
**ABACHA AND THE BANKERS:
CRACKING THE CONSPIRACY**

BY BOLA IGE^{1, 2}

Under the former military regime in Nigeria, the abuse of public power for private gain was widespread and was one of the country's most severe problems. Among those Nigerians who held high public office and subsequently found themselves in possession of great wealth was the late dictator General Sani Abacha. He and his collaborators are estimated to have embezzled assets of at least \$5 billion. That sum includes monies allegedly derived from the systematic misappropriation of funds from the Central Bank of Nigeria, bribes received from foreign companies and kickbacks on inflated contracts with Nigerian companies under the control of the Abacha family. Most of the assets were channelled abroad through simple bank transfers, in cheques or in cash. It is suspected that funds are currently located in Austria, the Bahamas, Brazil, Canada, Dubai, France, Germany, the Hong Kong Special Administrative Region of China, Italy, Kenya, Lebanon, Liechtenstein, Saudi Arabia, Singapore, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Assets were paid into personal bank accounts or accounts held mainly by Nigerian or offshore shell companies, with access available to Mr. Abacha, his family members or close associates.

On 29 May 1999, after eight military regimes, two civilian republics and a short-lived interim government, President Olusegun Obasanjo came to office. His reputation as a man of integrity has helped him to obtain prompt and massive support from the international community. He has embarked on an anti-corruption programme, but to many its implementation appears to be too slow.

Among the high points of President Obasanjo's anti-corruption action is the recovery of assets siphoned out of Nigeria by past military regimes. With this, he is continuing the State policy initiated immediately after Mr. Abacha's death under General Abdulsalam Abubakar's interim Government.

A series of steps have been taken to recover the remaining assets believed to have been stolen by the Abacha family and its associates. The

¹The late Attorney-General and Minister of Justice of Nigeria.

²The present article, prepared in cooperation with Petter Langseth and Oliver Stolpe of the Centre for International Crime Prevention, Office on Drugs and Crime, is based on a paper presented by Bola Ige at the 10th International Anti-Corruption Conference, held in Prague in October 2001.

Government of Nigeria has created a special investigative panel, which is currently conducting financial investigations to identify monies and to seek mutual legal assistance from a number of countries; however, no tangible results have been achieved yet. Legal proceedings are under way in various jurisdictions to repatriate money frozen in foreign banks and Nigerians hope that the international community can help to speed up the process.³

The current recovery programme of the Government has been criticized for its alleged limited scope, in that it has so far addressed only those funds diverted by the Abacha family and not those diverted by other former members of past military regimes. President Obasanjo, however, has repeatedly said that he will initiate an investigation of any person against whom there is convincing evidence.

RECOVERY EFFORTS

Basically, the assets that the Government is trying to recover have two illicit origins:

(a) Nigerian authorities suspect that not less than \$2-3 billion was stolen from the Central Bank of Nigeria;

(b) Not less than \$2 billion in bribes was received by Mr. Abacha and his associates. Those bribes were all paid by national and, to a larger extent, foreign companies to obtain often-inflated State contracts.

The Government of Nigeria has so far succeeded in recovering about \$1 billion. Most of that money was recovered under the former regime of General Abdulsalam Abubakar. Strong investigative powers under the former military regime were used to effect the transfer of monies to the Government's account at the Bank for International Settlements. Under the new democratic order and with the reintroduction of constitutional rule, investigators and prosecutors have a more difficult task than before.

All the monies recovered originated from the diversion of funds from the Central Bank of Nigeria. The Nigerian investigators are sceptical regarding the likelihood of recovering the bribe monies.

Since the Government of President Obasanjo came to power, requests for mutual legal assistance have been submitted to Liechtenstein, Luxembourg, Switzerland, the United Kingdom and the United States. Based on those requests, \$147 million in assets have been frozen in Liechtenstein, \$602 million have been frozen in Luxembourg and \$660 million have been frozen in Switzerland. In addition, following informal contacts, accounts of unknown value have been frozen in Jersey in the United Kingdom.

In the case of the United Kingdom, until a short time ago a lack of progress had been blamed on the law, which would not allow cooperation

³As reported on 19 April 2002, a settlement between Nigeria and the Abacha family will return a total of \$1 billion to the Government of Nigeria by banks from countries around the world, including Liechtenstein, Luxembourg, Switzerland and the United Kingdom. The total amount of funds recovered by the Government of Nigeria is now approximately \$2.2 billion.

until charges had been filed against the respective offenders in Nigeria; however, since the trial of Mohammed Abacha, one of Sani Abacha's sons, began, there have been no further obstacles. In fact, in September 2001, the Government of the United Kingdom responded positively to Nigeria's request for mutual legal assistance. Because of the various suits before British courts on this matter, no comment can be made here. Correspondence between President Obasanjo and President George W. Bush of the United States indicates that mutual legal assistance will soon be forthcoming from that country as well.

Switzerland has been particularly cooperative. Although Nigeria and Switzerland have no treaty on mutual legal assistance, Switzerland can provide mutual legal assistance based on national law and a declaration of reciprocity. In addition to freezing \$660 million, the Swiss judicial authorities currently handling the case have also indicted Mohammed Abacha, Abubakar Atiku Bagudu, a former minister and Ismaila Gwarzo, former National Security Adviser to Sani Abacha, under Swiss law for money-laundering, fraud and taking part in a criminal organization. They are also examining the possibility of pressing charges against Swiss financial intermediaries.

More assets are suspected of being located in or having been channelled through Austria, the Bahamas, Brazil, France, Germany, the Hong Kong Special Administrative Region of China, Lebanon, the Libyan Arab Jamahiriya, Saudi Arabia, Singapore and the United Arab Emirates. Informal discussions with these countries have produced rather different results. While some countries, such as France and Germany, seem prepared to cooperate if they receive a formal mutual legal assistance request, others have proved far more reluctant.

ABACHA FUNDS IN THE MAJOR BANKS

The main banks involved in the scandal are among the world's largest commercial banks. Many of them ignored the most basic rules of due diligence when entering into business relations with the Abacha family. In a considerable number of cases, no complex money-laundering schemes were adopted, the members of the family involved did not hide their true identity and bank officials found no impediments to accepting their funds. In a reference note, one bank official described Mohammed Abacha and his brother Ibrahim as the sons of a "well-known and respected member of the northern Nigerian community" and found them to be "unfailingly charming, polite and, above all, reliable" (United States Senate 1999; Minority Staff 1999, 2001).

In late 2000 and early 2001, the British Financial Services Authority and the Swiss Federal Banking Commission published reports on the outcome of investigations against the banks involved in handling the monies allegedly diverted by Sani Abacha and his associates. Both agencies found "severe control weaknesses" in many of the banks involved. Regardless of the suspicious nature of the economic background, several banks neither

sought clarification nor filed suspicious transaction reports. The Swiss Federal Banking Commission investigated 19 Swiss banks for their dealings with Sani Abacha and his collaborators and published a report naming six banks for not respecting due diligence obligations (Swiss Federal Banking Commission 2000). In addition, the Commission has filed a formal complaint against a Swiss bank through the banking industry's self-regulatory body. However, while the amount the bank actually handled amounted to \$214 million, the maximum fine is \$5.9 million. Given the high returns the bank may have earned handling such amounts, such a comparatively small fine does not constitute a real deterrent. In the United Kingdom, the Financial Services Authority investigated 23 banks and identified significant control weaknesses in 15 of them. However, British law does not permit the Financial Services Authority to make its report public or to name the financial intermediaries involved.

MEETING THE CHALLENGES OF PREVENTING THE DIVERSION OF FUNDS THROUGH CORRUPT PRACTICES AND OF RECOVERING SUCH FUNDS

Besides obtaining mutual legal assistance from those countries to which the monies were allegedly transferred, the challenge faced by the Nigerian authorities is the conclusion of a successful court case against Mohammed Abacha and others. For the recovery effort, it will be crucial not only to obtain convictions for corruption, fraud, money-laundering and related crimes, but also to link the wealth abroad to particular crimes committed in Nigeria. If that link cannot be established, many of those States where assets are or are thought to be located will refuse to freeze, confiscate or repatriate the assets. It is, therefore, important to obtain verdicts that will be difficult to challenge either in Nigeria or elsewhere.

The other challenge facing the Nigerian authorities and the international community is to prevent the future diversion of funds. For that purpose, Nigeria must tighten its financial controls and strengthen mechanisms to prevent corruption and related practices. At the same time, a mechanism should be put in place by the international community to assist countries such as Nigeria in their attempts to recover their national wealth from abroad by providing technical expertise and strategic guidance. The international financial centres must also increase the oversight of financial operators and ensure compliance with due diligence rules. Some concrete measures to meet some of these challenges are presented below.

GLOBAL CASE MANAGEMENT ASSISTANCE

States seeking to recover funds diverted through corrupt practices by persons in positions of power, such as political leaders or top government officials, should be supported in their efforts with technical expertise and

strategic guidance. In particular, the United Nations may consider giving home to a structure able to provide such guidance, since the neutrality of the Organization would make such a contribution acceptable and the case management credible to all sides.

One function performed by such a mechanism should be global case management assistance. Since Nigeria lacked sufficient expertise in that field, it was forced to outsource that function to private lawyers operating out of the countries that had received requests for mutual legal assistance from the Government of Nigeria. Such a mechanism should have a capacity-building function with a view to empowering national authorities to pursue international cases of corruption and related practices on their own. It should also provide a platform to enable the States parties involved in such international corruption cases to meet on a regular basis in order to identify legal and political obstacles and to collaborate in designing a common strategy to overcome such obstacles.

The case manager would work mainly with the requesting jurisdiction to decide on the locus of civil and criminal complaints and to advise on hiring lawyers and investigators. He or she should also assist in the preparation of the case at the national level, in particular by exercising some quality control regarding the national investigation and prosecution in order to ensure that the evidence gathered and the results obtained meet the standards of the requesting State and can be used there in the context of the mutual legal assistance procedure.

PREVENTION OF THE FUTURE DIVERSION OF FUNDS

In parallel to the recovery effort, it is essential to strengthen national mechanisms designed to prevent funds from being diverted through corrupt practices. That would not only help to protect the country and its people from being victimized in the future by corrupt leaders or high-level public officials, but also contribute to the credibility of the recovery effort and give additional legitimacy to the request for international judicial assistance. Such measures should include:

- ❑ Strengthening official anti-corruption bodies to prevent and control corruption at the national level;
- ❑ Developing and implementing a comprehensive national integrity strategy;
- ❑ Designing mechanisms for monitoring the expenditure of projects, in particular development projects, involving the recipients as well as civil society at large.

These measures should be financed through a “governance premium”, consisting of 1-3 per cent of the recovered funds and of every donor contribution received by Nigeria. The recipient of this premium should be the recently established Independent Commission for the Prevention of Corruption, the institution with the mandate to carry out those tasks. As

a government-driven initiative might not be perceived as credible by the general public, the Commission should be responsible for the planning, implementation and monitoring of an integrated national integrity strategy and anti-corruption action plan.

Such a governance premium would encourage the donor community to allocate the necessary funds to strengthen the national integrity systems of recipient countries. To date, good governance has not been among the priorities of donors, nor among those of most recipient Governments. The partnership of President Obasanjo, as a credible champion of good governance, and the United Nations, as a neutral arbiter, would be ideal for promoting the governance premium concept.

NEW INTERNATIONAL LEGAL INSTRUMENTS

The importance of the forthcoming United Nations convention against corruption in the context of asset recovery cannot be emphasized enough. That legal instrument, once signed and ratified by Member States, will greatly enhance international judicial cooperation in asset recovery. Indeed, that could be the single most important feature of the future convention.

It is hoped that the future legal instrument will also address the principles of due diligence and "know your customers" in international financial transactions, in order to stop corrupt leaders from taking their ill-gotten gains abroad. With evidence that Mohammed Abacha repeatedly transferred money directly from the treasury to his accounts in some of the world's biggest and most reputable commercial banks, it is clear that those banking regulations are not being complied with. A Swiss banker at a recent Transparency International workshop in Prague started his presentation by saying that "a dollar is a dollar is a dollar" and claiming that it was very hard for bankers to identify "dirty" money. Considering the vast sums of money that some African leaders and their relatives transfer through countless bank accounts, it should be clear to everyone where the money is coming from. This painful fact may well be brought home to the bankers as and when they are finally held accountable for their tacit complicity in handling stolen funds.

The Government of Nigeria will continue to do everything in its power both to enable the repatriation of the assets in question and to support international efforts to improve cooperation so as to ensure that, in future, other nations do not suffer similar experiences.

REFERENCES

Minority Staff of the United States Senate Permanent Subcommittee on Investigations (1999), "Private banking and money laundering: a case study of opportunities and vulnerabilities", appendix, 9 November. Available online at <http://www.senate.gov/~gov_affairs/110999_report.htm> (accessed on 3 May 2002).

- _____ (2001), "Correspondent banking: a gateway for money laundering", 5 February. Available online at <http://www.senate.gov/~gov_affairs/psi_final_report.pdf> (accessed 3 May 2002).
- Swiss Federal Banking Commission (2000), "Abacha funds at Swiss banks", Report of the Swiss Federal Banking Commission, 30 August. Available online at <<http://www.ebk.admin.ch/e/archiv/2000/neu14a-00.pdg>> (accessed on 3 May 2002).
- United States Senate (1999), Evidence of R. W. Baker, Brookings Institution, Washington, D.C., before the Permanent Subcommittee on Investigations, 106th Congress, 1st session, "Private banking and money laundering: a case study of opportunities and vulnerabilities", appendix, 10 November. Available online at <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_senate_hearings&docid=f.61699.wais> (3 May 2002).

