



# **CASE SPECIFIC AGREEMENTS AND MUTUALLY DEFINED SOLUTIONS FOR FINAL DISPOSAL OF CONFISCATED ASSETS**

**by**

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- **THANKS FOR INVITING NIGERIA**
- **EFCC BACKGROUND**
- **CURRENT ONGOING EFFORTS**
  - Investigation into Arms Procurement Deals (2015)
  - Deziani Allison Madueke (2016)
  - Malabu Oil (2017)
  -

# Diezani Property in Bayelsa State taken late hour



3/23/2017

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# **\$37.5m property in Banana Island Lagos belonging to Diezani Alison Madueke**



# Cash recovered from Andrew Yakubu, former Group Managing Director, The Nigerian National Petroleum Corporation NNPC



# Cash recovered from Andrew Yakubu, former Group Managing Director, The Nigerian National Petroleum Corporation NNPC



## CASE SPECIFIC AGREEMENTS AND MUTUALLY DEFINED SOLUTIONS FOR FINAL DISPOSAL OF CONFISCATED ASSETS

Existing management of returned assets system in Nigeria would be examined to determine their suitability to satisfy not only public expectations but expectations of the state parties and others interested in the returned assets.

Article 57 paragraph 5 of UNCAC which provides:

**“Where appropriate state parties may also give consideration to concluding agreements or mutually acceptable arrangement on case by case basis for final disposal of confiscated property”.**

In recovering stolen funds, it is important to assure the international community that all assets recovered will be greatly utilized for the benefits of the Nigerian nation.

## AGREEMENTS SIGNED BY NIGERIA

- Nigeria has entered into bilateral agreements with Switzerland, UK, UAE and US among others.
- These agreements merely created guidelines for prompt return of assets, but largely assets have been returned in compliance with Chapter V of the United Nations Convention Against Corruption.

# NIGERIA – SWITZERLAND AGREEMENTS ON ABACHA LOOT

- In 1999, the Swiss authorities pursuant to a request for mutual legal assistance agreed to return the stolen funds and in 10 years , they have returned about \$723m to Nigeria
- The Nigerian government decided it would finance specific projects with the funds.
- Returned funds were channelled through the budget to finance its economic reform program National Economic Empowerment and Development Strategy (NEEDS) to target provision of critical infrastructures.

## **NIGERIA – SWITZERLAND CONTD.**

- In order to ensure transparency and accountability, World Bank mobilized the civil society organizations to participate in review of the use of the returned stolen funds.
- On the whole, the World Bank public expenditure review came up with a report that the funds were used in accordance with agreed objectives.
- Nigeria is currently negotiating an agreement with the government of Switzerland on the return of additional USD\$321 million Abacha loot which will be used for the benefit of Nigerian people and to be monitored by World Bank.
- Negotiations is yet to be concluded.

# NIGERIA – UK AGREEMENTS

## DARIYE AND ALAMIEYESEIGHA

- In the cases of Dariye and Alamiyeseigha, the UK government returned stolen funds to Nigeria and later returned to Bayelsa State government which is the victim in this case. During the process of return of the assets, disposal of the assets was not discussed.
- About £1.28 million of stolen assets have been returned to Nigeria since 2006. This follows investigations into the financial dealings of Joshua Dariye and the former Governor of Bayelsa State, Diepreye Alamiyeseigha. (Source: UK Foreign and Commonwealth Office Press release)
- The return of assets to Nigeria was in fulfilment of the UK's commitments "under Chapter V of the United Nations Convention Against Corruption and is the result of continued co-operation with the Nigerian authorities."

## **NIGERIAN EXPERIENCE IN CONSULTATION PROCESS (UK and SWITZERLAND) EXAMPLES**

- There was regular consultation between stake holders on the return of stolen assets.
- Parties clearly understood issues involved and there was common commitment to implement agreements even beyond the UNCAC provisions based on mutual cooperation.
- Parties were flexible in their positions

# MECHANISMS FOR ACCOUNTABILITY OF RETURNED FUNDS

The Nigerian government adopted policies that have aided positively the management of returned assets through the budget process

- Government has identified assets recovery as a source of revenue and the budget includes a revenue line item of asset recovery.
- The line item focuses on social welfare and social investment projects of government such as conditional cash transfer, school meal project, job creation and empowerment.
- The budget monitoring mechanism applies to the projects in addition to other transparency and accountability measures that may be required by CSOs and international development partners

## MECHANISMS FOR ACCOUNTABILITY OF RETURNED FUNDS CONTD.

- The Treasury Single Account structure recently adopted by the Nigerian government is also designed for fiscal accountability.
- Government has opened is the asset recovery account (naira, dollar, Euro and Pound Sterling) into which recovered assets are deposited for monitoring transparency and accountability
- Furthermore, government adopted the Framework on the Management of Recovered Stolen Assets which is based on inter agency cooperation with participation of professional bodies and CSO

## MECHANISMS FOR ACCOUNTABILITY OF RETURNED FUNDS CONTD.

- The Framework recognises Minister of Finance being custodian of government asset as Chairman of inter agency Central Asset Management Committee.
- The Presidential Committee on Asset Recovery chaired by the Vice-President coordinates inter agency reports from key anti corruption agencies and ministries.
- Committee comprises Attorney-General of the Federation, Minister of Finance, Minister of Information, Chair of EFCC, Chair of ICPC, DG-SSS, NSA, IGP and the Executive Secretary of the Presidential Advisory Committee Against Corruption.

# MECHANISMS FOR ACCOUNTABILITY OF RETURNED FUNDS CONTD.

- In the interim there is a concerted effort by Nigerian government to enact a comprehensive legal framework to enhance recovery and management of assets through the Proceeds of Crime Bill otherwise known as POCA Bill.
- POCA seeks to establish a Central agency to manage the proceeds of crime both from civil and criminal forfeitures.
- When enacted by the National Assembly, the law will harmonize and consolidate the existing legislative provisions on the recovery of proceeds of crime and related matters in Nigeria and supersede existing framework for management of recovered stolen assets.

# CHALLENGES

- Victim countries are not adequately consulted on the methods used in assessing and deducting various charges, legal fees and taxes on returned stolen assets.
- The requirements for dual criminality in certain jurisdictions frustrates and delays requests for MLATs, MOUs and final disposal of confiscated assets.
- In Nigeria, there is absence of comprehensive legislation on Non-Conviction-Based assets confiscation regime (NCB).
- A bill on mutual legal assistance in criminal matters is already before the National Assembly and its adoption will further enhance efforts on recovery of assets between Nigeria and other Jurisdiction.

# CONCLUSION/RECOMMENDATIONS

- We agree with the **StAR** (Stolen Assets Recovery) Initiative position in their framework for effective assets management that the World Bank group could offer services to help monitor the use of the funds.
- That this should be purely voluntary and in keeping with the fundamental principles of return of stolen assets as embodied in UNCAC.
- The role of civil society's organization and interest groups in monitoring spending is also very important.

## **CONCLUSION CONTD.**

- There is the need to improve public financial management process, internal controls and procurement procedures.
- State parties must realize the importance of an unhindered access to information on policy decisions.
- State parties should provide assurance that the returned assets would be utilized for development and poverty alleviation to ensure public confidence.

## CONCLUSION CONTD.

Finally, we agree with the **G8 ASSET RECOVERY INITIATIVE** which outlined 8 Principles and Options for Disposal and Transfer of Confiscated Proceeds of Grand Corruption must follow the following principles:

- Transparency.
- Recoveries should benefit the people of the nations harmed.
- Disposal of confiscated assets must be in a case-specific manner.
- Compliance with UNCAC principles of combating corruption and repairing the damage done by corruption.
- Consistency and Coordination.
- Encourage Use of an Agreement.
- Preclusion of Benefit to Offenders.
- The role for Civil Society Organizations is also very important.

## **CONCLUSION CONTD.**

The foregoing recommendations in our opinion summarize the solutions for final disposal of confiscated assets that should be mutually adhered to by parties, for effective Disposal and Transfer of Confiscated Proceeds of Grand Corruption.

**THANK YOU FOR LISTENING**

ACCEPT THE WARMEST ASSURANCES OF...



**Muhammadu Buhari**  
**President, Federal Republic of**  
**Nigeria**



**Abubakar Malami (SAN)**  
**Minister for Justice and Attorney-**  
**General of the Federation**



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