



POLICY BRIEF ON
A FRAMEWORK FOR ASSET RECOVERY
AND MANAGEMENT IN NIGERIA

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EXECUTIVE SUMMARY

The recovery of stolen assets is one of the main thrusts of the anti-corruption policy in Nigeria. Anti-corruption law enforcement agencies have the powers to identify, trace and seize proceeds of crime and seek freezing and forfeiture orders from the court. Significant amounts of monetary and other assets have been seized or recovered. However, there is no coordinated and effective mechanism in place for the management of such assets. This Policy Brief therefore examines government policies and actions in relation to asset recovery and management; and recommends the adoption of a coordinated asset recovery and management framework in Nigeria. The Policy Brief also seeks to promote dialogue on the implementation and monitoring of the National Anti-Corruption Strategy (NACS).

INTRODUCTION

Corruption is one of the major crimes that generate illicit proceeds. Societies affected by this problem are also faced with the task of recovering the proceeds of corruption. In most developing countries, corruption constitutes a major problem and this reflects a real issue for all societies because of its crosscutting impact. The dramatic cases of corruption and the civil society pressure on governments to bring corrupt officials to justice have led to many developing countries seeking to recover their stolen assets. The philosophy behind this is that asset recovery is an economic intervention strategy to remedy governance problems as it would provide the country with more resources for social reforms, as well as the possibility of removing negative role models and bringing corrupt officials to justice.

Asset Recovery therefore, is the kernel of the anti-corruption fight as criminal convictions without the forfeiture and return of assets will not dissuade the corrupt or serve as sufficient deterrence for others. The recovery of stolen assets raises series of policy questions ranging from how to use the returned funds to support development goals to how to keep the public informed. Success in managing returned assets is critical as it builds confidence in public institutions, faith in the war against corruption, and reinforces the rule of law.

STATEMENT OF THE PROBLEM

The impact of corruption on the Nigerian society and economy has been devastating. It continues to affect the Government's ability to provide basic services and directly impacts on the well-being of the population and its ability to rise out of poverty. *"Virtually every category of our leadership is implicated as shown by a recent official release that between 2006 and 2013 alone, N1.34 trillion was stolen by just about 50 people; N146.84 billion by 15 former State Governors; N654 billion by 11 businessmen; N524 billion by 8 Bankers; N146 billion by 12 federal and state civil servants; and N7 billion by four (4) former Ministers"*¹

Thus, the fight against corruption is one of the main thrusts of the Buhari Administration and the recovery of stolen assets is a priority of the government. The recovery of asset is largely a domestic or bilateral legal issue. However, whichever approach taken (criminal or civil) to recover stolen assets or proceeds of crime in general, the inherent challenges therein make the process complex and complicated. At the domestic level, there are challenges of identifying, seizing, freezing and confiscation in addition to the more problematic issue of proving the origin and ownership of such assets. At the international level, despite the comprehensive legal frameworks created in various instruments, there are jurisdictional challenges, including the application of mutual legal assistance and all the complexities associated with it. Even where the recovery effort is successful, a critical problem has to do with the management of the recovered assets.

It is against this background that developing a framework for the recovery and management of assets is a critical building block in anti-corruption and the prevention of the laundering of the proceeds of crime.

¹ Femi Odekunle, "Fighting Corruption In Nigeria: The Journey to Date", Invited /Commissioned "Pre-Inaugural Lecture" of the Olusegun Obasanjo Good Governance and Development Research Centre, National Open University of Nigeria (**NOUN**), Abuja, 9 December, 2016.

AIM

The aim of this policy brief is to examine the existing framework for asset recovery and management in Nigeria and recommend an integrated asset recovery and management strategy. The policy brief also aims to promote policy dialogue for the implementation of the National Anti-corruption Strategy recently approved by the Federal Executive Council (FEC).

OVERVIEW OF GOVERNMENT POLICIES AND ACTIONS IN RELATION TO ASSET RECOVERY

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) 40 Recommendations.

Nigeria has been an active voice in canvassing for the return of stolen assets and to this effect has sponsored two UNCAC resolutions on asset recovery which were adopted by the Conference of States Parties².

In furtherance of its anti-corruption agenda, Nigeria has enacted several legislations, adopted relevant policies, and set up institutions and structures in line with her international obligations³. These institutions have the mandate to prevent, investigate and prosecute corruption cases. In the course of their work, they also have the powers to identify, trace, freeze and confiscate proceeds of crime. However, the provisions in the laws on the management of

² Resolutions 5/3 and 6/2 adopted at the 5th and 6th Conference of States Parties held in 2013 and 2015 respectively.

³ The Anti-Corruption laws include the Money Laundering (Prohibition) Act 2011 as amended; Advance Fee Fraud and Other Fraud Related Offences Act 2006, Corrupt Practices and other Related Offences Act 2000; Code of Conduct Bureau and Tribunal Act, National Drug Law Enforcement Agency Act; the Criminal Code amongst others.

recovered assets are inadequate. For instance while sections 37 and 38 of the Corrupt Practices and Other Related offences Act 2000 (ICPC Act) provide for seizure and custody of seized property, the provisions on management of the seized property is minimal. Likewise section 47 dealing with forfeiture did not elaborate on the mechanism for managing such forfeited assets.

The Economic and Financial Crimes (Establishment) Act 2004 has provisions for seizure and forfeiture but did not elaborate on interim management of seized assets. Section 31(2) empowers the Secretary to the Commission to upon final forfeiture "take steps to dispose of the property concerned by sale or otherwise....". It did not elaborate on what to do with assets under interim forfeiture or on processes to manage assets under final forfeiture when they are not sold. Besides, each of the enforcement agencies adopt and implement its own asset management framework in the absence of any centralized standards or coordination mechanism. The effect of this is the deterioration and dissipation of recovered assets, as well as lack of transparency and accountability in the management process. This has led to huge losses to the country and loss of public confidence in the process. This is a major challenge given the fact that the main principle behind asset recovery is the preservation and protection of the value and character of the subject matter of the crime.

The Administration of Criminal Justice Act 2015, which has provisions for compensation of victims of crime, protection of witnesses in trials for certain categories of offences and modalities for Plea Bargaining, is a powerful tool for asset recovery and management⁴. In particular, the provisions on Plea Bargaining, when fully implemented will enable recovery of assets especially where the prosecution process is likely to be protracted.

Despite these challenges, the current administration has recorded successes in the recovery of stolen assets. The Honorable Minister of Information and Culture, Alhaji Lai Mohammed, issued a statement in Lagos on 4th June 2016 giving a breakdown of cash recovered within one year of the Buhari

⁴Sections 319 and 232 of the ACJA 2015

administration (29 May 2015 - 25 May 2016) totaling ₦78,325,354,631.82, \$185,119,584.61, £3,508,355.46 and €11,250. Other recoveries (a combination of cash and assets) under interim forfeiture during the same period include ₦126,563,481,095.43, \$9,090,243,920.15, £2,484,447.55 and €303,399.17. He further stated that anticipated repatriation from foreign countries totalled \$321,316,726.1, £6,900,000 and €11,826.11. 239. Non-cash recoveries which include farmlands, plots of land, uncompleted buildings, completed buildings, vehicles and maritime vessels were also made during the one-year period.

In addition to the above recoveries, and in order to strengthen the anti-corruption crusade and prevent the misappropriation and theft of public assets, the government introduced the following measures:

- a. Established the Treasury Single Account (TSA) to consolidate all government monies from all Ministries, Departments and Agencies into a single account to ease the facilitation and management of government funds.
- b. Signed up to the Open Government Partnership Initiative and has adopted a National Action Plan for implementation.
- c. Introduced the Bank Verification Number (BVN) policy which identifies and links all beneficial owners of accounts towards combatting money laundering and fraud.
- d. Adopted the cashless policy in 2012 to curb excesses of cash- based transactions in Nigeria
- e. Recently adopted a whistleblowing policy to facilitate recovery of proceeds of crime.

THE WEAKNESSES IN THE LEGISLATIVE AND INSTITUTIONAL POLICY FRAMEWORK

The Legislative frameworks establishing the law enforcement agencies give them wide powers to identify, trace, seize and seek orders from the court to freeze, confiscate and forfeit proceeds of crime. While significant efforts have been made in this direction and some assets have been seized, confiscated or forfeited to government, there is a challenge with the management of the recovered assets both while under interim forfeiture and when finally forfeited. Over the years, there has been public outcry on the management of such assets due to the dissipation, as well as the lack of transparency. The law enforcement agencies seem to agree on the need for a strategy/ mechanism for the management of such assets. This is part of what the Proceeds of Crime (POCA) Bill before the National Assembly seeks to address.

The POCA Bill seeks to among other things, establish an agency and a centralized framework for asset recovery and management. Furthermore, the POCA Bill provides for a non-conviction based asset forfeiture framework. However, some of its provisions may impinge on critical areas of the work of the Law Enforcement Agencies (LEAs) rather than strengthen them. For instance, the Bill seeks to establish an Asset Management Agency to manage all assets immediately upon seizure or confiscation by the LEAs till the final determination of each matter, and also to solely carry out all civil forfeiture cases. The stage of transfer of the assets as contemplated in the Bill is perceived as a major challenge in investigation and prosecution, especially in the tendering of evidence and exhibits where assets are instrumentalities of crime. It may also be beneficial to the asset recovery regimen to empower the LEAs to carry out civil forfeiture in appropriate cases.

Further, the Proceeds of Crime Bill⁵ seeks to repeal some of the asset detection, tracing, investigation and criminal forfeiture functions of Law Enforcement Agencies and this will impede the investigative, prosecutorial

⁵ Sections 2, 103(2) and 162 of the Proceeds of Crime Bill.

and confiscation powers of these Agencies in their day to day activities.

It is also perceived that the proposed Agency may interfere in matters under investigation and prosecution by other Law Enforcement Agencies and there is therefore the need to ensure there is no such interference until the final determination of each case and the asset is/or are forfeited or confiscated by the court.

Apart from the absence of a non-conviction-based asset forfeiture law, the absence until recently of a holistic national strategy to combat corruption is another major weakness in Nigeria's anti-corruption and asset recovery framework. This has been highlighted in various fora including the 1st cycle of review of Nigeria's implementation of the UNCAC. The Inter Agency Task Team of Anti-corruption Agencies had jointly developed a draft which was recently approved by the Executive Council of the Federation. A key pillar of the strategy is recovery and management of proceeds of crime. The implementation of a Strategy with an asset recovery and management framework will improve asset recovery in particular and facilitate greater coordination in the overall anti-corruption drive. That will also fulfill Nigeria's obligation under the FATF Recommendation 2⁶.

Finally, the limited capacity of the Code of Conduct Bureau (CCB) to verify asset declarations and the lack of transparency in the asset declaration regime cannot be overlooked. The public does not have access to declarations by public office holders and therefore cannot make reports on irregularities and false declarations. Even with the passage of the Freedom of Information Act, the Bureau still maintains that the National Assembly needs to make a specific regulation as provided by the Constitution before asset declarations can be made public.

For all these and other tangential issues, the need to provoke constructive dialogue on the urgency of a coordinated mechanism for asset recovery and

⁶ Recommendation 2 requires countries should have a mechanism in place to facilitate cooperation and coordination amongst competent authorities to combat money laundering (and the fight against corruption).

management within the framework of the holistic National Anti-Corruption Strategy based on acceptable international standards, formed the fulcrum of this Policy Brief.

EXPLORING INTERNATIONAL GOOD PRACTICE

The United Nations Convention against Corruption (UNCAC) is the ground breaking convention on corruption and asset recovery. The UNCAC explicitly identifies asset recovery as its fundamental principle. It enjoins States Parties to establish comprehensive domestic regulatory and supervisory regimes to prevent money laundering⁷. Countries that have ratified the UNCAC are required to criminalize the offence of bribery⁸, embezzlement, misappropriation or other diversion of property by a public official⁹, and laundering of the proceeds of crime¹⁰; however, criminalization of illicit enrichment, is left to the discretion of the States¹¹. Nevertheless, Article 21 of the UNCAC encourages States Parties to put in place measures that would criminalize illicit enrichment, which is defined as *“a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”*.

Furthermore, Article 31 (3) of the UNCAC mandates States Parties to take legislative and other necessary measures to regulate the administration by the competent authorities of proceeds of crime. Article 55 of the UNCAC further provides for international cooperation for purposes of confiscation and return of proceeds of crime to other States Parties.

What the UNCAC requires is a framework for seizure, confiscation and management of proceeds of crime by competent authorities and not necessarily a dedicated agency for that purpose as provided in the Proceeds of Crime Bill. Drawing from the UNCAC and other international anti-

⁷ Article 14

⁸ Articles 15 and 16

⁹ Article 17

¹⁰ Article 23

¹¹ It is crucial to note that criminalization not only allows national authorities to detect, prosecute and repress the offence but also provides the legal basis for international cooperation among law enforcement agencies, judicial and administrative authorities.

corruption instruments, several international organizations have made recommendations and issued guidelines on the management and disposal of seized and recovered assets. The G8 guidelines emphasize proper planning, efficient and cost effective administrative mechanisms, transparency and accountability and good fiscal decisions while ensuring that law enforcement objectives remain paramount¹². The FATF guideline has similar prescriptions and includes preservation and dealing with third party rights. It also emphasizes having sufficient resources for management as well as keeping appropriate records¹³. Similarly the European Union has issued several directives on the subject matter.

Given the peculiarities of the country, if the bill is passed and we opt for a dedicated agency, care must be taken to ensure that the modus operandi of such an agency does not impede investigation, prosecution and asset recovery mandates of other law enforcement agencies.

CONCLUSION

Asset recovery is a priority within the anti-corruption framework of Nigeria. However, apart from the legal challenges in the recovery of illicit assets, the management of recovered assets still remains a concern. The existing legal and institutional framework for asset recovery in Nigeria is still evolving. Whereas there are laws for asset recovery, the processes and procedures for the management of recovered assets have not fully developed. The international dimensions and challenges in asset recovery also necessitate the creation of a framework for the management of assets, not only to ensure that the recovered assets do not dissipate or are stolen again, but also to ensure transparency and accountability and inspire confidence and international partnerships.

¹² Best Practices for the Administration of Seized Assets (2005) - http://www.coe.int/en/t.dgh/monitoring/moneyval/web_ressources/G8_BPAssetManagement.pdf

¹³ FATF: Characteristics of an Asset Management Framework- <http://www.fatf-gafi.org/media/fatf/documents/reports/>

RECOMMENDATIONS

Based on this conclusion, specific, realistic and targeted recommendations that would promote further policy dialogue and actions are made below:

1. It is imperative to activate the implementation framework for the recently approved National Anti-corruption Strategy to enhance recovery and management of illicit assets.
2. The National Assembly should expedite action to enact into law the Proceeds of Crime Bill in order to ensure the required legal framework for asset management taking into consideration, stakeholder views and the peculiarities of the country.
3. The Honourable Attorney General of the Federation and Minister of Justice should convene an inter-agency forum to develop a sector – specific strategy and implementation plan on asset recovery and management to be annexed to the National Anti-Corruption Strategy (NACS) to enable implementation of the relevant pillar of the NACS. The IATT should commence the policy dialogue without delay to articulate all the issues to go into the Asset Recovery and Management Implementation Plan.
4. Successful prosecution and recovery of illicit assets is a function of good investigation. Therefore, Law Enforcement Agencies should improve the quality of investigation of corruption cases, including evidence gathering and management.
5. Similarly, the quality of prosecution must be improved to ensure that justice is done, offenders are punished according to law and proceeds of crime are taken away from them to serve as deterrence to potential offenders.

6. A lot more emphasis needs to be placed on the need for a holistic framework for whistleblower and witness protection. This is because they play important roles in asset tracing and recovery. The Federal Ministry of Justice as a matter of urgency should present the Public Interest Disclosure and Witness Protection Bill on whistle blower and witness protection to stakeholders for input and forward same to the National Assembly for speedy passage into law.
7. There is need for more transparency and public access to asset declarations as this will enhance verification, asset tracing and recovery. Therefore:
 - The National Assembly should make clear regulations as required by the Constitution on public access to asset declarations.
 - The CCB should be strengthened to carry out effective verification of declared assets.
 - Failure to declare and false declarations should be punished without delay to serve as deterrence.
8. Law Enforcement Agencies should ensure strict implementation of the provisions on victim compensation, plea bargaining and management of recovered assets as provided in the Administration of Criminal Justice Act 2015.
9. In order to improve the asset recovery and management regime, there is need to build the capacity of the Judiciary on developments and emerging issues on national and international asset recovery and management. The Chief Justice of Nigeria, through the National Judicial Institute, in collaboration with specialized training institutes and partners, may consider developing specialized training programs

for designated anti-corruption Judges and other Judges at all levels of the judiciary to enhance better understanding of and adjudication on asset recovery and management as provided in the law.

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