open Government Partnership. However, the asset recovery regime still lacks such transparency reforms. For instance, ACAs such the EFCC and ICPC periodically state amounts of money and properties confiscated³² without any breakdown of specific timeframes during which such recoveries were made or the cases to which they are connected. The 2019 Regulations

³⁰ For instance, Section 28 of the ICPC Act provides that, “Where in respect of any property seized under this Act, there is no prosecution or conviction for an offence under this Act, the chairman of the Commission may, before the expiration of twelve months from the date of the seizure, apply to a judge of the High Court for an order of forfeiture of that property, if he is satisfied that such property has been obtained as a result of or in connection with an offence [under the Act].

³¹ Economic Confidential, “Anti-Corruption: Recovered Assets Decay Over Neglect, Poor Management” (14 September 2020) < <https://economicconfidential.com/2020/09/anti-corruption-recovered-assets-decay/>> accessed 4 November, 2020.

³² See Kunle Sanni, “ICPC Recovered N77 Billion in 2019 – Official” *Premium Times* (10 February 2020) < <https://www.premiumtimesng.com/news/top-news/376533-icpc-recovered-n77-billion-in-2019-official.html>> accessed 4 November 2020.

discussed above were intended to enhance transparency in this respect. However, they have failed to achieve this objective as the database of recovered assets created pursuant to the Regulations are not accessible to the public, with only stipulated ACAs and LEAs allowed to login to access the database.³³

d. Non-Binding International Regime on Utilisation of Recovered Assets: Even though Chapter V of the United Nations Convention Against Corruption is dedicated to asset recovery, there are negligible provisions on the disposal or utilisation of recovered assets. The only reference to this is to be found in Article 57(3c)(5) which provides that consideration should be given to the legitimate owners of looted assets being returned or the victims of the crime of corruption when disposing of such assets. It further provides that contracting State Parties may consider concluding agreements for the final disposal of confiscated properties on a case-by-case basis.

Based on this provision, most MOUs for the repatriation of looted assets to Nigeria often contain clauses that stipulate what such assets should be spent on. This, however, provides the government in office considerable leverage to determine what returned assets should be used on, even where such use might not be in the best interest of the citizens of the country who are the ultimate victims of corruption. With no legally binding provisions, guidance on this has been sourced from the Global Forum on Asset Recovery (GFAR) Principles on Asset Recovery³⁴ and other Guidelines created by the Stolen Asset Recovery (StAR) Initiative and other institutions. Whilst have been useful for purposes of advocacy to ensure that recovered assets are utilised for purposes that are most beneficial to citizens in a transparent and accountable manner, there is a need for a more binding framework for this at the international level.

e. Politicisation of Asset Recovery and Utilisation: Recent developments demonstrate increasing indications of the politicisation of asset recovery and management issues in Nigeria. As highlighted above, ACAs and LEAs periodically release statements of the number and worth of assets recovered without necessary details, as if to provide political rationalisation of their existence and effectiveness. The issue of asset recovery and

³³ See website of ARMU at <<https://armu.ng/>> accessed 5 November 2020.

³⁴ StAR Initiative, "The GFAR Principles" Available at <<https://star.worldbank.org/content/gfar-principles>> accessed 4 November 2020.

management has also been a cause of dispute between the AGF and the EFCC in particular. The outcomes of this include the introduction of the 2019 Asset Recovery Guidelines and the ongoing rather secretive investigation of the erstwhile Chairman of the EFCC, Ibrahim Magu, by a specially constituted Investigative Panel based on allegations levelled against him by the AGF. Whilst it is hoped that the passage of POCA would address most of the legal and institutional loopholes that have enabled these issues, the current apparent politicisation of issues surrounding the recovery and utilisation of looted assets has to be addressed.

RECOMMENDATIONS

At a fundamental level, the objective of ensuring that Nigeria has a strong, transparent and accountable regime for asset recovery and management is to ensure that recovered assets are not re-looted and are rather used for purposes that benefit the ordinary citizens. Going forward, to enhance the extant regime for asset recovery and management in Nigeria to achieve these objectives, the following recommendations are immediately vital:

- Pass the Proceeds of Crime Bill as soon as possible. In considering the bill in its current form, both chambers of the National Assembly should work with relevant stakeholder, including civil society, to ensure that:
 - The Proceeds of Crime Recovery and Management Agency established under the Bill is bestowed with the necessary independence to effectively carry out its job without political interference. This should be done with particular regard to the appointment and removal of its leadership and the funding of the Agency
 - The mandate of the Agency is distinct and does not overlap with the mandate of the EFCC, ICPC and other ACAs and LEAs operating within the anticorruption and governance space in Nigeria. This is especially so with respect to the use of non-conviction based forfeiture mechanisms and the handling of properties that are subject to either interim or final forfeiture in criminal proceedings
 - Substantial provisions are made to ensure that there would be necessary transparency and accountability in the functions of the Agency

- Pending the passage of the Proceeds of Crime Bill, the Asset Recovery and Management Unit (ARMU) in the Federal Ministry of Justice – which is the leading department handling asset recovery issues in Nigeria – should adhere to basic standards of transparency and accountability in coordinating the recovery and management of looted assets. A good starting point would be to ensure that the database of recovered assets is made publicly accessible.
- Concerted efforts should be made to address the apparent political issues that underlie the unremitting conflict between the Office of the AGF and ACAs on asset recovery issues. Whilst it is essential that the ongoing investigation by the Justice Ayo Salami-led panel of allegations against the former Chairman of the EFCC, Ibrahim Magu is brought to a logical conclusion through due process, concrete actions need to be taken to prevent further political nuances that have the potential of impeding progress in Nigeria’s asset recovery and management efforts.
- Finally, government and civil society actors should work together to leverage extant principles and guidelines to ensure that the proceeds of crime are used on projects and purposes that directly benefit the victims of corruption. The current framework of paying all such proceeds into the Consolidated Revenue Account puts such funds at risk of being re-looted without providing remedy for the victims of such corrupt activities.

About ANEEJ

The Africa Network for Environment and Economic Justice (ANEEJ) is a non-government organization whose goal is to amplify the voice of the weak, the less privileged and the marginalized groups in the society including women, youths, and People Living With Disabilities in order to increase their participation in the democratic decision-making process. As its basis, ANEEJ believes in a democratic system for managing human interest and operates within two broad focal areas namely environmental and economic justice.

Specifically, ANEEJ implements projects relating to governance and democracy, human rights (including migration and development issues) and anti-corruption, peace building and conflict resolution, development effectiveness, environment including water, sanitation and hygiene among others.

The Africa Network for Environment and Economic Justice (ANEEJ) is currently implementing the Civil Society Advocacy to Support Anti-corruption and Rule of Law in Nigeria (CASARN) project. The project is part of the implementation of the Rule of Law and Anti-Corruption (ROLAC) Programme which is funded by the European Union and implemented by the British Council.

The goal of the CASARN project is to enhance governance in Nigeria by contributing to the fight against corruption, strengthen rule of law and the protection of human rights by reinforcing prevention mechanisms and enhancing civil society and public engagement in the fight against corruption. The expected outcomes are:

- 1) Improved oversight, transparency and accountability in the management of resources, and
- 2) *Enhanced civil society and public engagement and participation in the fight against corruption in Nigeria.*

