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Nigeria's Fight against Revenue Loss: Effective Mechanisms for Asset Recovery

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Abstract

Nigeria's economy endures substantial setbacks due to considerable revenue loss from corruption and other illicit activities. These unlawful acts have resulted in extensive adversity, exacerbating socio-economic disparity. Notwithstanding numerous legal and regulatory initiatives, the nation continues to encounter difficulties in entirely addressing income loss and recuperating misappropriated assets. This paper examines the urgent need for improved strategies to battle corruption and improve asset recovery. This paper explores the critical need for enhanced strategies to combat corruption and improve asset recovery mechanisms in Nigeria. It adopts a doctrinal research methodology, analyzing relevant statutes, case law, and academic literature to assess the current legal framework and identify areas for improvement in asset recovery efforts. It highlights enduring deficiencies in enforcement and coordination among stakeholders that impede the efficacy of asset recovery initiatives. This paper's principal findings indicate that although advancements have occurred, the issue persists substantially. Therefore, this paper advocates for enhanced collaboration across pertinent institutions, the application of contemporary technology for monitoring and recovery, and the elevation of public awareness to promote increased accountability. It underscores the necessity for extensive policy reforms to improve transparency and efficiency in asset recovery procedures. This paper indicates that the implementation of these techniques can substantially mitigate income loss in Nigeria and reinstate public confidence in governance, hence fostering sustained national growth.

Keywords: Asset Recovery, Corruption, Revenue Loss, Nigeria

1. Introduction

Corruption in the commercial sector frequently includes bribery, extortion, and various unlawful financial transactions. This could result in the misappropriation of public funds and the accumulation of illicit wealth.[1]Unfortunately, in Nigeria, there is a debilitating level of corruption and financial impropriety, the consequences of which have decimated the Nigerian economy and resulted in pungent consequences. Understandably, these have caused serious concern leading to calls for action and attempt to resolve this issue. Corruption is a terrible plague which has a broad spectrum of corrosive consequences on societies;[2] it is not a novel issue and has been a problem for centuries.[3]Consequently, the dual issues of forfeiture and recovery of assets have become fundamental issues in Nigerian jurisprudence.[4]Asset recovery is one of the most vital instruments used to combat corruption[5] and it has become one of the major themes in discourses on development funding partially because of the humongous amounts of revenue lost yearly

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[1] I Adamaagashi, C Awakessien and S Awakessien, 'Corruption and Governance: Examining the Impact on Political Stability in Nigeria' (2024) 10(2) *International Journal of Social Sciences and Management Research* 1.

[2] United Nations Office on Drugs and Crime, *Foreword to the United Nations Convention against Corruption* (UNITED NATIONS New York, 2004) iii-iv <https://www.unodc.org/documents/brussels/ UN_Convention_Against_ Corruption.pdf> accessed 5 September 2024.

[3] N Mogboh, 'Bribery and Corruption and the Validity and Performance of a Contract' in CC Nweze, AJ Offiah and A Mogboh Jnr (eds), *Beyond Bar Advocacy: Multidisciplinary Essays in Honour of Anthony OkoyeMogboh, SAN* (Umuahia: Impact Global Publishers Ltd, 2011) 175.

[4] OVC Ikpeze and OM Ofodile, 'The Role of the Nigerian Judiciary in Asset Forfeiture and Recovery' (2022)18 *UNIZIK Law Journal* 1.

[5] M Umar, D Samson and UN Baba, 'Anti-Corruption and Asset Recovery and Forfeiture in Nigeria: Lessons from USA and UK Experience' (2018) 1(1) *Gombe Journal of Administration and Management* 227.

because of corruption.[6]It is not in doubt that Nigeria has been active in its efforts to recover assets stolen through corrupt practices[7] but how successful have these been and what can be done to improve the process? That is the quest of this paper. This paper is divided into five parts. The first is the introduction, the second examines the legal and institutional frameworks for asset recovery in Nigeria, the third enunciates the procedure for asset recovery in Nigeria, the fourth articulates problems encountered in the recovery of assets in Nigeria and the last part concludes the paper and makes recommendations. It is based on the foregoing that this paper sets out to outline effective mechanisms for asset recovery in Nigeria.

2. Legal and Institutional Frameworks for Asset Recovery in Nigeria

Nigeria has developed an extensive legal and institutional framework to address corruption and enable the recovery of misappropriated assets. This framework comprises numerous laws, regulations, and institutions specifically developed to tackle the issues of asset recovery.

2.1 Legal Framework

2.1.1 Corrupt Practices and Other Related Offences Act 2000

This legislation is one of the prime legislations enacted to fight corruption. It seeks to prohibit and prescribe punishment for corrupt practices and other related offences. Section 3(1) thereof established the Independent Corrupt Practices and Other Related Offences Commission **(**ICPC) while section 5(1) confers on officers the same powers and immunities as a Police Officer under the Police Act. Section 6(a)-(f) stipulates the duties of the Commission which include to receive and investigate allegations of corrupt practices, to advise on the elimination or minimization of corruption, to educate the public on corruption, and to enlist and foster public support in combating corruption. It is submitted that these prime functions of the ICPC stipulated in the Act have not been realized.

Interestingly, section 52 of the Act provides that whenever an allegation of corruption is made against the President, Vice-President, Governors, or their Deputies, though they enjoy constitutional immunity while still in office, the Commission can initiate the investigation of such political officeholders and thereafter apply to the Chief Justice of the Federation to authorize an Independent Counsel to investigate the allegations of corrupt practices made against such officials; the Independent Counsel will make a report of his findings to the National or State Legislatures as the case may be. This is a novel, innovative, and far-reaching provision. Unfortunately, the Commission has never deemed it fit to utilize same. Furthermore, this can be incorporated into the statutes of other relevant bodies. It is submitted that the Commission alongside the AGF and EFCC are the prime bodies involved in the fight against corruption and the quest for asset recovery. It is therefore expected that they rise to the task.

2.1.2 Economic and Financial Crimes Commission (Establishment) Act 2004[8]

The EFCC Act established the Economic and Financial Crimes Commission, the principal agency tasked with investigating and prosecuting economic and financial crimes, encompassing corruption and asset recovery. Section 26 of the EFCC Act empowers the EFCC[9] to seize the properties of an individual suspected of committing an economic and financial crime discovered in the process of searching the individual.The Act also goes on to stipulate as follows:

> *Where a person is arrested for an offence under this Act, the Commission shall immediately trace and attach all the assets and properties of the person acquired as a*

[6] I Jimu, *Managing Proceeds of Asset Recovery: The Case of Nigeria, Peru, the Philippines and Kazakhstan* (Working International Centre for Asset Recovery Paper Series No. 06) 5.
[7] Civil Forum for Asset Recovery, 'Asset Recovery in Nigeria: the Good and the Bad' (12 September 2018) <https://cifar.eu/nigeria-asset-recovery/> accessed 15 July 2024.
[8] Cap E1, Laws of the Federation of Nigeria (2004), hereinafter known as 'the EFCC Act'.
[9] The Agency created to carry out the functions and execute the powers of the foregoing Act.

> *result of such economic or financial crime and shall thereafter cause to be obtained an interim order forfeiting the property to the Federal Government*.[10]

Furthermore, it prescribes that where-

> *(a) The assets or property of any person arrested for an offence under the Act has been seized; or*
>
> *(b) Any assets or property has been seized by the Commission under this Act, the Commission shall cause an ex parte application to be made to the Court for an interim order forfeiting the property concerned to the Federal Government and the Court shall, if satisfied that there is prima facie evidence that the property concerned is liable to forfeiture, make an interim order forfeiting the property to the Federal Government.*[11]

It is instructive to underscore that the former provision, in application, should precede the latter.[12] The inevitable corollary to this is that the tracing and attachment (or seizure) of the property in issue should be carried out prior to the procurement of the interim order. What ramifications does this have for human rights? While crimes especially those of this nature should be fought to a stand-still, they should be fought in such a manner that human rights should be protected because seizing the property in question before obtaining a court order (and an ex parte one at that!) certainly goes against the rights of the owners of those property bearing in mind the obnoxious fact that most times, people in power fight their enemies or perceived enemies in Nigeria by all means including the above.

2.1.3 Public Officers (Restitution of Misappropriated Funds) Law[13]

Section 3 of this law makes a strong provision to aid the recovery of assets stolen by public officials. It stipulates as follows if a public officer is found guilty of embezzlement, theft, or misappropriation of public funds, the court shall mandate one of the following actions (a) Remit the equal amount of the misappropriated funds to the State within three months of the conviction, or (b) Surrender assets equivalent to the value of the misappropriated funds to the State Government if payment is not made within the stipulated timeframe. This is supplementary to any other penalty imposed by the court for the offence.

This is a very commendable provision though it is submitted that it will prove more effective if the conviction-based approach here is combined with the non-conviction based system so that once a public official is found to have misappropriated assets, the same can be recovered from him even without conviction. The Law goes on to empower the Governor to set up a panel to conduct an investigation to ascertain whether a public officer was convicted[14] and the said panel can even go as far as investigating the assets and activities of the spouse, child, relative, parent, associate or privy of the public officer.[15] Furthermore, anyone who aids or abets a public officer in the commission of any of the above crimes shall be liable on conviction to imprisonment for a term not exceeding five years[16] and in addition, any such assets in the possession of such a person shall be forfeited to the State Government.[17] The above

[10] S 28. It is submitted that circumscribing the forfeiture to the Federal Government is misconceived in view of the fact that the perpetrator of the crime may have defrauded the State or Local Government (or their agency, ministry or parastatal) or a private individual or company in which case they should be the beneficiary of the forfeiture instead of the Federal Government. It is therefore submitted that this provision be amended to that effect. While noting that the makers of this Act presumably intended that the Federal Government may recover these monies and send to the relevant bodies or persons, this is often not carried out in practice.

[11] Ibid, s 29. The arguments advanced in the preceding footnote apply here *mutatis mutandi.*

[12] *Nwaigwe v FRN* (2019) LPELR 46944 SC.

[13] Revised Laws of Enugu State of Nigeria 2004.

[14] Ibid 2004 s 4(1).

[15] Ibid s 4(2).

[16] Ibid s 7 (1).

[17] Ibid s 7(2).

provisions are enthusiastically applauded and the relevant agencies should do everything within their powers to lend efficacy to the same.

2.1.4 Asset Tracing, Recovery and Management Regulations 2019[18]

The subsidiary legislation, enacted by the former Attorney General of the Federation, Abubakar Malami SAN, aims to establish procedures for effective coordination among Law Enforcement and Anti-Corruption Agencies. Its objectives include:

1. Investigating illegally acquired assets and proceeds of crime by individuals and corporate bodies, including Financial and Designated Non-Financial Institutions.
2. Tracing and attaching assets and proceeds of crime under an enabling Act.
3. Seizing and disposing of assets and proceeds of crime subject to forfeiture under an enabling Act.
4. Recovering stolen assets within and outside Nigeria, adhering to international best practices to protect the country's financial integrity, address distrust in handling recovered assets, and ensure transparent disposal.[19]

The regulations apply to illegally acquired assets and proceeds of crimeby a person, corporate bodies including Financial Institutions, and Designated Non-Financial Institutions investigated or prosecuted under any relevant Nigerian Act.[20] The Office of the Attorney General of the Federation is assigned several functions, and the regulations acknowledge that existing laws of relevant agencies regarding asset recovery remain in force.[21] The primary aim of the regulations is to streamline asset recovery processes under the Attorney General's office, which is expected to enhance effectiveness and yield positive results.

2.1.5 Nigeria Police Act 2020

The Nigeria Police Act empowers the Police to forestall the commission of crime, investigate same, and combat same. Section 214(1) of the Constitution makes provision for the establishment of the Nigerian Police.[22]Section 4 of the Act provides that the police are tasked with crime prevention and detection, apprehension of offenders, maintenance of law and order, protection of life and property, and enforcement of laws. They may also undertake military responsibilities inside or beyond Nigeria as mandated by law. This is indeed a comprehensive and expansive provision that outlines the general duties of the Nigerian Police.

Hence, corruption and other sorts of financial crime are part and parcel of the criminal jurisdiction of the Police. Furthermore, section 28(1) empowers a superior police officer to authorize any police officer to enter any house, shop, warehouse, or other premises in search of stolen property and to seize same. Clearly, under this provision, where the proceeds of corruption are suspected to be in any premises, a superior police officer is within his right to authorize any police officer to search same and seize the proceeds. It remains to be said that the Police is the agency with the highest jurisdiction to fight crime, more so, the Police has enormous powers. Alluding to this, it has been asseverated that the police constitute the primary and most visible part of the criminal justice system, serving as the entry point through crime reporting or detection, and sustaining consistent direct contact with the public.[23]

Essentially, whereas other agencies have limited criminal jurisdiction, the Police has virtually unlimited criminal jurisdiction. Put differently, every conceivable crime falls within their purview. Unfortunately, they have not always shown competence or professionalism. More need to be done to reorganize and galvanize the Police to reach the standards of their sister agencies in other countries. This includes an

[18] ATRMR 2019.
[19] Ibid reg 1.
[20] Ibid reg 2.
[21] Ibid reg 4.
[22] See also ME Nwocha and FL Nwuhuo, 'Enforcement of Law: Review Powers and Challenges of the Police in Nigeria' (2024) 15(1)*NAUJILJ* 79.
[23] AB Dambazau, Criminal Justice (Ibadan: Spectrum Books Ltd, 2002) 178.

upward review of qualification for enlistment, improving salary and welfare, rigorous training, effective supervision, and increased oversight checks by the National Assembly are measures that can help reposition the Nigerian Police.[24]

2.1.6 Money Laundering (Prevention and Prohibition) Act (MLA) 2022

The Act was enacted with the objectives, inter alia, to provide for an effective and comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution, and punishment of money laundering and related offences; to strengthen the existing system for combating money laundering and related offences and establish the Special Control Unit Against Money Laundering (SCUML).[25] Section 7(1) thereof mandates financial institutions and designated non-financial business to report suspicious transactions to SCUML while section 12(1) prohibits the opening or maintaining of numbered or anonymous accounts. Section 20 criminalizes retention of the proceeds of an unlawful act while jurisdiction over issues arising from the Act is exclusively given to the Federal High Court. This is yet another legislation that seeks to fight illicit movement of funds. Although it is fixated on money laundering, this necessarily extends to corruption and thereby, to asset recovery.

2.1.7 Proceeds of Crime (Recovery and Management) Act 2022[26]

This recent legislation establishes a comprehensive framework for the recovery and management of proceeds of crime, including the creation of the Asset Management Corporation of Nigeria (AMCON).The Proceeds of Crime (Recovery and Management) Act, enacted on May 12, 2022, seeks to create an effective regime for the recovery and management of proceeds of crime in Nigeria.[27] The Act aims to establish an efficient legal and institutional framework for the recovery and management of proceeds of crime, benefits obtained from criminal acts, and unclaimed assets believed to constitute proceeds of crime. It also establishes non-conviction-based mechanisms for the recovery of these proceeds and delineates the administration and disposal of assets forfeited to the Federal Government of Nigeria.[28] The Act creates the Proceeds of Crime (Management) Directorate, responsible for fulfilling the Act's objectives.[29] A significant element is the non-conviction-based recovery mechanism,[30] which incentivises persons to relinquish criminal proceeds without the apprehension of conviction, although it does not exclude prosecution under other statutes.

Section 26 empowers designated officers, including representatives from the Nigerian Customs Service, National Drug Law Enforcement Agency, EFCC, Police, and Immigration, to seize and detain cash suspected to be derived from illicit operations or above the legal threshold.[31] Initially, cash may be retained for seven days, enabling the officer to get a court order for extended detention.[32] Part VI of the Act addresses the confiscation of proceeds derived from criminal activities, whereas Part VII covers the investigation, search, and seizure of these proceeds. The Act creates the Confiscated and Forfeited Properties Account, into which funds from the sale, management, or disposal of forfeited assets, along with repatriated revenues from illegal activities, are deposited.[33] Jurisdiction over matters pertaining to the Act is conferred upon the Federal High Court, the High Court of the FCT, and State High Courts, with

[24] ME Nwocha and FL Nwuhuo, 'The Police and Policing System in South Africa: The Law and Lessons for Nigeria' (2024) 15(1)*NAUJILJ* 11-12.
[25] MLA 2022 s 1(1).
[26] Hereinafter simply called 'the POCA', for an extensive review see T Onyiuke, 'A Critique of the Nigerian Proceeds of Crime (Recovery & Management) Act 2022' (2023) 4(2)*Amicus Curiae* 461-475.
[27] D Adu and E Randle, 'Proceeds of Crime (Recovery and Management) Act, 2022' (Mondaq, 15 August 2022) <https://www.mondaq.com/nigeria/crime/1221592/proceeds-of-crime-recovery-and-management-act-2022> accessed 15 July 2024.
[28] POCA 2022 s 1 (a), (c) and (g).
[29] Ibid s 3.
[30] Ibid s 7.
[31] Ibid s 26 (2) (b).
[32] Ibid s 27.
[33] Ibid ss 68 and 69.

specialised courts assigned to adjudicate particular cases.[34] The Act comprehensively defines assets to encompass tangible and intangible property, including movable and immovable assets, as well as legal papers or instruments, including electronic or digital formats.[35]This therefore envisages Non-fungible tokens (NFTs) and cryptocurrencies and this is a very sound provision because it also anticipates futuristic types of assets. This holistic strategy seeks to improve asset recovery and effectively address corruption.

2.1.8 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997

Article 1 of the Convention provides that each party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantages, whether directly or through intermediaries, to a foreign public official, for that official or a third party, in order that the official act or refrain from acting in relation to the performance of official duties, to obtain or retain business or other improper advantage in the conduct of international business. With regards to sanction, Article 3(3) states that each party shall take the necessary measures to provide that the bribe and proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable. Article 9 makes provision for Mutual Legal Assistance while Article 10 provides for extradition. It is expected that this Convention will further be relied on by the relevant authorities in fighting corruption and recovering the proceeds of crime.

2.1.9 The United Nations Convention against Corruption 2003

This is the first comprehensive instrument of the United Nations tasked with the duty of battling corruption.[36] Article 51 of the Convention provides that the return of assets is a fundamental principle and State parties shall afford one another the widest measure of cooperation and assistance in this regard. Consequently, this instrument furnishes Nigeria with a lot of legal backing in seeking assistance from other countries in the repatriation of stolen assets. The consistent return of funds looted during the Abacha military junta lends credence to the importance of this provision but more needs to be done. Essentially, the Convention furnishes a framework where States can help one another fight corruption. A critical aspect of the Convention relates to Mutual Legal Assistance. To that end, Article 46 of the Convention provides that State Parties are obligated to furnish comprehensive mutual assistance in investigations, prosecutions, and judicial proceedings pertaining to offences under this Convention. This assistance must be provided to the maximum degree permissible under applicable laws and agreements. Assistance requests may encompass gathering evidence, serving legal documents, conducting searches and seizures, inspecting things and locations, supplying information and expert assessments, and identifying or tracing criminal proceeds. Additional forms of help encompass enabling voluntary appearances, supplying documents and data, and asset recovery, provided they adhere to the domestic laws of the requested State Party.

Article 15 makes adequate provisions regarding what a request for Mutual Legal Assistance should contain. Crucially, chapter V of the Convention makes detailed provisions on asset recovery including the prevention and detection of transfers of proceeds of crime, measures for direct recovery of property, mechanisms for recovery of property through international cooperation in confiscation as well as return and disposal of assets. Chapter VI relates to Technical assistance and information exchange. As is immediately apparent, the above furnishes Nigeria with a strong basis to cooperate and collaborate with other countries to trace, freeze, and recover proceeds of corruption repatriated above, it is hoped that the AGF and other relevant officials and agencies will do more to realize the essence of this provision. An illustration of the benefit of MLA can be vividly seen in the case of Abacha where Nigeria sought the

[34] Ibid s 73 (1) and (2).
[35] Ibid s 82.
[36] O Abiodun, 'Toward Effective Repatriation of Illegally Acquired Assets in Nigeria' (2014) 2(1)*UNILAG Journal of Humanities* 131.

assistance of Swiss authorities as well as those of Liechtenstein, Luxembourg, the UK, and the US through MLA, and this culminated in the recovery of approximately USD 1.3 billion.[37]

2.1.10 Financial Action Task Force (FATF) Recommendations

The Financial Action Task Force is a body established to articulate measures to combat money laundering and terrorist financing.[38] It advanced some 40 recommendations[39] including that countries should criminalize money laundering and that financial institution secrecy laws do not inhibit implementation of these recommendations. Others are that financial institutions should not keep anonymous accounts or accounts in obviously fictitious names and should undertake customer due diligence measures, including identifying and verifying the identity of their customers. These measures are particularly important. Most of these fintechs and new generation banks in Nigeria adopt a *laissez faire* approach in this regard and the CBN and other agencies must do more to ensure that the above measures are met. Bank Chief Executives must also ensure their staff scrupulously adheres to the above measures.

Furthermore, the FATF recommendations include that financial institutions should pay special attention to any money laundering threats that emanate from new or developing technologies that might favour anonymity as well as all complex or unusually large transactions. There are also recommendations *vis-a-vis* Mutual Legal Assistance and Extradition as well as other forms of cooperation. Hence, the entire gamut of these recommendations should be properly harnessed in our climes. Although they are basically against money laundering and terrorist financing, the war against these is virtually synonymous or at least complementary to the battle against corruption and asset pillage.

2.1.11 The STAR Initiative

The Stolen Asset Recovery Initiative is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime which supports international efforts to terminate destinations for corrupt funds.[40] It seeks to help countries establish a legal regime to recover the proceeds of corruption and it envisions that an effective legal regime should include criminal prosecution and confiscation or non-conviction based confiscation as well as civil actions.[41] This is yet another avenue our national agencies in this area can utilize to realize an effective regime for asset recovery in Nigeria. It is expected that the AGF, in collaboration with other relevant agencies and officials, will ensure a synthesization of all of the above to entrench a robust, sustainable, efficacious, and effective legal framework for the prompt recovery of stolen assets in Nigeria.

2.2 Institutional Frameworks for Asset Recovery in Nigeria

In addition to the aforementioned statutory framework for asset recovery in Nigeria, certain institutions are involved in the quest to entrench a sustainable and successful paradigm for asset recovery in Nigeria. Apart from the institutions established by the statutes examined above, other institutions include:

2.2.1 Private Individuals

In Nigeria, private individuals are also mandated to apprehend people caught in the process of crime or while fleeing the *locus criminis* or to report on same to the Police or other crime enforcement agencies. As such they are meant to be a vital cog in the wheel of fighting corruption and recovering the proceeds of crime. Unfortunately, they are often scared because most perpetrators of these crimes are powerful people and the security agencies are themselves often complicit. In this wise, it has been opined that people should be encouraged to come forward with information relating to corrupt practices and such persons

[37] Ibid138.
[38] AY Shehu, 'Key Legal Issues and Challenges in the Recovery of Proceeds of Crime: Lessons from Nigeria' (2014) 3(1) *International Law Research*186.
[39] See generally, 'FATF 40 Recommendations' <https://www.fatf-gafi.org/en/topics/fatf-recommendations.html> accessed on 22 July 2024.
[40] Shehu (n 38) 190.
[41] Ibid.

should be offered protection from any retaliation as this will enable stolen funds to be recovered.[42] This is a piece of ratiocination with which this paper entirely agrees. This is the notion of community policing where the fight against crime is begun from the community. It is hoped that private individuals will have the courage to report suspicious activities and illicit cash flows to the relevant agencies and those agencies should offer them protection and act with dispatch.

2.2.2 Judiciary

The judicial powers of the Federation are vested in the courts listed in the Constitution.[43] The powers extend to all inherent powers and sanctions of a court of law as well as to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.[44] Since the judiciary is the body tasked with the adjudication of matters, it equally handles matters related to recovery or forfeiture of assets. For instance, section 9(1) of the POCA provides that a preservation order shall be granted by the Court to preserve property reasonably suspected to have been derived from unlawful activities and represents *instrumentality* of unlawful activity or unclaimed property. When such an order expires, the relevant body, under section 12(1), may apply to the court which granted it for a renewal of same. Furthermore, as stated earlier, the original jurisdiction to entertain matters relating to the POCA is conferred on the Federal High Court, High Court of the FCT, and State High Courts and the Heads of these Courts are mandated to designate special courts to hear and determine the cases under the Act.[45]

As the following few cases will show, the Judiciary has had its fair share of the duty in this area. Thus, in *Dangabar v FRN*,[46] the Court of Appeal when faced with the issue of whether the *ex parte* order of the trial court freezing the account of the appellant pursuant to the EFCC Act was unconstitutional, held that it was not. It anchored its view on the basis that the order freezing the appellant's account was consistent with the intendment in section 44(2) (k) of the 1999 Constitution which allows for the temporary taking of possession of property for the purpose of any investigation, investigation or inquiry. This is a good position because it is a trite law that a party shall not be allowed to benefit from his wrong.[47] In *Nwude v FRN*,[48] the Court firmly held that an appellant cannot be allowed to enjoy the proceeds of his crime. This position is commendable and once a defendant in a corruption trial is found guilty, the proceeds of same must be forfeited to the government. Furthermore, there is the case of Joshua Dariye, the former Governor of Plateau State whose administration misappropriated more than USD 11 million; the matter was taken to court, and eventually, properties worth GBP 395,000 and assets worth USD 5.7 million were recovered from him.[49] The judiciary has also found it necessary to convict TafaBalogun, a former Inspector General of Police, Lucky Igbinedion, a former Governor of Edo State, Diepreye Alamieyeseigha, a former Governor of Bayelsa State as well as Cecilia Ibru, a former CEO OF the defunct Oceanic Bank; in all these cases their criminal proceeds were also recovered.[50]

It is discernible then that the judiciary also has a huge role to play in asset recovery. Nobody says that judges should grant any order requested by relevant agencies for the asking but they must be bold to act when faced with cogent, strong, and verifiable evidence. This will push the anti-corruption fight and enhance asset recovery.

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[42] KFA Ibrahim and SO Ademu et al, 'Whistleblowing as a Tool for Reducing Corrupt Practices in Nigeria' (2023) 1(2) *International Journal of Advance Research in Multidisciplinary* 99.
[43]Constitution of the Federal Republic of Nigeria 1999 (as amended) s 6(1).
[44] Ibid s 6 (a) and (b).
[45] Ibid s 73 (1) and (2).
[46] [2014] 12 NWLR (Pt 1422) 589.
[47]*Alade v Alic (Nig) Ltd* [2010] 19 NWLR (Pt 1226) SC 111@131.
[48] (2015) LPELR-25858 CA.
[49]Abiodun (n 36) 136.
[50]Ibid 141-142.

2.2.3 Global Forum on Asset Recovery

The United Kingdom and the United States of America co-hosted the Global Forum on Asset Recovery in Washington DC on 4th-6th December 2017.[51] The forum has ten principles; partnership, mutual interests, early dialogue, transparency and accountability, beneficiaries, strengthening anti-corruption and development, case-specific treatment, to consider using an agreement under UNCAC article 57(5), preclusion of benefit to offenders, and the inclusion of non-government stakeholders.[52] The forum provides a platform for over 80 bilateral and multi-jurisdictional meetings to progress on vital asset recovery cases and sign a new Memorandum of Understanding between Nigeria, Switzerland, and the World Bank which set out the return of $321m of recovered assets.[53] It is submitted that the AGF and other critical stakeholders should continually engage with this Forum to expedite the identification, tracing, confiscation, and return of assets stolen from Nigeria, and the sooner the better.

Apart from the institutions discussed above, other relevant agencies have roles to play in relation to asset recovery. They are National Drug Law Enforcement Agency; National Agency for Prohibition of Trafficking in Persons; National Agency for Food and Drug Administration and Control; Nigeria Customs Service; Nigerian Financial Intelligence Unit; Code of Conduct Bureau; Department of State Services; Armed Forces; Standard Organisation of Nigeria; Nigeria Maritime and Safety Agency; Nigeria Immigration Agency; Nigeria Ports Authority; National Inland Waterways Authority; Nigerian Security and Civil Defence Corps; Federal Inland Revenue Service; and such other organizations as the AGD may designate.[54]

These bodies are not exhaustive thus the sheer number of them makes the task of supervising them an onerous one. Nevertheless, the AGF and its officers must stay on top of the situation to ensure all the agencies involved in asset recovery can exchange information seamlessly, if not with one another, then at least to the Database maintained with the Office of the AGF which will serve as a clearing house. All the bodies discussed or listed in this work have the difficult but achievable task of accelerating and accentuating asset recovery in Nigeria and they are expected to live up to the task.

3. Procedure for Asset Recovery in Nigeria

Simply put, the procedure for asset recovery in Nigeria is as provided under Regulation1 of the Asset Tracing, Recovery, and Management Regulations 2019. It is as follows:First of all, the relevant agency must identify the assets presumed to have been illegally acquired and then set out to scrupulously investigate same. Thereafter, it must trace and attach same before seizing same and then finally recovering and returning same. It is instructive to point out that for asset tracing to be effective, the relevant agency or officials undertaking same must ensure they comply strictly with the law and act professionally, or else they may be hamstrung. This means that only very well-trained personnel must undertake missions of this sort or else instead of recovering assets, they may face all sorts of legal actions especially when they act in an unprofessional manner. Incidents where the EFCC for instance is quick to mark a person's house without carrying out a detailed investigation is barbaric and unprofessional the investigation must be carried out with painstaking care because it is the foundation of the procedure and if it is not done properly, every other step coming after is bound to fail for according to Lord Denning, 'You cannot put something on nothing and expect it to stay there. It will collapse."[55]

4. Challenges Facing Asset Recovery in Nigeria

As the various relevant agencies tasked with fighting corruption and recovery of assets have gone about their business, the perpetrators of related crimes have fought back. This has led to an avalanche of

[51] V Prusa and S Asimi(eds), *Asset Recovery: Nigeria's Story of Small Progress* (Abuja: Being a Publication of the Civil Society Legislative Advocacy Center/Transparency International Nigeria, 2021) 17.
[52] Ibid.
[53] Ibid.
[54] POCA 2022 s 82.
[55] *Macfoy v UAC* (1962) AC 150.

impediments to asset recovery in Nigeria. One such challenge is that whereas the EFCC (and one can make the same argument for other relevant bodies) has been effective with respect to cases involving ordinary citizens, it has fared worse when the cases involve Politically Exposed Persons (PEPs)[56].Essentially then, whenever PEPs are involved in corruption charges or asset recovery, the relevant bodies act with less vigour or bite. Unfortunately, most cases of high financial dimensions involve PEPs. Juxtapose the virulence the EFCC shows in arresting 'Yahoo' boys with what has transpired recently in the issue of Yahaya Bello, the immediate past Governor of Kogi State, and the façade playing out. Therefore, the EFCC and other bodies and the Government must have the political will to fight corruption and recover the proceeds of same without fear or favour. If this is not done, progress will not be made in this area.

Another challenge is that the various agencies do not collaborate enough[57] and this frustrates the effectiveness of asset recovery efforts. It therefore follows that they must learn to collaborate better in order to advance asset recovery in Nigeria. A third challenge is that technology is not being adequately utilized. So many officers still carry out their investigations and asset tracing manually. The relevant agencies must go all out to train their staff and acquire the needed technology to ramp up asset recovery. The next challenge is the slow pace of justice delivery in Nigeria where cases often go on for many years and defence counsel often tries to filibuster the procedures in cases. The designation of special courts under the POCA is a good start but more needs to be done to expedite cases involving corrupt practices and asset recovery. Furthermore, some of the statutes creating the relevant agencies are now outdated and need to be overhauled. The agencies also fail to collaborate effectively with their foreign counterparts and this hamstrings their effectiveness.

In a thorough study of asset recovery in Nigeria, the following were pinpointed as challenges:

i. Lack of political will;
ii. Weak domestic legal framework;
iii. Cash-based economy and unregistered properties;
iv. Lack of technical competence;
v. Complex and lengthy procedure or court proceedings;
vi. Improper management of recovered assets;
vii. Problem of dissipation, cost of recovery, and public confidence;
viii. Political interference in the process of litigation and court proceedings; and
ix. Compromise by the investigating agency.[58]

It is believed that a successful resolution of these challenges will significantly expedite and enhance asset recovery in Nigeria.

5. Conclusion and Recommendations

From this study, it is clear that there is an extant framework for the recovery of assets which are the proceeds of corruption and other crimes. All hands must be on deck to galvanize the system and accentuate the rate of success. These assets when recovered are restored either to the government or their legitimate owners. This paper concludes that while the fight is on, more needs to be done. Accordingly, it proceeds to articulate the following recommendations:

1. The political class and other leaders must lead by example in eliminating or at least severely reducing corruption and other criminal activities which have the ultimate consequence of decimating the revenue of the country.

[56] AY Shehu, 'Key Legal Issues and Challenges in the Recovery of Proceeds of Crime: Lessons from Nigeria' (2014) 3(1) *International Law Research* 194.
[57] Ibid 195.
[58] OVC Ikpeze and OM Ofodile, 'Assets Forfeiture and Recovery in Nigeria' (2022) 4(2) *IJOCLLEP*115.

2. Leaders of all classes as well as the AGF and Heads of all the relevant agencies must have the willpower to fight corruption given its pervasive effects.
3. Widespread dissemination of this issue must be launched so that the populace will be informed of this issue, the ramifications, and the solutions.
4. All the anti-corruption agencies must work in concert with banks and other financial institutions to keep tabs on the movement of funds. The BVN must be leveraged to ensure that suspicious transactions are immediately flagged and reported to the relevant agency. This will help the tracing and recovery of the assets involved if they are stolen.
5. All the agencies involved in this area must carry out regular training and re-training of staff and conduct exchange programmes with foreign counterparts so they can keep in touch with international best standards.
6. Technology must be utilized more for efficiency, speed, and precision. The days of tracking assets manually are over. With sophisticated machines, the relevant agencies can track things much faster in real-time.
7. Critical reform of the anti-corruption agencies is essential to enable them to meet up with international best practices. Similarly, there is the need to regularly update the anti-corruption statutes to meet international best standards because as things evolve, the laws must be able to tackle modern innovations. For instance, these days many transactions are no longer carried out via fiat currencies but through crypto and other intangible assets. The relevant statutes must be amended to reflect this.
8. Banks and other financial institutions, under threat of sanction from the relevant agencies, must be forced to adhere to KYC (Know your Customer) and to report suspicious transactions. This will help assets involved in such transactions to be immediately traced, investigated, and frozen.
9. There is the need to diligently maintain and operate a centralized database system where all the relevant agencies can report their findings in relation to asset tracing so that their information will be streamlined. The EFCC for instance may be privy to information that the ICPC does not have and vice versa. This database will substantially improve access to information and expedite the process of asset tracing and recovery. Although this database is meant to be under the Office of the Attorney General, more must be done to ensure all information received is disseminated promptly to all the relevant agencies.
10. The relevant agencies must operate transparently so the public will know how much they recover within a stipulated period and what is done with same. This will give them confidence and enable them to assist and support these agencies.
11. Money laundering and possession of huge amounts of cash must be seriously discouraged. Whenever a person has a huge amount of cash, it almost certainly means such an amount emanates from crime.
12. To effectively recover assets, Nigeria must combine conviction and non-conviction paradigms.
13. The Office of the Attorney General and other relevant agencies must cooperate with other countries and international organizations to track and recover stolen assets.

It is hoped and expected that a faithful implementation of these would enhance the effective recovery of assets in Nigeria and ensure a faster, more virile, and more articulate system.