



# Global Forum for Asset Recovery PROGRESS REPORT: NIGERIA

DEVELOPMENT SINCE DECEMBER 2017 TO JUNE 2019



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This publication is an output of a project implemented by the Civil Society Legislative Advocacy Centre (CISLAC), in partnership with Transparency International (TI). The two-year project is titled: Turning up the pressure: Tackling Money Laundering through Multi stakeholder approaches in ECOWAS countries.



## FOREWORD

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Due to the globalisation of the Nigerian organised crime and the continuous effort to hide the proceeds of crime abroad, Nigeria has vast quantities of assets frozen abroad. The World Bank/ UNODC database of repatriated and frozen assets estimates close to \$5bn assets stashed abroad as of 2019.

Recovered assets are still a small fraction of around \$17bn, which Nigeria loses annually through money laundering, tax evasion, embezzlement, looting and other crimes in the form of illicit financial flows according to the highly respected data from Global Financial Integrity. Asset recovery has rightfully been made a priority of the current government. While I welcome the progress that has been made, much more needs to be done by Nigeria and the international community, if asset recoveries are about to make a difference for the countless victims of crimes perpetuated in the name of unimaginable greed and on the expense of all Nigerians.

Specifically, two points need to be addressed: 1) international community needs to work towards speedy and efficient recovery of stolen assets; 2) Receiving countries including Nigeria need to work towards a transparent and accountable system of utilization of repatriated assets to compensate victims, from whom the assets have been stolen.

I therefore welcome this progress report, which brings evidence of progress in Nigeria, or lack of it, since the landmark Global Forum on Asset Recovery organized in Washington, DC. in 2017. Some critical areas in the domestic management of recovered assets, international cooperation and the lack of passage of the crucial legislative framework are highlighted. This report also provides specific guidelines how to use the 10 GFAR principles agreed in 2017 in Washington as a monitoring and analytical tool for governmental and non-governmental actors in order to provide a measurable evidence of progress.

While this report was coordinated by Civil Society Legislative Advocacy Centre (CISLAC), an affiliated organization to the Transparency International (TI) global movement, we are grateful to our colleagues from the German-based Civil Forum for Asset Recovery for their invaluable contribution. My thanks go also to the Transparency International Secretariat, especially Gillian Dell coordinating the asset recovery work and Jessica Ebrard, who coordinates money laundering projects. Chapters from UK, Tunisia, Sri Lanka, Brazil, Germany, Ukraine and many other made also valuable contributions and observations. I would also like to commend our Nigerian-based partners, both in the government and outside who have supported this work and who carry the responsibility to turn the policy recommendations into an action.

Our ambition stands that the report will advance the global effort to accelerate recovered assets to the countries of their origin in a way, which remedies victims of corruption and other crimes, who have suffered most because of unimaginable greed of a few. I believe that this report offers practical tools, how to make the Nigerian asset recovery system, both domestic and international, more accountable and 'people-oriented' while urging the international community to do more to increase the volume of repatriated assets to their countries of origin.

Yours faithfully,



Auwal Ibrahim Musa (Rafsanjani)  
Executive Director  
Civil Society Legislative Advocacy Centre

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## GFAR PROGRESS REPORT: NIGERIA

*DEVELOPMENTS SINCE DECEMBER 2017 - JUNE 2019*

This report is structured to measure a progress under the seven dimensions of the domestic and international asset recovery system in Nigeria in the period between December 2017 and June 2019. The adequacy of the legal framework is considered, institutions and the 'political will' to implement the asset recovery system is assessed, transparency and participation of state and non-state actors is discussed, after which enforcement experienced is described. International cooperation and recent cases are thereafter analysed. A special section with the detailed analysis of the 10 GFAR principles concludes this report. A detailed methodological note used for 'scoring' of the progress under the 10 principles including detailed explanation is attached in the annex.

This research has mainly used secondary resources from media, official reports and other sources. Small number of expert interviews were conducted for the purpose of this report. Overall, the report is a reflection of a civil society organization involved in the process of policy advisory and monitoring of the domestic and international asset recovery system, and more broadly anti-corruption effort, in Nigeria.

The inaugural Global Forum on Asset Recovery (GFAR) was held in Washington, DC, December 4th to 6th, 2017, hosted by the United Kingdom and the United States with support from the Stolen Asset Recovery Initiative (StAR). Its inaugural meeting focused on assistance to four priority countries: Nigeria, Sri Lanka, Tunisia and Ukraine.

This Forum was the place for partnership and collective action, bringing together partners, and officials from throughout these countries to coordinate action-steps. It provided a platform to empower the investigators and prosecutors charged with identifying and tracing assets and getting necessary cooperation with financial centers in recovering and returning them.

The deliverables for GFAR included progress on cases achieved by the four focus countries, increased capacity through technical sessions, renewed commitment to advancing asset recovery cases, and increased collaboration among involved jurisdictions.



# CHAPTER ONE

## Adequacy of Legal Framework

In Nigeria, the key asset recovery legislative framework the Proceeds of Crime Act (POCA) had not been passed as of June, 2019. The passage of the Bill has been one of the two explicit asset recovery commitments made by President Buhari during the 2016 London anti-corruption conference. The delay in the passage underscores that asset recovery and control over the domestically and internationally recovered assets is a politically very sensitive matter in a context of weak institutions and weak compliance with the rule of law like in Nigeria. If passed and enacted into law, POCA is unlikely to solve all legal, policy and operational challenges associated with asset recovery. However, the law would provide a legal and institutional framework for the confiscation, seizure, forfeiture, recovery and management of assets or proceeds gained in unlawful activities.

For example, one of the key provisions of the POCA establishes a new Asset Recovery Management Agency, (ARMA) which would inevitably infringe on the current mandates of the three anti-corruption agencies and other institutions with the mandate to confiscate assets. Another very contentious provision provides that a certain percentage of recovered assets can be retained by the enforcing agencies, who complain about

high costs associated with the investigation, prosecution and management of recovered assets.

However, many observers are concerned with ‘income-generating’ approach to asset confiscations if this provision is retained.

The absence of this legal provision is a major setback for domestic and international asset recovery effort and more broadly for the anti-corruption effort in Nigeria.

Importantly, non-conviction approaches to asset recovery have been prioritized by the executive and the judiciary. Anti-corruption agencies and anti-corruption judges received extensive training on the use of the non-conviction-based approaches to assets confiscation. Despite this, judiciary and judges still complain about the persistent lack of training and gaps in existing legal frameworks.

Stakeholders urge the judges to ‘change the mindset’ and increasingly use the powers to recover assets in the absence of the conviction of a wrongdoer. Despite the limits of the application of the non-conviction provisions, the volume of domestically recovered assets has been considerably boosted since 2016 due to the greater use of non-conviction

<sup>1</sup> POCA can be accessed here: <http://cislacnigeria.net/proceeds-of-crime-bill-2019/>, accessed on the 18th of May, 2019

<sup>2</sup> Interview conducted on the 5th of March, 2019

approach coupled with the implementation of key policies such as Whistleblowing policy, Voluntary Offshore Assets Regularization Scheme (VOARS) , Treasury Single Account (TSA) , Voluntary Assets and Income Declaration Scheme (VAIDS) , and others. The government claims an overwhelming success of these policies. For example, the Whistleblowing policy recovered allegedly 7.8 billion Naira (\$25 million), \$378 million and

£27,800 between November 2016 and 2018 according to the government figures. However, independent verification of the volume of recovered assets is not available. The end use and/or compensations of the recovered proceeds, especially in cases of immovable and perishable assets is largely not traceable.



<sup>4</sup> The Scheme is effective from the 8 October 2018. The Scheme, which is expected to last for 12 months, provides a platform for Nigerian taxpayers, who have defaulted in the payment of taxes, to voluntarily declare their offshore assets in exchange for a one-time levy of 35% on all offshore assets and immunity from prosecution for tax offences related to those offshore assets. <http://www.mondaq.com/Nigeria/x/760826/wealth+management/Federal+Government+Launches+the+Voluntary+Offshore+Assets+Regularization+Scheme>

<sup>5</sup> The Treasury Single Account (TSA) policy unifies all government accounts in a single unit for the effective management of its finances, bank and cash position. <http://placng.org/legist/an-overview-of-the-treasury-single-account-tsa/>

<sup>6</sup> Voluntary Assets and Income Declaration Scheme (VAIDS) effective 1 July 2017 by Executive Order No. 4 of 29 June 2017 to give defaulting tax payers the opportunity to make up their outstanding tax obligations from 2011 to 2016 in return for waiver of penalty and interest and criminal prosecution. <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/ng-voluntary-assets-and-income-declaration-scheme-and-responsible-tax-practice.pdf>

<sup>7</sup> See PACAC (2018) PACAC report 2015-2018



# CHAPTER TWO

## Adequacy of Institutions and Political Will

Asset recovery has clearly high-level political support of the current administration. However, the absence of the crucial legislative framework, no coordination of domestic stakeholders and lack of implementation of key guidelines on the management of recovered assets adversely affects international and domestic asset recovery effort.

Asset recovery in Nigeria is characterised by two distinct but mutually reinforcing processes. Firstly, Nigeria's active international asset recovery efforts put Nigeria in a leadership position of the international coalition of countries which argue for unconditional and swift return of assets to the countries of assets' origins. Secondly, domestic asset recovery concentrates on the confiscation of assets within the Nigerian jurisdiction.

The domestic asset recovery effort is very problematic. The unclear and inefficient asset recovery portfolio is shared by various anti-corruption agencies. In theory, the Asset Recovery and Management Unit (ARMU) was set up in the Ministry of Justice to overview the entire asset recovery portfolio. However, this Unit is hamstrung by the lack of resources and capacity as well as lack of a

common asset recovery policy and of a centralized database of recovered assets confiscated and seized by other agencies.

While having overlapping mandates and unclear institutional boundaries, other anti-corruption agencies like the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Nigeria Drug Law Enforcement Agency (NDLEA), Department of Security Services (DSS), National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Nigeria Police Force and even the military have legal powers to administer, seizure, confiscation and recovery of assets that are traceable to crime and illegal acquisition.

The Presidential Advisory Committee against Corruption (PACAC) has been very active in producing guidelines on various aspects of international and domestic recovery, including the management of interim and final forfeitures. Especially right after GFAR in 2017, key guidelines had been issued such as The Recommended Framework for the Management and Administration of Recovered Stolen Assets in Nigeria, Case Management Manual, Plea Bargain Manual, Non-Conviction Based





Approaches to Asset Recovery Manual and many others. Extensive trainings for judiciary and anti-corruption agencies have been conducted. However, PACAC has a status of an advisory committee without the powers to enforce

implementation of the guidelines issued. There is little or no evidence that these guidelines would make a tangible difference in the chaotic management of domestically recovered assets.



# CHAPTER THREE

## Transparency and Participation



CSOs are unable to play a role in the monitoring of domestic asset recovery. International recovery, especially the 2017

**\$322<sub>m</sub>** 

is a positive example in the transparency and management of the recovered assets.



In 2017, Nigeria received

**£78<sub>m</sub>** 

from the UK Government as part of the asset recovery in a bribery case involving an alleged US \$1.1 billion paid by Shell and ENI as a “signature bonus” for one of the largest oil concessions.

Public information is provided but is patchy and inconsistent. In the case of the management of domestically recovered assets, especially interim seizures, the process is not transparent at all. The mismanagement results frequently in the depreciation of these assets. Simple audit of these confiscated and seized assets is not available at the time of writing. The last comprehensive and publicly released list of recovered domestic and international assets was in May 2016.

Reported volumes of domestically forfeited assets claimed by some agencies seem to be absurdly high and do not clearly distinguish between interim and final forfeitures. Other Nigerian agencies do not report recovered assets at all, which fuels speculations about ‘re-looting of looted assets’.

CSOs are very active in the Nigerian asset recovery process with well-established international and domestic networks. They are active especially in the international recovery processes. However, CSOs are unable to play a role in the monitoring of domestic asset recovery. International recovery, especially the 2017 \$322 million is a positive example in the transparency and management of the recovered assets. Under the DFID-funded MANTRA project, the returned funds are used for Conditional Cash Transfers with under the CSO-monitoring. In terms of participation and inclusiveness, this project is worldwide a show-case of the involvement of non-state actors. However, this precedent has not been extended to other asset recoveries.

# CHAPTER FOUR

## Enforcement Experience

There is no coordinated and effective mechanism in place for the management of such assets<sup>8</sup>. In 2017, Nigeria received £78 million from the UK Government as part of the asset recovery in a bribery case involving an alleged US \$1.1 billion paid by Shell and ENI as a “signature bonus” for one of the largest oil concessions. Despite ongoing efforts, no other significant recoveries have been concluded since 2017<sup>9</sup>. According to the World Bank/ UNODC Stolen Asset Recovery Initiative (StAR) database<sup>10</sup>, around \$5 billion of Nigerian assets are still awaiting asset returns from foreign jurisdictions.

International enforcement of asset recovery is very challenging for the Nigerian government. Despite sustained diplomatic effort, bilateral relationships and increasingly competent asset recovery expertise, the progress on specific cases is slow and hampered by the distrust and/or unwillingness of international partners to cooperate, domestic political infighting about the competencies to lead the asset

recovery process and high costs associated with the complexity of individual negotiations and required legal expertise.

Domestic enforcement is complicated by the general poor discipline of the public administration and the judiciary. Even if internationally acceptable guidelines are issued, the capacity of the competent agencies to enforce these rules is limited. The asset recovery process is also not immune to political interference into judicial proceedings and corruption allegations against the judiciary. Unclear competencies and ‘overcrowding’ of anti-corruption agencies do not provide necessary institutional leadership to translate the political will into action and enforce available guidelines. Especially management of domestically recovered assets has not improved considerably since 2017.

<sup>8</sup> <http://tugar.org.ng/wp-content/uploads/2017/09/POLICY-BRIEF-ON-A-FRAMEWORK-FOR-ASSET-RECOVERY-AND-MANAGEMENT-IN-NIGERIA.pdf>

<sup>9</sup> An ongoing case is another recovery of \$267 million seized from the British Crown territory of Jersey by the United States, see e.g. <https://www.bbc.com/news/world-europe-jersey-48509274>

<sup>10</sup> <http://star.worldbank.org/star/>

# CHAPTER FIVE

## International Cooperation

The Nigerian anti-corruption agenda is predicated on both local initiatives and international obligations and treaties the country has signed up to, several of which have strong requirements on Asset Recovery and Management. These include the United Nations Convention Against Corruption (UNCAC, 2003), the United Nations Convention Against Transnational Organized Crime (UNTOC, 2000), and the African Union Convention on Preventing and Combatting Corruption (AUCPCC, 2003). Others are the Stolen Asset Recovery Initiative (StAR) of the World Bank/UNODC and the Financial Action Task Force (FATF).<sup>11</sup>

Since GFAR, the Nigerian government has made continuous attempts to establish

partnerships through regular meetings of officials; bilateral and multi-lateral treaties/agreements for recovering these stole assets. Bilateral agreements include the following i) Nigeria- UAE agreement<sup>12</sup>, ii) Nigeria - United states of America<sup>13</sup>, iii) Nigeria - Swiss<sup>14</sup>, iv) Nigeria - United Kingdom<sup>15</sup> among others. On the multilateral front, Nigeria led in 2018 the international cooperation under the African Union umbrella to develop Common African Position on Asset Recovery and Asset Return. This effort culminated in the presentation of this position during a series of side-events on the 73rd UN General Assembly.

<sup>11</sup> <http://tugar.org.ng/wp-content/uploads/2017/09/POLICY-BRIEF-ON-A-FRAMEWORK-FOR-ASSET-RECOVERY-AND-MANAGEMENT-IN-NIGERIA.pdf>

<sup>12</sup> <http://www.nigerianeye.com/2018/05/corruption-nigeria-uae-agreement-on.html>

<sup>13</sup> <https://www.state.gov/j/inl/rls/nrcrpt/2013/vol2/205253.htm>

<sup>14</sup> <https://www.vanguardngr.com/2017/12/nigeria-signs-mou-to-recover-321m-loot-from-switzerland/>

<sup>15</sup> <https://www.channelstv.com/2018/08/29/breaking-nigeria-uk-sign-agreements-on-security-economy/amp/>

# CHAPTER SIX

## Recent Cases

It is important to note that vast sum of recovered assets are domestic recoveries. On May 30, 2016, the Federal Government of Nigeria published specific details of funds traced to and recovered from corrupt former government officials as part of his war against endemic graft. The names of the corrupt officials from whom the assets were

recovered were however not disclosed. Details of the recoveries, published by the Federal Ministry of Information, showed that the Nigerian government successfully retrieved total cash amount 78 billion Naira (around \$ 25 million), \$185 million £3,5 million and €11, 250 between May 29, 2015 and May 25, 2016.<sup>16</sup>




### Case #1

Since 2017, Nigeria has received and started utilizing the US\$ 322 million 'Sani Abacha' loot transferred by Switzerland through its Conditional Cash Transfer (CCT) scheme. Amid some controversies of unnecessary legal payments to Nigerian lawyers, the lack parliamentary approval for appropriation and delays in disbursement, the CCT is being used under the active monitoring of civil society organisations and in accordance with the MoU signed during GFAR in 2017. Despite some challenges, the Sani Abacha return is highlighted as international best practice in asset return due to the transparent management of recovered assets with active involvement of civil society throughout the entire asset recovery process.

<sup>16</sup> See PACAC (2018) USING RECOVERED ASSETS FOR NIGERIA

Details of the recoveries, published by the Federal Ministry of Information, showed that the Nigerian government successfully retrieved total cash amount

**N78<sub>bn</sub>**  
(\$25 million), 

\$185 million, £3.5 million and €11, 250 between May 29, 2015 and May 25, 2016.



In 2018, Repatriation from foreign countries totaled:

**\$321<sub>m</sub>** 

**£6.9<sub>m</sub>** 

**€11,826.11** 

This includes the Sani Abacha repatriation from Switzerland. Earlier in 2017.

Also released were recoveries under interim forfeiture, both in cash and other assets, during the same period: 126 billion Naira, \$9 million, £2,4 million and €303,399.17<sup>17</sup>. The ministry also announced that 239 non-cash recoveries were made during the one-year period. The non-cash recoveries are – farmlands, plots of land, uncompleted buildings, completed buildings, vehicles and maritime vessels, the ministry said.

Repatriation from foreign countries totaled: \$321 million, £6.9 million and €11,826.11 in 2018. This includes the Sani Abacha repatriation from Switzerland. Earlier in 2017, Nigeria received £78 million from the UK Government as part of asset recovery in bribery case involving \$1.1 billion paid by Shell and ENI as “signature bonus” for one of the largest oil concessions.

Furthermore, a number of bilateral negotiations with various international jurisdictions are being pursued. However, negotiations are slow and cumbersome. The lack of trust of international partners that Nigeria can manage repatriated assets responsibly, domestic factors such as 2019 Presidential elections, high associated legal costs and lack of institutional coordination on the Nigerian side may be main obstacles in the successful conclusion of negotiations. Importantly, foreign partners demonstrate different readiness to repatriate assets to Nigeria. While some jurisdictions and governments clearly provide technical, political and operational assistance (e.g. UK and USA), Nigerian officials are frustrated about jurisdictions that are clearly uncooperative, even to simple requests for information or Mutual Legal Assistance Requests.<sup>18</sup>

<sup>17</sup> ibid

<sup>18</sup> Interview conducted on the 5th of April, 2019.

# CHAPTER SEVEN

## Adherence to Global Forum for Asset Recovery (GFAR) Principles<sup>19</sup>

### Principle 1: Partnerships

#### Description

Since GFAR, the Nigerian government has made continuous attempts to establish partnerships through regular meetings of officials; bilateral and multi-lateral treaties/agreements for recovering these stole assets. Bilateral agreements include the following i) Nigeria- UAE agreement<sup>20</sup>, ii) Nigeria – United states of America<sup>21</sup>, iii) Nigeria – Swiss<sup>22</sup>, iv) Nigeria – United Kingdom<sup>23</sup> among others. On the multilateral front, Nigeria led in 2018 the international cooperation under the African Union umbrella to develop Common African Position on Asset Recovery and Asset Return. This effort culminated in the presentation of this position during a series of side-events on the 73th UN General Assembly.

**Rating: Green (full adherence)**

*There are three Rankings (Green, Orange, Red), each explains the level of adherence to the GFAR principles and is subject to CISLAC assessment base on the methodology adopted.*

### Principle 2: Mutual interests.

#### Description

The Nigerian government is successfully distributing the \$322 million as agreed during GFAR. After the significant amount of the US\$723 million illicitly acquired by Abacha's family which had been returned to Nigeria from Switzerland in 2006 was unaccounted for, conditions for the repatriation of the new batch of the Abacha loot, including third party oversight from civil society funded by development partners (DFID) and supported by the World Bank are now monitoring the distribution of the funds. The Nigerian government is very active in negotiations with several key sending or destination countries nearing a return of a number of deals. Despite demonstrating shared interests from Nigeria and countries where assets await returns, mutual suspicion about the ability to manage returns accountably in Nigeria and the readiness to transfer recovered assets swiftly and without preconditions prevails. No significant international recoveries have been concluded since GFAR in 2017.

**Rating: Orange – partial adherence**

<sup>19</sup> CISLAC and CiFAR developed a user-friendly methodology to assess the progress against the 10 GFAR principles. The ranking ranges from full adherence (green), some adherence (yellow) and no adherence (red).

<sup>20</sup> <http://www.nigerianeye.com/2018/05/corruption-nigeria-uae-agreement-on.html>

<sup>21</sup> <https://www.state.gov/j/inl/rls/nrcrpt/2013/vol2/205253.htm>

<sup>22</sup> <https://www.vanguardngr.com/2017/12/nigeria-signs-mou-to-recover-321m-loot-from-switzerland/>

<sup>23</sup> <https://www.channelstv.com/2018/08/29/breaking-nigeria-uk-sign-agreements-on-security-economy/amp/>



### *Principle 3: Early dialogue.*

#### **Description**

The Nigerian government is actively pursuing bilateral and multilateral negotiations on asset recovery arguing for swift and unconditional return of recovered Nigerian assets stashed abroad. This applies especially to the political level spearheaded by the Head of State and the Minister of Justice. At the technical level, especially international negotiations lack capacity and resources. Alleged political interference in anti-corruption effort and the ability of Nigerian asset recovery agencies to cooperate with each other and with international partners is frequently questioned. The inability to investigate, prosecute and convict large corruption trials domestically and reduce the continuous outflows of illicit funds from Nigeria (estimated at \$16.7 billion annually ) are hampering the early dialogue ability of Nigerian authorities with international partners.

**Rating: Orange - partial adherence**

### *Principle 4: Transparency and accountability.*

#### **Evidence for rating:**

Information is provided publicly but is patchy and inconsistent. Domestic recoveries are fractioned amongst many law enforcement agencies. The management of recovered assets, especially interim seizures, is not transparent at all and results frequently in the depreciation of these assets. Information is not publicised well. The unclear and inefficient asset recovery portfolio is shared by various Anti-Corruption agencies. The Asset Recovery and Management Unit which also serves as the secretariat of the National Anti-Corruption Strategy was set up in the Ministry of Justice to overview the entire asset recovery portfolio, but this Unit is hamstrung by the lack of resources and capacity as well as of a common asset recovery policy and of a centralized database of recovered assets. The last publicly released list of recovered assets was in May 2016.

The absence of the Proceeds of Crime Act is an ongoing challenge in enforcing policy guidelines on assets management and transparency issues by the Presidential Advisory Committee Against Corruption (PACAC) and others. Reported volumes of domestically forfeited assets seem to be absurdly high and do not clearly distinguish between interim and final forfeitures. Some Nigerian agencies do not report asset recovery at all. CSOs have no role on the monitoring of domestic asset recovery. Unless judicial asset seizures stipulate the management of recovered assets, no clear guidelines are followed. International recovery, especially the 2017 \$322 million is a positive example in the transparency and management of the recovered assets. Under the DFID-funded MANTRA project, the returned funds are used for Conditional Cash Transfer under the CSO-monitoring. However, this precedent has not been extended to other asset recoveries. The transparency and accountability of recovered assets lacks the implementation of issued guidelines and unified legislative framework.

**Rating: Orange - partial adherence**

### *Principle 5: Beneficiaries.*

#### **Evidence for rating:**

The government has guidelines that suggest returns should first compensate victims, except the \$322 million Abacha loot. There is no publicly available information on any specific case where victims of corruption were compensated. There are some requirements to improve living standards, but they are not strictly complied with or not measured. In the absence of clear guidelines on the end-use of the repatriated assets, it is not clear how recovered assets are utilised, especially in cases of domestically recovered assets. The introduction of social investment programmes (SIPs) is the beneficial scheme of the federal government claims that recovered assets are used for pro-poor and development projects such as energy programme (N-Power Initiative), Conditional Cash Transfer (CCT) to the poor, Home Grown School Feeding Programme (HGSF) and Government Enterprise Empowerment Programme (GEEP). In particular immovable assets and perishable assets are not returned to victims and are frequently let to depreciate beyond any potential use.

**Rating: Orange - partial adherence**

### *Principle 6: Strengthening anti-corruption and development.*

#### **Evidence for rating:**

Returned assets are not directly ploughed back to strengthen anti-corruption institutions. Anti-corruption agencies are making case to withhold a certain percentage (4.5%) of the recoveries to cover for the recovery cost which is not budgeted for by the government. No preference is given to anti-corruption measures in return distribution, or returns are not traceable in the general budget. Governmental guidelines make frequent references to the end-use of recovered assets to implement the SDG agenda. Some development programs with strong links to the SDGs are partly supported with domestically and internationally recovered assets.

**Rating: Orange - partial adherence**

*Principle 7: Case-specific treatment.*

**Evidence for rating:**

The law enforcement agencies treat all depositions of confiscated proceeds in a case-specific manner. In theory, a judicial process is in place to consider how each return should be undertaken that publishes reasons for the approach taken. The judgments are not always published and known to the public. International repatriations are strictly case-specific due to specific contexts, different jurisdictions involved and pre-conditions presented by individual parties.

**Rating: Green (full adherence)**

*Principle 8: Consider using an agreement under UNCAC article 57(5)*

**Evidence for rating:**

Especially internationally repatriated funds are considered for a potential case-specific agreement and details of concluded agreements are published, including on modalities of return, timing, amounts returned and monitoring mechanisms. The disposition of funds is carried out taking consideration of national development objectives and making consistent use of existing national frameworks. Examples will include the Abacha Loot repatriation procedures, the James Ibori confiscated assets return, among others. Domestically recovered assets lack clear monitoring. Their end-use is not always clear and is not clearly audited against the (non-binding) guidelines.

**Rating: Green (full adherence)**

### *Principle 9: Preclusion of benefit to offenders*

#### **Evidence for rating:**

In the absence of the specific legislative framework on the management of recovered assets, there are no guidelines or specific rules which would restrict companies or persons convicted of corruption offences in the participation of returned assets.

**Rating: RED (No adherence)**

### *Principle 10: Inclusion of non-government stakeholders*

#### **Evidence for rating:**

There is a strong difference between domestically recovered assets and internationally repatriated assets. Monitoring of the management, end-use, impact and all other aspects of domestic recoveries is very challenging. CSOs contribute to the policy-level discussion about the decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition, monitoring and administration of recovered assets, including domestically recovered assets. However, access to reliable data of any kind is challenging. Recent international recoveries, especially the MANTRA-supported Sani Abacha return in 2017 puts the involvement of CSOs in the monitoring of the utilisation of the funds at the core of the agreement and can thus be considered as best practice. The current version of the Proceeds of Crime Act discusses a CSO-representative in the board of the newly formed Asset Recovery Agency. If passed and enacted, such provision would provide institutional entry for CSOs into the transparent management of recovered assets, including domestic recoveries.

**Rating: Orange - partial adherence**

# CHAPTER EIGHT

## Recommendations



### Legal Framework

- (i) The Proceeds of Crime Act (POCA) bill needs to be passed to improve the management of recovered assets both domestically and internationally. Without POCA, international trust into Nigeria's ability to manage recovered assets will remain low.
- (ii) CSOs shall be included – through POCA – in the asset recovery process, including transparency in the recovery and management of domestically recovered assets.
- (iii) The end-use of internationally and domestically recovered assets must be clearly stated and must prioritise individual victims of corruption and/ or other criminal offences.



### Institutions and Political Will

- (iv) Asset recovery cases involving politically exposed persons must be prioritized;



### Transparency and Participation

- (v) Management of recovered assets must be improved. Unified database of final and interim forfeitures and international recoveries must be established and published without pre-conditions;
- (vi) All agencies with the mandate to seize assets must publish disaggregated data of interim/ final forfeitures, types of assets seized, ongoing cases, etc.;



### Transparency and Participation

- (vii) Asset recovery data must be published and verified by an independent entity;
- (viii) CSOs' representatives shall be involved at the institutional level (e.g. in the board of the newly established Asset Recovery Management Agency) and individually (e.g. through monitoring of individual recoveries, e.g. the CSO monitoring of the cash transfers of the Sani Abacha loot from Switzerland).



### Enforcement Experience

- (ix) Issued policy guidelines on the management of recovered assets, the end-use of recovered assets, and disaggregated data of recovered assets must be enforced and harmonized across all agencies with the mandate to confiscate and seize assets;
- (x) CSOs need to be much better coordinated and must present united position to key asset recovery principles.



### International Cooperation

- (xi) Nigerian government must continue their high international engagement. Multilateral and bilateral relationships and agreements need to be strengthened.
- (xii) The institutional leadership and responsibility for asset recovery process on the Nigerian side must be clear and undisputable.
- (xiii) International partners shall provide unconditional political and technical assistance to Nigeria, including capacity building to the civil society actors.
- (xiv) Jurisdictions harboring Nigerian assets, which are proceeds of crime, shall pursue case-specific negotiations about the return of the assets to Nigeria under mutually acceptable arrangement about the end-use and management of these assets.

# CHAPTER NINE

## Annex: Methodological note - GFAR Principles Assessment



The Global Forum for Asset Recovery (GFAR) took place in Washington D.C. in December 2017. It was an outcome of the London Anti-Corruption Summit held in 2016 and built on the previous Arab Forum for Asset Recovery series,<sup>24</sup> that began in 2012, and the Ukraine Forum on Asset Recovery,<sup>25</sup> that took place in 2014, both of which aimed at supporting the countries involved in recovering assets hidden overseas by former rulers. The GFAR took these experiences to a global level, focusing on four countries: Nigeria, Sri Lanka, Tunisia and Ukraine and was jointly hosted by the UK and the US. The forum primarily focused on political, policy and technical exchange between involved governments a civil society participation was limited.<sup>26</sup>

The final communique of the GFAR set out ten principles that the hosts and focus country governments committed to in their further work on asset recovery. These principles were not agreed to as binding commitments, nor worded as such, and

reference themselves as ‘approaches and mechanisms for enhancing coordination and cooperation, and for strengthening transparency and accountability of the processes involved.’<sup>27</sup> Similarly the wording of each principle is vague in many cases and lacks the specificity needed to be seen as clearly binding. Nevertheless, they do contain key ways in which the participating governments have agreed to act and should be seen as strongly influential in guiding their actions with respect to asset recovery.

This section examines each principle and its meaning in turn, with a view to providing greater detail on the meaning of the principles and how they relate to government action for asset recovery. It then includes a methodology for a traffic light assessment of adherence with each principle.

<sup>24</sup> <https://star.worldbank.org/ArabForum/About>

<sup>25</sup> <https://star.worldbank.org/node/729>

<sup>26</sup> <https://star.worldbank.org/about-us/global-forum-asset-recovery-gfar>

<sup>27</sup> <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>



## GFAR PRINCIPLES

### Principle 1: Partnership.

It is recognised that successful return of stolen assets is fundamentally based on there being a strong partnership between transferring and receiving countries. Such partnership promotes trust and confidence.

This principle implies that the governments strengthen their bilateral relationships on asset recovery with countries of origin and destination. Partnerships could range from informal meetings to building relationships between key officials at different levels, to regular political and technical conferences, to memoranda of understanding and concluding bilateral treaties on asset recovery. At the technical level, it could also include facilitating the setup of platforms for communication and exchange of information between law enforcement and the judiciary of different countries including membership in relevant international organisations, for example asset recovery inter-agency networks, Interpol etc.

No adherence	Partial adherence	Full adherence
<p>The government has not started building partnerships with sending or destination countries.</p> <p style="text-align: center;"><b>RED</b></p>	<p>The government started to build bilateral/multilateral partnerships at informal level, but lacks concrete measures; ad hoc informal meetings take place but are not regular; participation in international fora and platforms on asset recovery cooperation</p> <p style="text-align: center;"><b>ORANGE</b></p>	<p>The government established one or more bilateral/multilateral partnerships with sending or destination countries; regular meetings of officials; potentially bilateral treaties or other agreements in place. Regular participation in international fora and platforms on asset recovery cooperation.</p> <p style="text-align: center;"><b>GREEN</b></p>
<i>Evidence for rating</i>		
<p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		

### Principle 2: Mutual interests

It is recognised that both transferring and receiving countries have shared interests in a successful outcome. Hence, countries should work together to establish arrangements for transfer that are mutually agreed.

This principle implies that origin and destination countries should work together to mutually agree the conditions for the return of any assets. This too could range from entering into ad hoc, good faith negotiations on individual returns, to concluding a bilateral or multilateral treaty or other agreements setting out the modalities for future returns which satisfies all parties.

No adherence	Partial adherence	Full adherence
<p>The government has not identified modalities for return with sending or destination countries</p> <p style="text-align: center;"><b>RED</b></p>	<p>The government worked to establish arrangement for mutually agreed transfers with sending or destination countries, but lacks of concrete measures ad hoc negotiations but not regular; no treaties or other bilateral/multilateral agreements discussed or concluded</p> <p style="text-align: center;"><b>ORANGE</b></p>	<p>The government has entered into regular negotiations proactively with several key sending or destination countries nearing a return; concluded or in the process of concluding bilateral/multilateral agreements on return</p> <p style="text-align: center;"><b>GREEN</b></p>
<i>Evidence for rating</i>		
<p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		

### Principle 3: Early dialogue

It is strongly desirable to commence dialogue between transferring and receiving countries at the earliest opportunity in the process, and for there to be continuing dialogue throughout the process.

In some respects, underlying the first two principles, this principle implies that governments should commit to proactive and sustained dialogue with their counterparts in confirmed or likely countries holding their assets or sending assets to their country at an early stage of the asset recovery process. This could include for example efforts to communicate with counterparts already before a mutual legal assistance request is sent, during initial investigations into the case and in sharing information on the case from an early stage.

On the longer term, the principle aims to build durable relationships both at the political and technical levels to countermand possible future problems in the return, maintaining proactive and efficient communication between countries throughout the whole asset recovery process. This could take the form of ad hoc or regular meetings at the political and technical levels; sharing information at the technical level with counterparts on a regular basis; putting in place communication channels and participating in available platforms at the technical levels so that they are available when a new asset recovery case starts.

No adherence	Partial adherence	Full adherence
<p>The government has not entered into dialogue with possible and confirmed sending or destination countries at an early stage of the asset recovery</p>	<p>The government has entered into dialogue both at the political and technical levels with sending or destination countries at an early stage of the asset recovery process, but efforts are lacking for more sustained dialogue or are challenging. There are ad hoc mechanisms or the government has joined mechanisms to communicate and exchange information with international counterparts at the technical level but they are not used efficiently and consistently</p>	<p>The government has entered into sustained dialogue with several sending and destination countries on asset recovery. Suitable communication channels and participation in international platforms on asset recovery cooperation at the technical levels are in place and consistently used</p>
<p style="text-align: center;"><b>RED</b></p>	<p style="text-align: center;"><b>ORANGE</b></p>	<p style="text-align: center;"><b>GREEN</b></p>
<i>Evidence for rating</i>		
<p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.,</p>		

## Principle 4: Transparency and accountability

Transferring and receiving countries will guarantee transparency and accountability in the return and disposition of recovered assets. Information on the transfer and administration of returned assets should be made public and be available to the people in both the transferring and receiving country. The use of unspecified or contingent fee arrangements should be discouraged.

Closely linked and potentially reaffirming principles developed and partially highlighted in this paper on transparency and accountability, this principle requires that States act to ensure that the asset recovery process adheres to internationally recognized best practice on transparency and accountability. This includes ensuring that authorities should publicly provide timely and accessible information in advance of any return on the agreed process; the amounts being returned; the timing of the return; and on the disposition and the administration of returned assets.<sup>28</sup>

<sup>28</sup> Transparency International France, Le sort des biens mal acquis et autres avoirs illicites issus de la grande corruption : Plaidoyer pour une procédure adaptée, au service des populations victimes, Key Principle 1, Stolen Asset Recovery Initiative, Management of Returned Assets: Policy Considerations (StAR, Washington D.C.: 2009), pp. 1-2.

No adherence	Partial adherence	Full adherence
<p>The government does not publish updates on asset recovery efforts; no information is available online; any information on returns is only provided short notice or only through personal contacts; it is challenging to find out how returned assets are held and disbursed</p> <p style="text-align: center;"><b>RED</b></p>	<p>Information is provided publicly but is irregular and inconsistent. It covers some aspects of the returns and distribution process but not others AND/OR it covers some returns but not others. Information is not publicised well</p> <p style="text-align: center;"><b>ORANGE</b></p>	<p>Information is openly provided by the government and covers all aspects of the return process for all cases this information is provided in a timely and accessible manner and a contact point exists for questions</p> <p style="text-align: center;"><b>GREEN</b></p>
<i>Evidence for rating</i>		
<p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		

## Principle 5: Beneficiaries

Where possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct.

This Principle reaffirms the long established idea that victims of the abuse of power by public officials should receive compensation for the damage caused as part of an asset recovery process.<sup>29</sup> It further recalls the established principle that, without prejudice to the victims of corruption, recovered assets should be allocated in such a way as to improve the living standards of the people.<sup>30</sup>

<sup>29</sup> UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/34 of 29 November 1985), paras 11, 18,19; United Kingdom: General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.

<sup>30</sup> Transparency International France (n.4), Key Principle 2; UNCAC Coalition Civil Society Statement for the Global Forum on Asset Recovery; United Kingdom: General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.

No adherence	Partial adherence	Full adherence
<p>Returned assets are not required to compensate victims nor to improve living standards; returned assets go directly into the State budget and are not traceable as having contributed to one of these aims</p>	<p>The government has guideline that suggest returns should first compensate victims, but it is not obligatory; there are some requirements to improve living standards but they are not strictly complied with or not measured</p>	<p>All return agreements with third countries include clauses about utilising returned assets for victim compensation and/or improving live standards. There is a clear procedure for victims to register their status as a victim of that particular form of corruption and a policy or law clearly specifies the return should first go to victim and then to improve living standards. The government conducts and publishes assessments that show adherence and challenges</p>
<p style="text-align: center;">RED</p>	<p style="text-align: center;">ORANGE</p>	<p style="text-align: center;">GREEN</p>
<p><i>Evidence for rating</i></p>		
<p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		

## Principle 6: Strengthening anti-corruption and development

Where possible, in the end use of confiscated proceeds, consideration should also be given to encouraging actions which fulfil UNCAC principles of combating corruption, repairing the damage done by corruption, and achieving development goals.

Adding to the above Principle, the proceeds of the corruption can also be used to strengthen the rule of law and prevention of corruption, and thus contribute to the achievement of the Sustainable Development Goals, in particular Goal 16.<sup>31</sup>

<sup>31</sup> Transparency International France (n.4), Key Principle 2; UNCAC Coalition Civil Society Statement for the Global Forum on Asset Recovery; United Kingdom: General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.

No adherence	Partial adherence	Full adherence
<p>The government does not envisage actions in the end use of confiscated proceeds assets to strengthen anti-corruption, no preference is given to anti-corruption measures in return distribution and sustainable development, or returns are not traceable in the general budget</p>	<p>The government has guidelines that suggest returns should be used to strengthen anti-corruption return distribution and sustainable development, but they are not strictly complied with or not measured</p>	<p>There is a clear policy or law requiring part of a return to be used for anti-corruption prevention and development. The government conducts and publishes assessments that show adherence and challenges</p>
<b>RED</b>	<b>ORANGE</b>	<b>GREEN</b>
<p><i>Evidence for rating</i></p> <p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		

### Principle 7: Case-specific treatment.

Disposition of confiscated proceeds of crime should be considered in a case-specific manner. This Principle implies that governments should treat each case separately when it comes to the disposition of the confiscated proceeds of corruption. In some cases, this may mean that funds are put into the general budget, in others a victim compensation scheme is set up. Key here will be the purpose for which the returned funds will be used, as determined by consideration under Principles 5 and 6.

No adherence	Partial adherence	Full adherence
<p>The government gives no consideration of each case separately, all cases are treated alike and without a clear purpose for which the returned funds will be used</p>	<p>The government treats cases separately but without clear rationales OR only treats cases different in some cases and without clear purpose</p>	<p>All cases are treated in an individual fashion; a process is in place to consider how each return should be undertaken that publishes reasons for the approach taken</p>
<b>RED</b>	<b>ORANGE</b>	<b>GREEN</b>
<p><i>Evidence for rating</i></p> <p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		

## Principle 8: Consider using an agreement under UNCAC Article 57(5).

Case-specific agreements or arrangements should, where agreed by both the transferring and receiving state, be concluded to help ensure the transparent and effective use, administration and monitoring of returned proceeds. The transferring mechanism(s) should, where possible, use existing political and institutional frameworks and be in line with the country development strategy in order to ensure coherence, avoid duplication and optimize efficiency.

UNCAC Article 57 (5) states that: where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

This principle encourages governments to ensure transparency and accountability, as well as effectiveness, in all bilateral and multilateral return agreements. This includes ensuring case-specific agreements or arrangements are public, including when returns are part of reconciliation arrangements,<sup>32</sup> as well as detailing the timing, amounts, disposition and monitoring mechanism of returns. The principle also recommends using existing frameworks in the country of origin for the disposition of returned funds as well as consistency with the country's national development objectives when allocating the funds in order to avoid duplications. This could translate into using the returned funds to expand or continue already existing development or anti-corruption programmes, in line with Principle 6.

No adherence	Partial adherence	Full adherence
<p>The government does not develop case specific agreements OR does not publish them or any details about them. There is no consideration of national development objectives or use of existing national frameworks in the disposition of funds.</p> <p style="text-align: center;"><b>RED</b></p>	<p>Some case specific arrangements for return are carried out AND are published, including details on modalities on return and is not on regular basis. The use of returned assets in the country of origin takes into consideration existing national frameworks and development objectives only in some cases and without a clear strategy.</p> <p style="text-align: center;"><b>ORANGE</b></p>	<p>All cases are considered for a potential case-specific agreement and details of all concluded agreements are published in a timely fashion, including on modalities of return, timing, amounts returned and monitoring mechanisms. The disposition of funds is carried out taking consideration of national development objectives and making consistent use of existing national frameworks.</p> <p style="text-align: center;"><b>GREEN</b></p>
<p><i>Evidence for rating</i></p>		
<p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		




<sup>32</sup> Transparency International France (n.4), Key Principle 1.



## Principle 9: Preclusion of Benefit to Offenders

All steps should be taken to ensure that the disposition of confiscated proceeds of crime do not benefit persons involved in the commission of the offence(s).

This principle reaffirms the best practice provision that States should ensure that the disposition of confiscated proceeds of crime do not benefit directly or indirectly persons involved in the commission of the offence(s)<sup>33</sup> and that any suspicion of irregularities concerning the management of the funds should lead to the opening of an investigation by authorities<sup>34</sup>.

No adherence	Partial adherence	Full adherence
<p>The government does not have specific rules that restrict companies or persons convicted of corruption offences from participating in distribution of returned assets; there is no clear line of authority to investigate irregularities OR in practice there is little evidence of investigations into potential irregularities</p>	<p>Rules on the participation of offenders in the distribution of recovered assets exist but are not well enforced; there are investigation and suspension powers but they are not clear or applied irregularly</p>	<p>Specific rules prohibit the participation of offenders in the distribution of recovered assets; authorities have clear powers to launch investigations into irregularities in the dispersal of recovered assets and to suspend the disbursement and actually use those powers</p>
 RED	 ORANGE	 GREEN
<p><i>Evidence for rating</i></p> <p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		

## Principle 10: Inclusion of non-government stakeholders.




To the extent appropriate and permitted by law, individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, should be encouraged to participate in the asset return process, including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets.

<sup>33</sup> United Kingdom: General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.

<sup>34</sup> Transparency International France (n.4), Key Principle 4; UNCAC Coalition Civil Society Statement for the Global Forum on Asset Recovery.

This principle reaffirms the best practice principle that civil society, non-governmental organizations and community-based organizations, should participate in the asset return process, including by helping to identify how harm can be remedied through the recovered funds, contributing to decisions on return and disposition, and fostering transparency and

All steps should be taken to ensure that the disposition of confiscated proceeds of crime accountability in the transfer, disposition, monitoring and administration of recovered assets.<sup>35</sup> This implies that civil society groups in the country of origin are granted access to information on asset recovery dispositions early on and without hurdles; that they have a meaningful participation in the decision-making process on the use of returned funds, including during negotiations at a bilateral or multilateral level; that they are able to conduct the monitoring on the reuse of returned assets freely and independently; and that they are not retaliated against for their work on asset recovery.

No adherence	Partial adherence	Full adherence
<p>Civil society, non-governmental organizations and community-based organizations are not included in all the stages of the returns process.</p>	<p>Civil society, non-governmental organizations and community-based organizations can participate in some discussions on the return of assets, but its influence is limited OR it is only invited on an ad hoc basis. Civil society has access to information on asset recovery processes but the information is provided in an inconsistent and challenging way. Monitoring of returned assets by civil society takes place but independence and safety in their work is not sufficiently granted.</p>	<p>Civil society has a right to participate in all asset recovery cases, including by representing the victims, and its recommendations have weight in all phases of the decision-making process. Information on asset recovery processes is provided fully and in an easily accessible way. Monitoring activities are conducted independently from authorities and without retaliation.</p>
		
<p><i>Evidence for rating</i></p>		
<p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, official policy documents, media reports. Please specific sources.</p>		

<sup>35</sup> UNCAC Coalition Civil Society Statement for the Global Forum on Asset Recovery.

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