ASSET RECOVERY:
NIGERIA’S STORY OF SMALL PROGRESS

Civil Society Legislative Advocacy Centre (CISLAC),
Transparency International Nigeria

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Yours faithfully,

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Asset Recovery: Nigeria's Story of Small Progress

1.0 Executive Summary

This report details the findings of a study that reviewed Nigeria's asset recovery initiatives in the last 22 years, with particular focus on interventions undertaken by President Buhari’s government in the last six years. Civil Society Legislative Advocacy Centre\(^1\) (CISLAC) commissioned this study to generally assess the cooperation or non-cooperation of foreign jurisdictions in Nigeria’s Asset Recovery process. The study among others reviewed Nigeria’s current financial outflows and asset recovery context; examined existing global frameworks to facilitate recovery of Nigerian assets currently abroad; analyzed levels of corruption by foreign governments and their decisions and provide appropriate recommendations.

The methodological approach is qualitative and descriptive. Secondary data from books, journals, magazines, unpublished works, dailies, periodicals, and other digital sources were extensively reviewed and contextually analysed to provide insights on the global political economy of asset recovery vis-a-vis the Nigerian government’s efforts. Key informant interviews were undertaken to triangulate literature with context.

The study finds that while Nigeria has indeed made progress in terms of national anti-corruption and asset recovery actions, processes, and institutions; lessons from across four different democratic governments in Nigeria since 1999 highlight the impact of politics on the process. The priorities of the president rather than the institutional independence and organizational initiatives of anti-corruption agencies are critical to the success or otherwise of asset recovery drive in the last 22 years of democratisation in Nigeria.

1.1 Summary of Findings

- The institutional framework and interagency coordination for anti-corruption and asset recovery is fluid, largely inefficient, and continuously evolving, with anti-corruption agencies perennially in conflict with the office of the Attorney General;
- While there are gaps in national legislation and institutional frameworks in anti-corruption and asset recovery, Nigeria’s international engagement on the challenges of corruption and illicit capital flow to development is exemplary;

\(^1\) National chapter of Transparency International (TI) in Nigeria
In many respects, Nigeria’s asset recovery initiatives are a continuation by other means of Nigeria’s endless intra-elite conflict, where anti-corruption projects are employed to settle scores and secure legitimacy in Nigeria’s chaotic political transitions;

Nigeria’s efforts are hampered by the trio of inefficiency in the criminal justice system; covert and over politicization of asset recovery process; and limited international cooperation, especially from some countries holding Nigerian assets, while a number of others have been supportive;

An analysis of Nigeria’s asset recovery efforts against the GFAR principles paints a mixed picture, Nigeria performed well on principles 1, 6, and 7 (partnership; strengthening anti-corruption and development; case-specific treatment), the country made progress, however with copious room for improvement on indicators 2, 3, 5 and 8 (mutual interests; early dialogue; beneficiaries; consider using an agreement under UNCAC article 57(5)) and performed poorly on indicators 4 and 9 (transparency and accountability; preclusion of benefit to offenders) with the country performing well on some indicators and failing on others;

The Ibori case aptly illustrates the story of Nigeria's anti-corruption and asset recovery initiatives in the last 22 years in all its characterization. The case highlights the depth of public corruption and theft of public assets perpetrated by governors of Nigeria’s 36 states. The case questions the real impact of the last two decades of relentless anti-corruption campaigns on governance culture in Nigeria and the continuous theft of public resources by elected officials. The case also highlights the cautious reluctance of international partners in repatriating assets, due to the likelihood of theft of such returned assets due to the inability of the Nigerian criminal justice system to bring such perpetrators to justice; and

Putting the Abacha third asset recovery in perspective, international intervention and relentless campaign by civil society organizations are the main drivers of accountability and openness in the management of recovered assets.

Around $5bn stolen from Nigeria is frozen in foreign countries\(^2\) but pales in comparison to between $15 to $18 billion that Nigeria loses annually to illicit financial flow\(^3\). The humongous amount of national assets pilfered by bureaucrats and political office holders highlights the intractable problem of public corruption in Nigeria and that except the cycle of waste is broken, efforts at recovery will go to naught, in a cycle of public theft - asset recovery - theft of recovered assets.

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\(^2\) ‘TI: $5bn stolen from Nigeria frozen in foreign countries’, The Cable, March 23, 2021
\(^3\) ‘The lost potential of Nigeria’s asset recovery: How is the recovery of stolen assets sabotaged by politicians?’, CIFAR, October 10, 2021
2.0 Introduction, Objectives and Study Methodology

Theft of public assets particularly in the global south and its recovery has remained one of the central focuses of anti-corruption programs of the international development agencies due to the huge amount of resources lost annually to public corruption by these countries. Nigeria, as one of the countries of concern, is greatly affected by the theft and transfer of public resources by politically exposed persons. It has been projected that corruption in the private and public sectors in Nigeria could cost up to 37% of GDP by 2030\(^4\), highlighting the grave impact of public theft on national development.

Due to the dire threat by public corruption to Nigeria’s economic growth and development, Nigeria since 1999 has been politically active in the effort to recover assets stolen through corruption. President Obasanjo while in power between 1999 and 2007 recovered approximately $2 billion in assets from Switzerland, Luxembourg, and Liechtenstein and triggered some vital international initiatives against money laundering, some of which include Swiss banking and financial regulations on politically exposed persons.\(^5\) The current government of President Muhammadu Buhari has prioritized the fight against public corruption and the recovery of stolen assets as the primary policy agenda. Civil Society Legislative Advocacy Centre\(^6\) (CISLAC) commissioned this study to generally assess the cooperation or non-cooperation of foreign jurisdictions in Nigeria’s Asset Recovery process. The study among others reviewed Nigeria current financial outflows and asset recovery context; examined existing global frameworks to facilitate recovery of Nigerian asset currently abroad; analyze levels of corruption by foreign governments and their decisions and provide appropriate recommendations.

The approach of this study is qualitative and descriptive. Secondary data from books, journals, magazines, unpublished works, dailies, periodicals, and other online sources were extensively reviewed and contextually analysed to provide insight on the global political economy of asset recovery vis-a-vis the Nigerian government's initiatives. In order to analyse all the nuances of the theme, the study used qualitative interviews with informed stakeholders to provide better context to the literature.

2.1 International and Domestic Asset Recovery in Nigeria – Differences and Commonalities

To understand Nigeria’s decades of efforts to recover stolen assets, it is important to put the issue in the context of Nigeria’s political history. First, there is an age-long and widely held perception of public office in Nigeria as a legitimate and primary source of wealth accumulation and redistribution. Secondly, right from the 1970s, almost all governments in

\(^{4}\) PWC, Impact of Corruption on Nigeria’s Economy, (2016) 3
\(^{5}\) David Enweremadu, Nigeria’s Quest to Recover Looted Assets: the Abacha Affairs, 48(2) 51
\(^{6}\) National chapter of Transparency International (TI) in Nigeria
Nigeria have used anti-corruption rhetoric as governance tools to secure legitimacy and assuage public criticism. In addition, there has never been a dearth of legislative framework prohibiting public corruption and in fact, since 1979 architects of successive Nigerian constitutions have included clauses prohibiting the ownership of foreign accounts by all public officials.

Nigeria seemingly entered another epoch in asset recovery in 1999 with the return to democratic governance. The government of President Obasanjo was impelled by a combination of domestic and external developments to prioritize the issues of corruption and stolen assets held abroad and laid the policy foundation of asset recovery in the last two decades in Nigeria. President Obasanjo’s government shifted focus from locally based interventions to an international campaign targeting several Western financial centres holding Nigerian assets. Successive paragraphs will highlight some of the trends in asset recovery in the last 20 years.

Experiences across four different democratic governments in Nigeria since 1999 have shown that the political outlook and policy priorities of the president as indicative of the particular government are critical to the success or otherwise of asset recovery drive at particular times during the last 20 years. The government of President Obasanjo because of its prioritization of asset recovery was able to recover about $2 billion after eight years in power from Switzerland, Luxembourg, and Liechtenstein. The government of President Goodluck Jonathan recovered around $600M, while the Buhari government that was elected on an anti-corruption mandate has in six years recovered around $2.5 billion in international and domestic recoveries. The variations in successes recorded across Nigeria’s 22 years of democratic governance are due to differences in policies and strategies alongside the prioritization of asset recovery and ensuring an alignment of objectives, tools, and resources with international standards.

The institutional framework and inter-agency coordination for asset recovery are fluid, evolving, and largely inefficient. Overlapping agency mandates between Independent Corrupt Practices Commission, the Economic and Financial Crimes Commission, Nigeria Drug Law Enforcement Agency, State Security Services, National Agency for the Prohibition of Tracking in Persons (NAPTIP), and the Nigeria Police Force among others creates a problem for the ownership of the process. Unfortunately, the Asset Recovery and Management Unit that was established in the Ministry of Justice in 2020 to supervise the Nigerian asset recovery framework is largely incapacitated. Essentially, 22 years after democratic

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7 David Enweremadu, Nigeria's Quest to Recover Looted Assets: The Abacha Affair, Africa Spectrum, 48(2) 52
8 ‘Nigeria: Investigation - U.S.$4.6 Billion Abacha Loot Returned in 18 Years’, Daily Trust Newspapers, February 16, 2020
10 ‘Buhari recovers N1 trillion stolen funds, says APC -LAC’, The Guardian Newspapers, September 2, 2021
governance and four different governments, the main thrust of asset recovery and anti-corruption initiatives in Nigeria is political rather than institutional.

While the national government is currently considering non-conviction-based procedures to quicken its assets recovery drive\textsuperscript{11}, there is no singular non-conviction-based asset forfeiture legislative framework in Nigeria, a number of legislations have jurisdictions on non-conviction based asset recovery, and this to a large extent creates confusion. The president in September 2020, sent an Executive bill, known as the Proceeds of Crime Bill to the national assembly for passage\textsuperscript{12}, when the bill was passed the president declined to assent to it and the reason for the rejection was not publicly provided\textsuperscript{13}.

Also nationally, there is no legal framework on the civil recovery of proceeds of corruption. This civil forfeiture procedure is against the asset itself rather than the defendant, who are often third-party claimants. This uniquely evolved procedure only expects the anti-corruption agencies to prove that the focal assets are proceeds of crimes, with a lower burden of proof than exists in a criminal trial\textsuperscript{14}.

Although there are gaps in national legislative and institutional frameworks in anti-corruption and asset recovery, Nigeria’s international engagement in asset recovery is exemplary. Nigeria has signed up to a number of and international obligations and treaties, some of which include: The United Nations Convention Against Corruption (2003), the United Nations Convention Against Transnational Organized Crime (2000), the African Union Convention on Preventing and Combating Corruption (2003), the Stolen Asset Recovery Initiative (StAR) of the World Bank/UNODC and the Financial Action Task Force (FATF) 40 Recommendations.

Also, Nigeria is a visible voice internationally on asset recovery of stolen assets and has sponsored two United Nations Conventions against Corruption resolutions on asset recovery which were adopted by the Conference of States Parties in 2013 and 2015. These are Resolutions 5/3 and 6/2 adopted at the 5th and 6th Conference of States Parties.

\subsection*{2.2 Operation Management of Asset Recovery: Agency Mandates and Coordination}

More than seven different agencies in Nigeria have statutory powers to undertake asset recovery. They include the Independent Corrupt Practices Commission, the Economic and

\begin{itemize}
  \item \textsuperscript{11} ‘$700m looted funds returned in 4yrs; Nigeria receives £4.2m recovered from UK —Malami’, Vanguard Newspaper, May 19, 2021
  \item \textsuperscript{12} ‘Buhari sends Proceeds of Crime Recovery and Management Bill to Reps’, BusinessDay, October 14, 2020
  \item \textsuperscript{14} Olusola Olujobi, Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?, Journal of Money Laundering Control, 2021 (https://doi.org/10.1108/JMLC-09-2020-0107)
\end{itemize}

To further complicate matters, the Attorney General of the Federation issued a new regulation- Asset Tracing, Recovery and Management Regulations 2019, which establishes procedures for enforcement agencies with anti-corruption mandates in order to effective coordination. Under this new regulation, the Attorney General’s Office has the mandate to coordinate interagency investigations and tracing activities; collate data relating to recovered assets and maintaining a centralised database; maintain a depository for forfeiture orders; take custody of and manage finally forfeited assets; initiate proceedings to recover and return to Nigeria assets seized or forfeited outside Nigeria; manage forfeited assets in foreign jurisdictions; collaborate with relevant organisations on matters relating to asset tracing, recovery, management and disposal; and build capacity in law enforcement and anti-corruption agencies with regard to the tracing, recovery and management of seized, and forfeited assets.\textsuperscript{15}

The regulation empowers the office of the Attorney General as the sole office to conduct all forfeiture proceedings, both conviction and non-conviction based. In addition, the regulation mandates ongoing conviction-based forfeiture proceedings must be transferred to the office and it has the power to take over cases relating to seized, confiscated and forfeited assets. The regulation empowers the Attorney General's Office, and the Ministry of Finance to negotiate no less than 30% of any funds recovered on behalf of other tiers of government as administrative charges of the federal government.\textsuperscript{16}

Members of the civil society in Nigeria have vigorously contested the legitimacy, practicality and impact of this regulation. According to Olarewaju Suraju, the regulation 'undermines the optimum performance of key anti-corruption institutions, the Economic and Financial Crimes Commission (EFCC), and the Independent Corrupt Practices and Other Related Offences Commission (ICPC), and that the said regulation has since been nullified by a federal high court. The enabling statutes of the LEAs and ACAs vests in them the powers to carry out their activities and these enabling statutes are made by the national assembly vested with sole powers to make laws according to Section 4 of the 1999 constitution of the federal republic of Nigeria (as amended) and Section 1 of the constitution declares the supremacy of the constitution.\textsuperscript{17}

\textsuperscript{15} Article 3, Asset Tracing, Recovery and Management Regulations 2019
\textsuperscript{17} 'HEDA to Malami: Obey court order nullifying asset recovery regulations’ The Cable, November 1, 2020 (https://www.thecable.ng/heda-to-malami-obey-court-order-nullifying-asset-recovery-regulations)
This regulation is the climax of the historical contest for control between the Office of the Attorney General and anti-corruption agencies in Nigeria. A struggle that commenced with the first head of the Economic and Financial Crime Commission (EFCC), Mr. Nuhu Ribadu, who was removed from his position unceremoniously in 2007. According to Mr. Nuhu Ribadu ‘Mr. Michael Aondoakaa, whose most cardinal agenda as the AGF seemed to be destroying EFCC by every means possible and frustrating all the cases. In that regard, he attempted to take over the prosecutorial powers of the commission, which would have rendered the EFCC into a toothless bulldog. But, of course, we resisted’. 18

Mr. Ribadu was succeeded by Ms. Farida Waziri, who took over in 2008 and equally had challenges with the then-Attorney General, Mr. Mohammed Bello Adoke. She too accused the Attorney General of inference, stating that ‘the activities of the AGF office are embarrassing to the commission and have brought us in a bad light to the public perception on the fight against corruption’. 19 Mr. Adoke in an interview stated that the chairperson of EFCC ‘Madam Farida Waziri is too powerful’ 20 and issued a regulation aimed at bringing the anti-corruption commission under the full supervision of the Attorney General 21.

The turf war between EFCC, and the Attorney General continued with the current Attorney General, Mr. Abubakar Malami and the last head of EFCC, Mr. Magu, resulting in his suspension and eventual removal, ironically on the accusation of misappropriation of recovered assets at the prompting of the Attorney-General. In a memorandum to the president, the Attorney General accused the head of EFCC of offences “raging from diversion of recovered loot to insubordination and misconduct”. 22 The Attorney General did make available evidence to validate the allegations.

Irrespective of the personality that emerges as the head of the EFCC, there seems to be a permanent record of contention between the office of the attorney general and the commission and this struggle highlights the tenuous nature of anticorruption and asset recovery initiatives in Nigeria. The inability to create an institutional framework of the independence of anti-corruption agencies, cooperation, and tenure security has created a system of political interference and reduced public confidence in government’s anti-corruption interventions.

However, the constitution empowers the Attorney General to undertake and institute criminal proceedings against any person before any court of law in the country. According to the constitution, this means that they can take over and continue criminal proceedings.

20 ‘Nigeria: War Against Corruption - Waziri is Too Powerful - AGF Adoke’ Daily Trust Newspapers, July 24, 2011
22 ‘Malami Writes President, Seeks Removal of Magu’, ThisDay, June 19, 2020
started out by any authority or person. He can also discontinue cases at any stage before judgment is delivered\textsuperscript{23}. The wide and expansive powers of the Attorney General are disconcerting when put in perspective the fact that the Attorney General is a political appointee of the president and serves at his pleasure, thus sometimes affecting the independence and neutrality that the office demands\textsuperscript{24}.

Beyond the role of the Attorney General, there is also the issue of interagency rivalry between anti-corruption agencies in Nigeria and it is has become apparent in some cases that the different agencies have been competing rather than collaborating to achieve a common goal. According to Nigerian human rights activist and senior advocate, Femi Falana, ‘cases were lost due to official negligence and lack of inter-agency cooperation by the Federal Ministry of Justice, the anti-graft agencies and the State Security Service’.\textsuperscript{25}

Interagency rivalry among anti-corruption agencies and turf war between the office of the Attorney General of the Federation and anti-corruption agencies underlines the structural and institutional inadequacies of the current asset recovery initiative of the Nigerian state. Some of these inter rivalry contests are underpinned by access to the recovered assets, agency positioning, and political relevance of agencies.

\subsection*{2.3 Statistics of Nigerian International and Domestic Recoveries}

Estimates from the African Development Bank show that Africa loses about $148billion to corruption every year\textsuperscript{26}. According to President Muhammadu Buhari, around $150 billion was looted from the government treasury in Nigeria between 1995 and 2015\textsuperscript{27}. Also, the Global Financial Integrity report claimed that $182 billion was stolen and laundered offshore between 2000 and 2009 in Nigeria\textsuperscript{28}Investigations into arms procurement for the military under the Office of National Security Adviser revealed that $2.1 billion was shared among politicians leaving the citizens at the mercy of the Boko Haram insurgency\textsuperscript{29}. In total, more than $400 billion has been lost to graft in Nigeria since independence\textsuperscript{30}. These enormous figures underline the fact that a lot of Nigerian assets are lost through illicit financial flow.

\begin{thebibliography}{99}
\bibitem{23} Section 174 (1) of the 1999 Constitution of the Federal Republic of Nigeria
\bibitem{25} 'Inter-agency rivalry hurting anti-corruption war', Punch Newspapers, August 10, 2017
\bibitem{27} 'What to do with recovered loot', Guardian Newspaper, February 02, 2018
\bibitem{28} Global Financial Integrity, Trade-Related Illicit Financial Flows in 135 Developing Countries: 2008-2017 (2020)
\bibitem{29} 'What to do with recovered loot', Guardian Newspaper, February 02, 2018
\bibitem{30} UNODC, Nigeria’s corruption busters (2008)
\end{thebibliography}
While the information on the total worth of assets recovered by each government locally and internationally since 1999 remains hazy, the study highlights some of the amounts and sources recovered by each government since 1999.

<table>
<thead>
<tr>
<th>Government</th>
<th>Foreign Asset Recovery</th>
<th>Local Asset Recovery</th>
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| 1 President Obasanjo, 1999 - 2007<sup>31</sup> | $1.2 billion; Switzerland (2002)  
$149 million; Jersey Island, UK (2003)  
$500 million; Switzerland (2004)  
$458 million; Switzerland (2005) | No record available |
| 2 President Goodluck Jonathan, 2010 - 2015<sup>32</sup> | $1 billion; Switzerland (2012)  
$380 million; Switzerland (2015)  
$227 million; Liechtenstein (2014)  
$48 million; the United States (2014) | No record of recovery |
| 3 President Muhammadu Buhari, 2015 - Date<sup>33</sup> | $322 million; Switzerland (2017)  
4.2 million pounds, UK (2020)  
$311m; Bailiwick of Jersey, US (2020) | $100 million recovered on behalf of Nigerian Port Authority by EFCC;  
53 billion Naira recovered for the Federal Mortgage Bank of Nigeria;  
$43 million security funds from an apartment in Ikoyi;  
189 billion Naira recovered by ICPC, MDAs’ personnel cost from 2019 to 2020.  
2 billion Naira, ICPC on constituency Projects covering 2015 to 2018<sup>34</sup> |

<sup>31</sup> ’Investigation: N1.4trn Abacha Loot Returned In 18 Years’, Daily Trust Newspapers, February 16 2020  
<sup>32</sup> ’Investigation: N1.4trn Abacha Loot Returned In 18 Years’, Daily Trust Newspapers, February 16 2020  
<sup>33</sup> ’Buhari’s Govt Has Recovered N1trn Looted Funds – APC Leaders’, Daily Trust, September 2, 2021  
A cursory look at the figures validates the many projections about the huge amount lost to corruption in Nigeria and volume of Nigerian wealth illicitly held in foreign banks as well as the challenges of tracing outstanding funds and making repatriation. According to the United Kingdom’s Department for International Development, about $32bn was lost to corruption during the six-year administration of President Goodluck Jonathan and this figure represented 16% of the previous government’s resources that could have been utilized for national development. Thus, unsurprisingly, explaining the number of local funds recovered by the current government.

2.4 Political Economy of Asset Recovery

A review of Nigeria's anti-corruption initiatives and endeavours to retrieve stolen national assets both locally and internationally reveals two major realities that impact the effectiveness and integrity of the whole anti-corruption campaign. The first reality is that Nigeria's anti-corruption initiative is generally rooted in a given domestic and international historical and political context of every particular government in power.

Nigeria’s asset recovery initiatives are in many respects, a continuation by other means of Nigeria’s endless intra-elite conflict, where anti-corruption projects are employed to settle scores and secure legitimacy in Nigeria's chaotic political transitions. The architect of Nigeria's current anti-corruption initiative in this democratic era, President Olusegun Obasanjo, structured the anticorruption intervention in such a way that influenced his successor's choices.

At President Olusegun Obasanjo’s inauguration in May 1999, he emphasized at his inaugural speech that the fight against corruption would be prioritized by his government and in all his engagement both within and outside Nigeria, he accentuated his anti-corruption stance. One of the first bills, initiated by the executive, was the one on anti-corruption. The bill that was passed into law is the Corrupt Practices and other Related Offences Act, 2000. In 2002, the Economic and Financial Crimes Commission (EFCC) was established.

Even at that, President Obasanjo's anti-corruption initiative was roundly criticized for a solo and insincere and the use of anticorruption initiatives to settle political scores. According to the former Chairman, Senate Committee on Appropriation, Idris Abubakar, 'the president

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knows quite a number of corrupt officials in the three arms of government. Rather than prosecute them, he is using the dossier collected on them to blackmail them to support his government.\(^{38}\)

It has been suggested that President Obasanjo 'politically instrumentalized' the anti-corruption agencies created by him, particularly EFCC\(^{39}\). While EFCC remains one of the more visible and oftentimes controversial anti-corruption agencies in Africa. It has been instrumental in charging and prosecuting serving and former political office holders, as well as in recovering and repatriating significant Nigerian stolen assets. Yet it is also subject to frequent political interference, which reduces its effectiveness and means that it is often seen as an arm of the incumbent government without an independent mandate. Senior-level functionaries of the EFCC are perceived as being not immune to political pressures, which is one reason why the Commission has not been able to function credibly, while operational inefficiencies caused by insufficient funding and lack of technical capacity and expertise among staff also undermine the effectiveness of the Commission.

It is surprising when President Obasanjo accused his successors of politicizing the anti-corruption agencies he created during his tenure.\(^{40}\) Perhaps his complaint is about the subsequent politicization of anticorruption interventions by his successors. His views are supported by a number of stakeholders particularly during the government of President Goodluck Jonathan (2010 - 2015).

A coalition of civil society groups accused his government and its political party of playing petty politics with the fight against corruption in the country. Accusing him among other partisanship in dropping corruption charges against Mohammed Abacha, son of the former military dictator, Sani Abacha, and granting pardon in controversial circumstance to the former Bayelsa State Governor, Diepreye Alamieyeseigha, who was indicted for looting and stealing of public funds.\(^{41}\)

In his administration, cases of corruption were borne without any deliberate efforts by the government to prosecute the culprits. His regime was tagged as the most corrupt in the political history of Nigeria and there was interference with anticorruption agencies.\(^{42}\)


\(^{40}\) EFCC, ICPC have been politicized – Obasanjo, Daily Post, October 29, 2017 (https://dailypost.ng/2017/10/29/efcc-icpc-politicized-obasanjo/)


\(^{42}\) John Sunday Ojo, Looting the Looters: The Paradox of Anti-Corruption Crusades in Nigeria’s Fourth Republic (1999-2014), Canadian Social Science, 12(9), (2016), 7
One of the major factors that broke the People’s Democratic Party’s 16-year rule in Nigeria was pervasive corruption particularly during the government of President Goodluck Jonathan. President Muhammadu Buhari was elected on an anti-corruption mandate in 2015. Six years into his presidency, corruption in Nigeria remains intractable and allegations of politicization of the government's anti-corruption campaign and selective investigation of corruption allegations have doffed the government's effort like its predecessors. The government has been accused of shielding party members from investigation and the primary motivation of politicians joining the president's party from other political parties.43

The second noticeable trend about Nigeria's anti-corruption and asset recovery campaigns since 1999 is that while Nigeria has registered some significant improvements in anti-corruption and money laundering legal and structural regimes, such international driven reforms have not translated into any significant success for Nigeria, looking at Nigeria's poor rating on multiple anti-corruption indexes44. Highlighting the need to transcend reforms in the current narrow space to include extensive reforms in the political and criminal justice system.

Nigeria’s efforts are hampered by the trio of inefficiency in the criminal justice system; covert and over politicization of asset recovery process; and limited international cooperation, especially from countries holding Nigerian assets. While important improvements have been observed in the international legal framework for deterring the illicit transfer of assets, compliance with international standards is still sketchy. Although, Nigeria made a substantial recovery from Abacha's loot and others more than $582 billion has been stolen from Nigeria since independence45.

43 Oludayo Tade, Why Buhari’s government is losing the anti-corruption war, March 7, 2021 (https://theconversation.com/why-buharis-government-is-losing-the-anti-corruption-war-155488)
44 'TI ranking: Why corruption worsened in Nigeria since 2015 —CISLAC’, Punch Newspapers, January 28, 2021
45 'African kleptocrats are finding it tougher to stash cash in the West’, The Economist, October 10, 2019
3.0 The Analysis of Asset Recovery Efforts Against The GFAR Principles

The United Kingdom of Great Britain and Northern Ireland and the United States of America co-hosted the first Global Forum on Asset Recovery (GFAR) in Washington DC on 4-6 December 2017, with support from the Stolen Asset Recovery Initiative (StAR), which is a joint initiative of the World Bank and United Nations Office of Drugs and Crime. The forum’s primary focus is the recovery of assets stolen from Nigeria, Sri Lanka, Tunisia, and Ukraine. At the forum more than 300 participants representing 26 jurisdictions as well as international organisations, civil society and media, came together at GFAR to recommit to the global asset recovery agenda; share best practices; provide technical training to asset recovery practitioners; and support capacity building initiatives. The forum also provides a platform and opportunity for over 80 bilateral and multi-jurisdictional meetings to make progress on significant asset recovery cases in the four focus countries. It provided a platform for the signing of new agreements, including a significant new MOU between Nigeria, Switzerland, and the World Bank, which sets out the return of $321m of recovered assets.

The GFAR has 10 principles, viz: partnership, mutual interests, early dialogue, transparency and accountability, beneficiaries, strengthening anti-corruption and development, case-specific treatment, consider using an agreement under UNCAC article 57(5), preclusion of benefit to offenders, the inclusion of non-government stakeholders. The study will in subsequent paragraphs review Nigeria’s asset effort against each of the 10 principles.

Principle 1 mandates the building of a strong partnership between transferring and receiving countries in the hope that such a partnership will promote trust and confidence in the process. Nigeria in the three years and beyond has engaged with international stakeholders on the recovery of the stolen asset. One of such partnership building initiative is the asset recovery agreement that the Government of Jersey, the Federal Republic of Nigeria, and the Government of the United States of America entered into to repatriate over $308 million of forfeited assets to Nigeria on February 3, 2020. Also, the Nigerian government in 2021 updated the agreement with the UK government on specific arrangements related to assets stolen by the former Governor of Delta State James Ibori and his associates in the sum of

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£4.2M\textsuperscript{48}. The government equally signed a memorandum of understanding with the Swiss government and the International Development Association on the return, monitoring, and management of illegally-acquired assets confiscated by Switzerland and to be returned to Nigeria\textsuperscript{49}. While there is the need to extend the coverage of partnerships to include jurisdictions holding large volumes of Nigerian assets.

Principle 2 of GFAR highlights mutual interests between transferring and receiving countries and the need for shared interests in a successful outcome. This principle presupposes proper utilization of repatriated funds as expected and agreed by returning countries and international stakeholders. Nigeria's performance on this principle is mixed putting in perspective Nigeria's history of recovered assets getting missing \textsuperscript{[1]}. While the government claims to be putting structures and processes in place to prevent the stealing of returned assets\textsuperscript{[2]}, there are allegations of diversion by heads of sub-national governments and a suit has been instituted at the Supreme Court to that effect\textsuperscript{[3]}.

The third principle emphasizes early dialogue and transferring and receiving countries are enjoined to commence dialogue at the earliest opportunity in the process, and for there to be continuing dialogue throughout the process. While Nigeria is making some progress in this area, the Nigerian government is currently engaging with Ireland and a number of countries on the recovery of about £2 billion among others\textsuperscript{[4]}, highlighting the drive for asset recovery at the political level. However, defects in the criminal justice system, inter-agency competition, and interference in the operations of anti-corruption agencies greatly hamper the ability to stop the continuous bleeding of Nigerian assets, thus making a mockery of ongoing efforts to recover stolen assets.

The fourth principle talks about transparency and accountability between transferring and receiving countries. The principle encourages information on the transfer and administration of returned assets should be made public and discourages unspecified or contingent fee arrangements. The government's respect for this principle is subpar with public information provided remaining largely patchy and inconsistent, with the volume of local recoveries lost between often competing for anticorruption agencies. The Socio-Economic Rights and Accountability Project (SERAP) in buttressing this fact stated that the government has failed to provide information on the spending of stolen funds recovered by successive governments since the return of democracy in 1999, even after a court has ordered such\textsuperscript{50}.

\textsuperscript{48} Policy Paper, MoU between UK and Nigeria on the modalities for return of stolen assets confiscated by the UK, March 19, 2021
\textsuperscript{49} 'Assets Recovery: Buhari Seals Deal With Switzerland, IDA', Daily Trust Newspaper, March 27, 2018
\textsuperscript{50} 'SERAP: FG hasn’t obeyed court orders on recovered assets, budget padding', The Cable, March 3, 2021 (https://www.thecable.ng/serap-fg-hasnt-obeyed-court-orders-on-recovered-assets-budget-padding)
Principle 5 speaks to beneficiaries and that recovered assets should benefit the people of the nations harmed by the underlying corrupt conduct. Nigeria’s performance under this subhead is above average. The Monitoring Transparency and Accountability in the Management of Returned Assets (MANTRA) found about 703,506 people out of the total 834,948 in the social register in Nigeria got N23.7 billion as part of the federal government’s response to the COVID 19 pandemic, which was from the 2017 Abacha $322.5 million returned loot by the Swiss government\(^5\). There are fundamental questions about the process through which beneficiaries were selected and the real impact of interventions on socio-economic outcomes.

Principle 6 speaks to 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. Until now returned assets are not been directly invested back into strengthening anti-corruption institutions in spite of their perennial complaints about the paucity of funds. Perhaps with the new Asset Tracing, Recovery and Management Regulations 2019, which empowers the Attorney General’s Office and the Ministry of Finance to negotiate no less than 30% of any funds recovered on behalf of other tiers of government as administrative charges of the federal government, anti-corruption agencies will get funds to improve their operational capabilities\(^5\). However, it should be emphasized that current interventions of the government have not reduced corruption and money laundering.

Principle 7 focuses on case-specific treatment disposition of confiscated proceeds of crime should be considered in a case-specific manner. Nigerian anti-corruption agencies treat all depositions of confiscated proceeds in a case-specific manner. Judicial decisions are an important component of each asset recovery case and international repatriations are strictly case-specific due to specific contexts, different jurisdictions involved, and pre-conditions presented by individual parties or on mutual understandings.

Principle 8 focuses on the utilization of agreements under UNCAC article 57(5). Case-specific agreements or arrangements should be agreed upon 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’s development strategy in order to ensure coherence, avoid duplication


\(^5\) Article 3, Asset Tracing, Recovery and Management Regulations 2019
and optimize efficiency. There are concerns in the management process of recovered assets, however, there is a seeming improvement in Nigeria’s management of repatriated funds in the last three years. For instance, recovered $308 million looted by the late, General Sani Abacha will be used on the construction of Lagos – Ibadan Expressway, Abuja – Kano Expressway, and the Second Niger bridge in furtherance of the government’s commitment that the recovered asset will support and assist in expediting the construction of the three major infrastructure projects across Nigeria53.

Principle 9 speaks to the exclusion of benefits to offenders and that all steps should be taken to ensure that the disposition of confiscated proceeds of crime does not benefit persons involved in the commission of the offence(s). Nigeria’s performance in this subhead is very poor. Apart from a lack of legislative framework precluding defendants and their accessories from benefiting from their crimes of corrupt enrichment directly or indirectly, there is a report of the Nigerian government’s commitment to a deal that would help Kebbi State Governor, Atiku Bagudu, keep over $100 million from funds stolen by General Sani Abacha, has helped him to launder money54. The veracity of this report remains unknown.

Principle 10, which is the last principle enjoins the 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. The government in recent times has been engaging with the CSO group to monitor the spending of recovered funds. The government’s engagement with civil society is largely due to pressure from international partners. For instance, the Government picked a civil society organisation, CLEEN Foundation, to monitor the spending of the last tranche of $311m repatriated funds looted by General Sani Abacha, The money, was repatriated in February 202055.

53. $308m Abacha loot to be used on Lagos-Ibadan, Abuja–Kano Expressways — Malami’, Vanguard Newspapers, February 5, 2020
55. FG picks NGO to monitor spending of $311m Abacha loot’, Punch Newspapers, December 25, 2020
4.0 The Analysis of the Recent Case Studies

The asset recovery cases reviewed under this section were selected primarily because of the timing of the recoveries as one of the proxies to measure the management of recovered assets by the Buhari administration.

I. James Onanefe Ibori’s Case

Former governor James Onanefe Ibori was the Governor of Delta State in Nigeria between 1999 and 2007. He is an influential member of the People’s Democratic Party and a leader in the Niger Delta region. He was arrested by the Economic and Financial Crimes Commission (EFCC) in 2007 and was charged with theft of public funds, abuse of office, and money laundering.56 At the time of his arrest, the then head of the EFCC, Nuhu Ribadu alleged that Ibori attempted to bribe him to drop the charges with a cash gift of $15 million, which Ribadu immediately lodged in the Central Bank of Nigeria CBN.57 On December 17, 2009, A Federal High Court discharged and acquitted Ibori of all 170 charges of corruption brought against him by EFCC.58

In 2010, new allegations of theft of $266 million were pressed against him, but the government was unable to arrest him, claiming that he was a victim of political victimization. He was subsequently was arrested in Dubai, the United Arab Emirates under Interpol arrest warrants, issued from the United Kingdom courts for money laundering, and was eventually extradited to the UK.59

In February 2012, James Ibori pleaded guilty to a ten-count charge of money laundering, conspiracy to defraud and theft of US$250 million from the Nigerian public purse at Southwark Crown Court, London.60 On April 17, 2012, Southwark Crown Court sentenced Ibori to 13 years for his crimes.61 Among possessions confiscated from him were: A house in Hampstead, north London (£2.2m); a property in Shaftesbury, Dorset (£311,000); a mansion in Sandton, near Johannesburg, South Africa (£3.2m); fleets of armoured Range Rovers

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58 ‘Court clears Ibori of graft charges, EFCC kicks’, Guardian Newspapers, December 18, 2009
59 ‘Nigerian politician faces extradition to Britain on money laundering charges’ Telegraph Newspapers, May 14, 2010
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(£600,000); Bentley Continental GT (£120,000); and Mercedes-Benz Maybach 62 (€407,000 cash)\(^{62}\)

The United Kingdom government returned over £4.2 million to the Nigerian government as part of funds recovered from a former James Ibori\(^{63}\). The government is equally working towards securing the repatriation of more than £80 million linked to Ibori in the UK\(^{64}\).

The Ibori case aptly illustrates the story of Nigeria’s anti-corruption and asset recovery initiatives in the last 22 years in all its characterization. The case highlights the depth of public corruption and theft of public assets perpetrated by governors of Nigeria’s 36 states, James Ibori’s case is not an outlier, as 22 former governors are currently being investigated.\(^{65}\) This questions the real impact of the last two decades of relentless anti-corruption campaigns in Nigeria on governance culture in Nigeria and the continuous theft of public resources by elected officials.

Also, the Ibori case validates the argument that anti-corruption campaigns in Nigeria are sometimes political tools deployed by political elites in Nigeria to incapacitate political opponents, consolidate power and buy local and international legitimacy. The case equally points to the seeming impotence of the criminal justice system in Nigeria in bringing to justice the rich and powerful. In spite of the retinue of evidence against the former governor, it remains to be seen if he could have been convicted by a Nigerian court as he was by a British court. Although the case highlights the role of international cooperation in tackling corruption in countries with weak justice systems, the failures of the Nigerian criminal justice institutions have created doubts in international partners on the benefits of repatriating funds that are likely to be re-stolen by a largely above-the-law ruling elites.

II. Abacha III

General Sani Abacha served as the military head of state of Nigeria between 1993 and 1998. 23 years after his demise, public assets stolen by the former head of state are still being recovered and between 2002 and 2020, $4.6 billion have been recovered under the administrations of Olusegun Obasanjo, Goodluck Jonathan, and Muhammadu Buhari\(^{66}\).

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\(^{64}\) ‘Malami: Ibori’s suit against UK blocking repatriation of over £80m loot’, The Cable, May 13, 2021 (https://www.thecable.ng/malami-iboris-suit-against-uk-blocking-repatriation-of-over-80m-loot)

\(^{65}\) ‘22 ex-governors under probe, on trial – Malami’, Punch Newspapers, December 19, 2019

\(^{66}\) ‘Nigeria: Investigation - U.S.$4.6 Billion Abacha Loot Returned in 18 Years’, Daily Trust Newspapers, February 16, 2020
The recent in the list of these long reparations is the $311 million repatriated from the Bailiwick of Jersey, United States. The litigation process for the return of the assets titled ‘Abacha III’ commenced in 2014 while the diplomatic process that culminated in the signing of the Asset Return Agreement commenced in 2018 between the State of Jersey, The United States Government, and the Nigerian Government.

The return of the funds was tied to three major projects across Nigeria and the selected projects include the Lagos-Ibadan Expressway (Western Region), Abuja-Kano Road (Northern Region), and Second Niger Bridge (Eastern Region). According to the tripartite agreement under which the fund was repatriated, the fund will be administered by the Nigeria Sovereign Investment Authority and independently audited. In addition, the Federal Republic of Nigeria will establish a monitoring team to oversee the implementation of the projects and report regularly on progress.

According to the agreement under which the fund was returned, the government has established a Project Monitoring Team to oversee the implementation of the projects and report regularly on progress made to the public. Also, in order to ensure transparent management of the returned assets, a Civil Society Organisation that has combined expertise in substantial infrastructure projects, civil engineering, anti-corruption compliance, anti-human trafficking compliance, and procurement was appointed to provide additional monitoring and oversight. However, this selection process is currently being challenged in court.

The structures around the utilization of this fund show an improved accountability rigor around how repatriated funds are utilized, which was missing in some of the earlier trenches of Abacha funds returned by the Swiss government.

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67 "FG receives over $311m Abacha loot repatriated from U.S., Jersey – Malami", Vanguard Newspapers, May 4, 2020
68 "FG picks NGO to monitor spending of $311m Abacha loot", Punch Newspaper, December 25, 2020
69 "Abacha Loot: Court Halts FG’s Appointment of Consultant on Project Monitoring", This Day Newspaper, January 12, 2021
5.0 Conclusion

Four critical lessons can be drawn from Nigeria's recent endeavours to retrieve national assets pilfered by bureaucrats and political leaders. First, such efforts are usually rooted in a given domestic and international historical and political context. Nigeria's asset recovery initiatives were heavily influenced by Nigeria's endless intra-elite conflict, where anti-corruption projects are employed to settle scores and procure legitimacy.

Second, international asset recovery is a complex and highly demanding exercise. While Nigeria has recorded some significant institutional and procedural progress – the creation of anti-corruption agencies, legislative frameworks, and processes and increased global awareness, such international reforms have not translated into any significant success for Nigeria. There is a wide gap in the quantum of assets stolen and what has been recovered in the last 22 years. The trio of inefficient criminal justice systems; lack of coordination; and limited international cooperation, especially from countries holding Nigerian assets have continued to obstruct real progress.

Third, there has been significant improvement in the management of recovered assets, putting the management framework around the Abacha III in perspective. The insistence by returning countries for the creation of an open, accountable and inclusive repatriated asset management scheme has reduced the chances of re-looting recovered assets as was the case in the first decade of Nigeria's efforts at asset recovery.

Forth, the interagency rivalry between anti-corruption agencies and the persistence of Attorney Generals to impose their mark on the anti-corruption and asset recovery space in Nigeria has continued to create friction within the anti-corruption and asset recovery ecosystem in Nigeria, thus greatly hampering progress. A contest largely driven by access to funds from recovered assets attempts at winning public approval and political positioning largely undermines anti-corruption efforts.