Legal And Policy Framework For Forfeiture of Corrupt Assets In Nigeria

By Shajobi-Ibikunle, Gloria PhD*[1] & Adegboyega Oni*[2]

[1] Shajobi-Ibikunle, Gloria PhD, FCIA, Associate Professor Of Criminal Law, Department of Private Law; Property Law, Faculty of Law, University of Abuja. Tel: +234-803-422-5918, Email: gloria.shajobi-ibikunle@uniabuja.edu.ng

[2] Solicitor; Advocate, J.B. Daudu & co, 16B, Mafemi Crescent, Utako. Email: Emmanuelonilaw@gmail.com. Tel:+234-703-750-3186.

ABSTRACT

Nigerian governments have in the past loudly proclaimed their resolve to fight and win the war against corruption. This has led to a multiplicity of laws providing for the identification, restraint, freezing, seizure, confiscation, and forfeiture of properties/assets. These are held in any part of Nigeria and beyond acquired or reasonably suspected to be proceeds of illegal/criminal acts. The primary focus of this study will be a detailed examination of the current legal, policy and institutional mechanisms established for the forfeiture of corruptly acquired assets. This research shall adopt a doctrinal research methodology in which a rigorous analysis of laws, policy and institutional framework regulating corrupt asset forfeiture and management are carried out. Primary sources such as the Constitution and other Statutes would be examined as well as secondary sources. The findings are that the conviction-based forfeiture procedure employed by the criminal justice system in the recovery of corrupt assets appears inadequate to effectively curb corruption. Also, that the civil or non-conviction based forfeiture procedure as currently adopted potentially violates the provisions of 36(5), 43 and 44(1) of the 1999 Constitution of Nigeria. It is found though that its adoption remains the most efficient legal approach to confiscating corruptly acquired assets, and unexplained wealth in the war against corruption. The work recommended an amendment of the Constitution such that non-conviction based forfeiture and civil recovery which will recognize the legitimate power of the state to confiscate, under extant statutes, unexplained wealth in the absence of a criminal conviction is promulgated.

Key words

Proceeds of crime, unexplained wealth, mutual legal assistance treaties, civil forfeiture, forfeited assets, stolen asset recovery.

LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK FOR FORFEITURE OF CORRUPT ASSETS IN NIGERIA

1.1INTRODUCTION

Corruption is the world's most frequently discussed global problem[3]. It is a complex social, moral, political and economic phenomenon with a global connotation. As a global phenomenon, corruption is by no means limited to Nigeria. However, it poses a fundamental challenge for Nigeria because it is a major factor that inhibits economic development.[4] It is estimated that in its sixty years since independence, corruption has cost the Nigerian economy more than $550 billion.[5] It weakens the rule of law.[6]Also corrupt practices in the justice system often leads to slow and inefficient dispensation of justice.[7] Corruption undermines the core of the democratic system by tampering with electoral procedures, subverting the rule of law, and establishing bureaucratic muddles whose sole function appears to be to demand bribes[8]. Often it involves diversion of funds from development oriented projects to those that yield unlawful dividends to public officials. Corruption blocaks legal and sectoral reforms.[9] The perception of whether or not corruption exists especially in the public sector has been measured by the Transparency International.[10] Also, it does appear that states with high rates of corruption (or high levels of corruption perception) are also states with significantly low human rights record.[11] Countries

---

[3] BBC world service poll of December 9 2010 [online]: http://www.globescan.com/news_archives/bbc_corruption.accessed 28th March 2023.

[4] Causes and Effects of Corruption in Nigeria, International Journal of Economics , https://ijec.co. uk. Accessed 20 December 2025.

[5] Monitoring & Fighting Corruption in Nigeria: A year of impact with TransparencIT. World Justice Project, 4 October 2023. https://worldjusticeproject.org.

[6] Ibid. The World Justice Project Rule of Law Index ranked Nigeria 120/140 for absence of corruption in 2022.

[7] ibid

[8] United Nations, "UNODC'S Action against Corruption and Economic Crime", <https://www.unodc.org/unodc/en/corruption/> Assessed on 28 August 2023

[9] Esa O. Onoja, *Economic Crimes in Nigeria,Issues and Punishment*, Lawlords Publication, Abuja. 2018, p 71.

[10] The German-based global civil society organization founded in 1993 is leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, Transparency International raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

[11] For a statistical analysis, see Prof. Dr Anne Peters, Corruption and Human Rights, Policy Advice Working Paper Series No. 20 (Basel Institute of Governance) 2015, International Council on Human Rights Policy, *Corruption and Human Rights: Making the Connection* (2009), Switzerland. There are in fact numerous human

at the bottom of the list of states ranked by Transparency International's Corruption Perception Index of 2022 showed most countries were failing in their effort to curb corruption.[12] Denmark tops the list of performing States followed by Finland & New Zealand. South Sudan, Syria and Somalia are at the bottom. Of these states, two are in Africa and evidence abounds of human rights abuses. On the 2024 CPI, Nigeria scored 26 on a scale from 0 (highly corrupt) to 100(very clean) and was ranked 140th among 180 nations . See Table 1 below for its ranking for the last three years.[13]

Table 1: Corruption Perception Index (CPI)2022-2024 for Nigeria[14]

S/N	YEAR	CPI RANKING	NOS OF COUNTRIES
1.	2022	150	180
2.	2023	145	180
3.	2024	140	180

Similarly, a survey conducted by Socio-Economic Rights Project (SERAP) over a five year period revealed high levels of corruption in public institutions in Nigeria. The Nigeria Police Force was ranked the most corrupt with the power sector being second most corrupt. Others were the Judiciary , Education and health ministries.[15] In view of the widespread nature of corruption and its damaging effect, it is pertinent to review the existing framework set in place with a view to assessing their relevance and impact in the fight against corruption.

Consequently, this paper examines national statutes, including Advanced Fee Fraud Act, 2017, Proceeds of Crime Act, 2022 and Money Laundering (Prevention and Prohibition) Act,

rights violations that have nothing to do with corruption, such as discrimination against women. Conversely, there are forms of human rights enforcement procedures that appear to foster corruption such as the right to fair-hearing.

[12] 95 % of countries made little or no progress since 2017. 2022 Corruption Perceptions Index reveal scant progress against Corruption. 95 % of countries made little or no progress since 2017. see ' As world becomes more violent, Jan 31 2023. See Transparency .org. Last accessed March 14 2023.

[13] Corruption Perceptions Index 2024, Transparency .org. https://www.transparency .org. Accessed 20 December 2025.

[14] ibid

[15] Police Most Corrupt institution in Nigeria, reveals SERAP Survey,https://serap-nigeria.org. 26 March 2019. Accessed 23 December 2025.

2022 which regulate assets forfeiture in Nigeria. The paper also scrutinized institutional development of federal agencies in Nigeria such as the Economic Financial Crimes Commission (EFCC), Independent Corrupt Crimes Commission (ICPC), empowered to seize, forfeit, and manage corrupt assets. Relevant International conventions were analyzed also.

1.1.1. Definition of Key Terms

Corruption

Corruption is the malicious and deceptive aim to circumvent legal restrictions. It is using one's position or reputation in an improper manner by a public servant or fiduciary in an order to acquire profit or gain[16]. Corruption is also defined as an act with an intent to give some advantage inconsistent with official duty and the rights of others.[17]

Corruptly Acquired Assets

These are resources, properties, finances, or valuables that have been acquired by unethical, unlawful, or fraudulent means. They are also known as ill-gotten assets or illicit assets. These resources are frequently obtained by corrupt practices including bribery, embezzlement, fraud and money laundering[18]. When entities or organizations engage in corrupt conduct, they could amass assets that are a direct outcome of their unlawful actions or were instrumental to the corruption.

Freezing, Confiscation And Forfeiture Of Assets

Freezing is temporarily preventing the exchange, conversion, disposal, or transportation of property or provisionally acquiring custody of or authority over property as a result of a court order or other competent authority's directive. It entails holding onto assets while a criminal case is being resolved in order to stop them from being lost, changed, withdrawn, or discarded until the trial is completed.[19]

---

[16] S.V "Corruption", The law Dictionary <https://thelawdictionary.org/?s=corruption> , Accessed on 28 August 2023.

[17] BLACK'S Law Dictionary, 6th edn, West Publishing Co, 1990. p345

[18] Theodore S. Greenberg, et. al, (2009) Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture, available at <https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Non-conviction-based_Asset_Forfeiture_E.pdf. > Assessed on 28 August 2023

[19] United Nations, "United Nations Convention against Transnational Organized Crime and the Protocols Thereto", *United Nations Office On Drugs And Crime,* adopted 15th December, 2000, <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.> Accessed on Assessed on 28 August 2023

Confiscation, encompassing forfeiture where appropriate, refers to the long-term seizure of assets according to a judicial order or other relevant authority's order. The irrevocable forfeiture of property due to a court decision or other legitimate authority. The phrase is synonymous with forfeiture. Any rights that individuals or organizations may have had over the finances or other assets at the point of the seizure are forfeited.[20]

Assets Forfeiture refers to a legal action taken against a corrupt asset or person where the party is to let go or abandon the asset or assets. The Supreme Court of Nigeria defined the word forfeiture in Abacha's case[21] as the divestiture of property without compensation. It is the loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty. In *AG Bendel State House v Agbofodoh*[22], the Supreme Court referred to various dictionary meanings of the word 'forfeit' – all pointing to something being taken away as punishment for doing something wrong, holding *inter alia* thus: "The Webster's New Twentieth Century Dictionary, 2nd Edition, defines the word 'forfeit' as the act or process of paying a penalty for a crime, fault or mistake etc. and the word 'forfeiture' is defined therein to mean that which is forfeited; a penalty; a forfeit; a fine, damage, confiscation, sequestration and amercement".

Criminal forfeiture and Non-conviction-based (NCB) asset forfeiture are typically the two forms of forfeiture that are utilized globally to retrieve the profits of crime. They both aim to have the money and proceeds of crime forfeited to the state and they both have similar, dual justifications. It follows that title in those assets and properties forfeited is instantaneously transferred to another, such as the government. However, in recognition of the inherent rights of citizens to own property under section 43 of the 1999 Constitution our laws provide for the interim forfeiture of property. The essence is to preserve the property in question and not to promote a final determination of their rights and obligations.

It should be noted that the term .confiscate' appears to have been used interchangeably with "forfeit" in Nigeria and on most global scenes, although their differences are now well-defined. Upon forfeiture, confiscation takes precedence. Property forfeited by an individual is then appropriated, or confiscated, by the State as a result of that individual's act. Therefore, in order to confiscate property, it must first be forfeited; yet, a property may be forfeited without having to be subject to confiscation. Asset forfeiture is highly purposeful. The first rule is that people who engage in illegal conduct shouldn't be able to profit from their misdeeds, irrespective of it being an entity of the government the proceeds ought to be forfeited and utilized to provide

[20] Ibid.
[21] *Abacha v. FRN (2014) LPELR-22014(SC)*
[22] *1999 2 N.W.L.R. Part 592 Page 476 at 496-497 per Uwais CJN*

restitution. Second, illegal action needs to be shunned. Eliminating the financial incentive for crime deters it from occurring in the first place. Any asset instrumental to the crime must be forfeited in order to guarantee that they won't be utilized for more illegal activity and to act as a deterrence[23].

Return/ Recovery uf Assets

In a broad sense, recovery of an asset refers to all the measures that must be put in place to return proceeds of crime and corruption to the country it was stolen from or the individuals or entities it was stolen from. However, for the purpose of this paper, the form of asset recovery refers to how individuals or entities who have been cleared of all criminal charges or have been found not guilty can recover their assets. This aspect of the process is one which is often neglected. The process to be applied will generally depend on the type of forfeiture as well as the relevant statute pursuant to which such forfeiture was carried out in the first place. The Proceed of Crime (Recovery and Management) Act provides in its section 29 that any individual or entity who has had his asset detained can recovered it if there is no longer legal justification to do so and this justification is provided for in section 33 of the Act[24]. Also, the Economic and Financial Crimes Commission Act, 2002, Section 33, provides that if a person has been discharged or acquitted the court order or any interim order for forfeiture or confiscation of their assets will be revoked and the court has the obligation to return the assets to the individual[25]. Essentially, where in a criminal based forfeiture the accused is acquitted of the criminal charge or in a civil forfeiture, the state is unable to establish the sufficient legal justification for final forfeiture, such properties are liable to be given back unconditionally.

Management of Assets

Effective management of seized and confiscated assets lowers the dangers of having proceeds of crime in use and makes sure they are handled in a transparent and accountable way while maintaining their worth[26]. Article 31, paragraph 3 of the United Nations Convention against Corruption requires States parties to adopt, in accordance with their domestic law, such

[23] Theodore S. Greenberg, et. al, (2009) Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture.
[24] Section 29, The Proceed of Crime (Recovery and Management) Act, 2022.
[25] Section 33, The Economic and Financial Crimes Commission Act, 2002.
[26] World Bank, Stolen Asset Recovery Initiative, "Management of Stolen Asset <https://star.worldbank.org/focus-area/management-stolen-assets> Accessed on 29 August 2023

legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property[27].

Return or Disposal of Assets

Assets are frequently moved to the general treasury of the nation rather than immediately to the concerned jurisdiction whenever a confiscation order is put into effect in the required jurisdiction and no legal or political obstacles stand in the way of progress. The repatriation of the assets will thus need the use of another method. The assets may be divided or partially returned, with the remaining amount being retained by the requesting country to cover the expenses of detaining, keeping, and disposing of the confiscated assets, contingent on the agreements/policies amongst the countries concerned. Court rulings may also direct the restoration of assets to the victims.[28]

THEORETICAL FRAMEWORK

Contraband Theory is when any property tagged as contraband is illegal and should not be possessed or it will be subject to forfeiture. Hence, because of its nature an individual or entity cannot claim legal rights in such property so the proprietary interest in them ceases to exist. There are two main types of contraband and this was extensively discussed in the case of *Cooper v Greenwood* [29] where it was stated that contraband can either be contraband *per se* or contraband derivative. Contraband *per se* are items that are generally regarded as illegal and the use or possession of them is criminal; these include hard drugs which in many countries are illegal. Then contraband derivatives are items that are not intrinsically illegal but based on the use and form may become illegal. becomes illegal or contraband when one brings higher than the

Proceeds of Crime Theory; This theory is of the view that any interest, dividends, revenue, or asset obtained from an initial illegal activity, including the increase in the property's worth, may be included in the list of items that constitute the profits of criminal conduct. If proceeds are linked to illicit activity in general, they may be sought for forfeiture. In other words, it's not necessary for the revenues to have come straight from criminal activity.[30] While it might be appealing to aim at the proceeds of illegality, it can be challenging for the State to establish a link between the assets and the original illicit activity. For assets to be forfeited, the state must

[27] *Article 31, paragraph 3,* of the United Nations Convention against Corruption.
[28] World Bank, Stolen Asset Recovery Initiative, "Asset recovery Process <https://star.worldbank.org/focus-area/asset-recovery-process> Accessed on 29 August 2023
[29] *Cooper v. Greenwood*, 904 F.2d 302, 304-5 (5th Cir. 1990).
[30] Arizona State University, "Theories of Forfeiture".

currently demonstrate a “substantial connection" involving it and the illegal action from which it is regarded as proceeds. It takes more than a mere suspicion of a crime to proceed with an asset forfeiture case.[31]

Instrumentality Forfeiture Theory: This theory is of the view that properties or assets that were used to facilitate the criminal activity can be considered for forfeiture because it played a major role in the crime. Property used to aid or carry out illegality is also at risk of forfeiture, in addition to criminal gains. Assets that were utilized or proposed to be utilized in any way to commit or aid in the perpetration of a crime may be subject to such forfeitures.[32]

Criminal Enterprise Theory: This form of forfeiture is quite all-encompassing as it tries to facilitate the forfeiture of enterprises which may either be proceeds of criminal activities or instrumental to such and ensure that an individual or criminal interest in such enterprise is forfeited and therefore extinguished. This theory goes a step further to attack the proprietary interest that allows this individual the ability to afford or run a criminal enterprise. This form of forfeiture is quite difficult to come by, however it is mostly used when the party is involved in continual criminal enterprise and organized crimes.[33]

2.1 NATIONAL LEGISLATION

1.The Constitution Of The Federal Republic Of Nigeria(CFRN) 1999

The 1999 Constitution of the Federal Republic of Nigeria provides the legal framework for the country’s governance, including anti-corruption measures. Section 15(5) of the Constitution mandates the State to "abolish all corrupt practices and abuse of power," reinforcing the need for effective mechanisms to combat corruption. Additionally, Chapter II emphasizes national ethics, including discipline, integrity, and dignity of labour. The Constitution also empowers the National Assembly to enact laws for the recovery of public property misappropriated through corrupt practices by virtue of the legislative powers vested on it.

It is important to note that by the combined effect of section 43 and 44 of the Constitution, no person or authority has the power to take over the temporal or absolute control of the personal properties belonging to any person without an order of a court of competent jurisdiction authorizing any such person or authority to deal with or dispose of such property in a manner

[31] Ibid.
[32] Ibid.
[33] Ibid.

defined by the Court. Any attempt to arbitrarily seize, detain, confiscate, forfeit property in Nigeria is *ab initio* unconstitutional for reason of its inconsistency.[34]

Accordingly, statutes such as the Advance Fee Fraud and Other Fraud Related Offences Act (AFFA)[35], Proceeds of Crime Act (POCA)[36], Money Laundering (Prevention and Prohibition) Act (MLA),[37] National Drug Law Enforcement Agency (NDLEA), Act [38] Corrupt Practices and other Related Offenses Act [39], Economic and Financial Crimes Commission (Establishment) Act[40] and Administration of Criminal Justice Act, 2015,[41] set out processes by which the government may by a set procedure, to be sanctioned by a court of competent jurisdiction, secure forfeiture Order in respect of any properties/assets held in any part of Nigeria and beyond, reasonably suspected to have been acquired through proceeds and instrumentality of illegal/criminal acts.

Two main forms of asset forfeiture based on the nature of proceedings pursuant to which the forfeiture order is made exist. The proceedings may either be termed criminal or civil asset forfeiture. The process may also be divided into two stages; interim and final forfeiture. Criminal asset forfeiture takes place as a result of a criminal investigation of a person or group. In order to complete this procedure, the government must establish in court that the confiscated property is related to crime. If the defendant is found guilty, the court may decide to order the confiscation of such assets in lieu and/or addition to their punishment. On the other hand, Civil Asset forfeiture does not require a criminal conviction because the State is filing a lawsuit against the asset rather than the owner of the asset and has a lower standard of proof than in criminal cases.

2. Advanced Fee Fraud Act(AFFA)

One of the most debated legislation on the real nature of forfeiture in Nigeria is the Advanced Fee Fraud Act which prescribes that where any property has come into the possession of any officer of the Commission as unclaimed property or any unclaimed property is found by any officer of the Commission to be in the possession of any other person, body corporate or financial institution or any property in the possession of any person, body corporate or financial

[34] Chinelo Ogbozor Esq, 'Recovery and Management of Proceeds of Crime Under Contemporary Nigerian Forfeiture Laws' [2018] (Vol. 1), *Rule of Law Development Foundation (ROLDF) Annual Criminal Law Review*, 293.
[35] 2006
[36] 2022
[37] 2022
[38] 2000
[39] 2000
[40] 2004
[41] 2015

institution is reasonably suspected to be proceeds of some unlawful activity, the High Court shall upon application made by the Commission, its officers, or any other person authorized by it and upon being reasonably satisfied make an order that the property or the proceeds from the sale of such property be forfeited to the Federal Government of Nigeria. It is instructive to note that this legislation does not require that an Order of forfeiture be based on conviction for an offence.

The legality of the said provision has been settled in relation to interim forfeiture to the extent that the practice of temporarily depriving a person from dealing with the assets suspected to be proceeds of crime pending the determination of the case against him is not said to be unconstitutional because the right is not absolute.[42] The Supreme Court held the view that the provision affords an aggrieved person the right to discharge the interim forfeiture or show cause why the interim order should not be made final and therefore rightly guaranteed fair hearing. The effect of the above provision is that a permanent deprivation of proceeds acquired by unlawful acts by way of a final forfeiture could only occur upon conviction of a Defendant charged with an offence. Therefore, the mere fact that section 17 of the Advanced Fee Fraud Act is a self-confessed non-conviction based law may not necessarily detract from the fact that it falls within the bounds of criminal forfeiture.

Notwithstanding the above, it is pertinent to acknowledge that upon a proper construction of the provision, the legislature indeed envisaged civil forfeiture by way of civil proceeding in a case of unclaimed property. In such a case, the Court upon hearing of a motion *ex parte* for interim forfeiture order of the property concerned upon being satisfied that statutory notice or publication has been given or made for any person, corporate or financial institution in whose possession the property is found or who may have interest in the property or claim ownership of the property to show cause why the property should not be forfeited to the Federal Government of Nigeria. Under this procedure, the Court upon whom such application is made is not necessarily concerned with whether the properties are subject to a criminal charge. Rather, it behoves on the owners of such property to show cause, why the property should not be forfeited to the Federal Government of Nigeria. Upon failure of persons concerned to show cause or satisfy the Court that there are reasonable grounds, the Court is empowered upon hearing a Motion on Notice to grant final forfeiture.

[42] *Dame Patience Ibifaka Jonathan v Federal Republic of Nigeria* (2019) LPELR-46944(SC)

Principle of Double Jeopardy

Despite the noble intentions of the legislature, section 17 of the AFFA also poses a challenge to the legal maxim against Double Jeopardy. The State through the applying agencies can subject a defendant to more than one trial for the same offence with similar ingredients thereby giving the State as it were a 'second bite at the cherry'. Double Jeopardy is a principle of criminal justice which prevents an individual from being tried twice for the offense after having been acquitted or convicted by a competent court.[43] It is also stated in the 5th Amendment of the United States Constitution. [44] Therefore, this paper finds that the process of subjecting a defendant to a multiplicity of proceedings on the same subject matter creates room for an abuse of court process and offends section 36(9) of the Constitution of the Federal Republic of Nigeria 1999 which forbids double jeopardy.[45]

Notwithstanding the above, proponents of section 17 of the Advanced Fee Fraud Act argue that it is a special procedure which does not violate any proprietary rights under the 1999 constitution in as much as the Court finds that an applicant meets the requirement of proof required to make a final order of forfeiture being that it must be reasonably satisfied on the balance of probabilities or preponderance of evidence based on facts presented that such property is proceeds of unlawful activity.[46]

3.Proceeds Of Crime (Recovery And Management) Act 2022

This Act provides a comprehensive framework for tracing, freezing, managing, and recovering proceeds of crime. It empowers the Economic & Financial Crimes Commission (EFCC), Independent & Corrupt Practices Commission (ICPC) and other agencies to collaborate effectively in managing forfeited assets. Its enactment lends credence to long drawn scepticism as to the efficacy of the Advanced Fee Fraud Act and other civil forfeiture laws. The new Act enacts, in Part Four, provisions which cover abandoned assets, unclaimed assets suspected to be proceeds of crime, and criminal assets with no conviction. It empowers the Court to grant a forfeiture order when it is satisfied or reasonably suspect that the property is proceeds of crime,

---

[43] Afolayan A. F, *Criminal Litigation In Nigeria,* 3rd edn, Samok Printers, 225-227, 2018. It seeks to disallow government to deploy its immense arsenal to harass individuals , the judicial process must be seen as fair and just.

[44] Legal Information Institute. https;//www.law.cornell.edu. Last accessed 7/2 2025

[45] (fn 1)

[46] See dissenting opinion of Abiru, JSC in *Melrose General Services Ltd v. EFCC & Ors* (2024) LPELR-62733(SC), 176

directly or indirectly suspected to be proceeds of crime, instrumental to the execution of the crime. The Act states that when it comes to civil forfeiture, the proceedings shall be civil in nature and the burden of proof is on the balance of probability[47]. Curiously, it prescribes that the burden of proof that a defendant is a legitimate owner of property subject to forfeiture shall be on the Defendant[48]. Although, it has been argued that placing the burden of proof on a Defendant in a civil case is contrary to s. 131 (1) and (2) of the Evidence Act, 2011 this represents the position of the law on this point until such time the Courts shall interpret other wise.

The National Assembly gave preservation and restraint orders its stamp of legitimacy in the POCA to facilitate freezing properties reasonably suspected to have been derived from unlawful activities and represents instrumentality of unlawful activity or unclaimed property. The POCA does not define a preservation Order but its meaning is deductible from the wordings of the section 9 which empowers the Court to grant an order to preserve property reasonably suspected to have been derived from unlawful activities and represents instrumentality of unlawful activity or unclaimed property. On the other hand, the Act in its definition section merely defines a restraint order as 'an order under Part VI of this Act that is in force'.[49] However, Smith, Owen and Bodnar[50] in reference to the English Proceeds Of Crime Act 2002 noted that a restraint order is analogous to a freezing order in civil proceedings and its purpose is the preservation of assets at a time a Court does not know whether the defendant will be convicted or otherwise.

The procedure for obtaining both Orders as prescribed under the POCA reflects an acknowledgment of the constitutional right of citizens to own property in that it prescribes that relevant organizations may only obtain such Order by an *ex parte* application. The Court is empowered to make such orders upon being satisfied that there are reasonable grounds. In the case of a preservation Order, the applicant must satisfy the Court that there is reason to believe that the property concerned represents the proceeds of unlawful activity, whether they are:

(i) in the hands of the person who unlawfully acquired the property in the first instance, or

(ii) traced to any person to whom the property that represents the proceeds have been passed; (b) is involved in the facilitation of unlawful activity; or

---

[47] Section 8, POCA

[48] Section 74, POCA

[49] Section 82 of the POCA

[50] Ian Smith and Tim Owen QC and Andrew Bodnar, *Asset Recovery: Criminal Confiscation and Civil Recovery* (Issue 3, 2nd edn, OUP Oxford 2009) II. 1. 04

(c) is intended to be used to facilitate unlawful activity.

On the other hand, a restraint Order is fitting only where upon by a duly filed Affidavit the Applicant establishes that a defendant

(i) has been convicted of an offence or has been charged with an offence and a confiscation order has been made against the defendant, or it appears to the Court that there are reasonable grounds for believing that a confiscation order may be made against the defendant, or

(ii) Is to be charged with an offence and the Court is satisfied that the defendant is to be charged, and it appears to the Court that there are reasonable grounds for believing that a confiscation order may be made against the defendant.

The Proceeds of Crimes (Recovery and Management) Act, 2022 has also established a sound legal procedure for the management of forfeited or seized assets in Part VIII of the Act. Prior to this enactment, it was argued that existing laws on the subject were inadequate and lacked procedural and administrative structures for management of proceeds of crime. Allegations ran rife that law enforcement agents who recovered proceeds of crime further looted what they had recovered. Therefore, it was a no-brainer that the State had to take measures to regulate the process of loot management and recovery. The Act[51] mandates relevant organizations[52] to establish for themselves a Proceeds of Crime Management Directorate to oversee the management of proceeds of crime. The functions of the Directorate established under the law include the maintenance of a database of properties forfeited, regulation of asset management and disposal, and the establishment of a list of auctioneers, managers and related personnel, to oversee training on management of proceeds of crime among other functions. The Honourable Attorney General of the Federation (HAGF) and the Directorates so established may make regulations and guidelines respectively to aid the implementation of the Act.[53]

Furthermore, the law establishes a Confiscated and Forfeited Properties Account domiciled in the CBN wherein proceeds of crime as forfeited by regular courts, foreign countries and the Code of Conduct Tribunal shall be credited. The heads of the relevant organizations shall

[51] Section 3, POCA

[52] Economic and Financial Crimes Commission, Independent Corrupt Practices and other Related Offences Commission, 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, Nigeria Police Force, Department of State Services, Armed Forces, Standard Organisation of Nigeria, Nigeria Maritime and Safety Agency, Nigeria Immigration Service, Nigeria Ports Authority, National Inland Waterways Authority, Nigerian Security and Civil Defence Corps, Federal Inland Revenue Service, and such other organisations as the Attorney-General may designate

[53] Section. 81 (1) and (2) POCA

manage the account containing proceeds recovered by his organization and each account shall be audited by the Accountant General of the Federation.

The law inputs an obligation on the relevant authorities to take up administration and control of forfeited, seized, or frozen assets and this entails entering civil or criminal lawsuits to which the property is subject, collecting and managing securities from investment which the assets or property is subject to. Where a business is involved, they are to take an active role in its management which may include being in charge or aware of the day-to-day running of the business[54]. The relevant agencies are also to manage shares, stocks, bonds, and debentures as if they were bought in their name[55] and to dispose of or destroy any aspect of such an asset or property if they can prove it's a danger to public interest, health, morality, and safety. The law authorizes sale of a property or part of it if they reasonably believe that it would prevent loss or value or deterioration of the asset[56] upon reasonable notice to the owner of the property and all persons who have interest in the property.[57]

The Act also stipulates that where any part of cash subject to a seizure or an order of detention is shown to not form part of proceeds of crime or suspected crime, such part cash shall be released or returned to the legitimate owner by the relevant organization. In other words, third party rights over detained cash is guaranteed under the Act.[58] However, some other draconian provisions exist which stifle the process of recovering forfeited Assets particularly the fact that under the law, a person cannot file an action against the relevant organization except after a issuing a 30 days pre-action notice before the commencement of civil suits[59]at which time his properties may have been demolished or destroyed. Strangely, it prescribes that relevant organizations shall not indemnify any person claiming right in a property over any loss or damage suffered from the relevant organization taking over control or custody of the property.[60] This law is a direct confrontation to the settled principle of *Ubi Jus, Ibi remedium, a Latin phrase* that where there is right, there is a remedy.[61]

---

[54] Section 59, POCA
[55] Section 60, POCA
[56] Section 61, POCA.
[57] A relevant organization is also empowered to destroy/dispose of properties subject to an order of forfeiture on grounds of public interest, health or safety or to avoid deterioration and loss. It shall however give notice of imminent destruction/disposal to the defendant who may object to the destruction in writing within a period of 14 days from the date of notice. See Section 62 (1) –(3) POCA.
[58] See Section 28 (1) (b), 29 (2) and 32, POCA.
[59] See Section 78, POCA
[60] See Sections. 66, POCA
[61] Blacks Law Dictionary, 6th edn, West Law Publishing 1990, 1520.

4. Money Laundering (Prevention And Prohibition) Act 2022

The Money Laundering (Prevention and Prohibition) Act, 2022 establishes a robust legal basis for the seizure and temporary restraint of assets suspected to be proceeds of corruption and other unlawful activities. Under section 7, where a transaction is deemed suspicious, particularly, where it lacks economic justification, is inconsistent with known transaction patterns, or is linked to criminal activity. In such cases, the Nigerian Financial Intelligence Unit (NFIU), the Economic and Financial Crimes Commission (EFCC), or other competent authorities may direct that the transaction be reported immediately. Upon receipt of such a report, the authorities are empowered to issue a stop order deferring the transaction for up to seventy-two hours, and where the source of funds cannot be ascertained within that period, to apply to the Federal High Court for an order blocking the funds, accounts, or securities concerned (Money Laundering (Prevention and Prohibition) Act, 2022, s. 7(6)–(8)). These provisions function as a preventive mechanism, ensuring that suspected corrupt assets are preserved and insulated from dissipation pending investigation or prosecution.

Beyond provisional seizure, the Act provides a clear statutory foundation for conviction-based forfeiture of corrupt assets following a successful prosecution for money laundering or related offences. Section 18 criminalises the concealment, conversion, transfer, acquisition, or possession of proceeds of unlawful acts, including corruption, bribery, fraud, and tax crimes, whether committed within or outside Nigeria, and thereby establishes the substantive offence upon which forfeiture proceedings may lawfully be anchored. Upon conviction, individuals are liable to terms of imprisonment and fines of not less than five times the value of the illicit proceeds, while corporate bodies attract equivalent financial penalties alongside possible regulatory sanctions such as licence suspension or withdrawal (Money Laundering (Prevention and Prohibition) Act, 2022, s. 18(3)–(5)). These penal consequences operate in tandem with forfeiture orders, ensuring that conviction for money laundering results not merely in punishment of the offender but also in the permanent deprivation of the economic benefits of corruption.

This approach aligns with international best practices which emphasise asset deprivation as a core objective of anti-corruption enforcement, while reinforcing the principle that criminal liability must first be established before permanent confiscation of property can occur under the conviction-based model. Furthermore, the Money Laundering (Prevention and Prohibition) Act, 2022 performs a crucial predicate-offence function within Nigeria's civil asset forfeiture regime. By defining a broad spectrum of "unlawful acts" and criminalising dealings in their

proceeds, the Act supplies the underlying offences upon which applications for forfeiture may be founded under other statutory frameworks, notably the *Advance Fee Fraud and Other Fraud Related Offences Act, 2007* and the *Proceeds of Crime (Recovery and Management) Act, 2022*. In this way, the Act not only creates substantive criminal liability but also integrates into the evolving non-conviction-based asset recovery framework by furnishing the substantive and procedural legal basis upon which forfeiture orders may be initiated, granted, and enforced under complementary legislative regimes.This provision directly addresses a critical weakness that has plagued Nigeria's non-conviction-based forfeiture jurisprudence which is the failure to demonstrate that the res was indeed proceeds of unlawful activities. This evidential gap was the Achilles heel in *Melrose General Services Ltd v. EFCC & Ors*[62], where the Supreme Court set aside the final forfeiture orders made by the Federal High Court on the ground that the prosecution failed to demonstrate, on the balance of probabilities, that the res fell within the intractable web of proceeds of unlawful activities.

II. Regional Conventions

African Union Convention On Preventing And Combating Corruption(AUCPCC)

The African Union Convention on Preventing and Combating Corruption, adopted in 2003 and ratified by Nigeria in 2006, reinforces regional solidarity in fighting corruption. This Convention recognizes that African nations face unique challenges and must work together to address them. The Convention is a cornerstone regional instrument aimed at addressing corruption and facilitating asset recovery across Africa. Adopted in 2003 and in force since 2006, Nigeria's ratification in 2007 imposes binding international obligations to prevent, detect, punish, and eradicate corruption, including the recovery and repatriation of illicit assets.[63]

Nigeria operates a dualist constitutional framework, under Section 12(1) of the 1999 Constitution (as amended), which requires treaties to be domesticated by legislation before acquiring the force of law.[64] The Supreme Court's decision in *Abacha v. Fawehinmi* confirms that unincorporated treaties are not directly enforceable domestically, although they may guide interpretation and create legitimate expectations.[65]

---

62 (2024) LPELR-62733(SC)

63 African Union, *African Union Convention on Preventing and Combating Corruption*, adopted 11 July 2003, entered into force 5 August 2006. Available at: https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption

64 Federal Republic of Nigeria, *Constitution of the Federal Republic of Nigeria 1999 (as amended)*, s.12(1).

65 *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 (SC).

Notwithstanding the absence of specific domestication of the AUCPCC, Nigeria remains bound at the international level under the Vienna Convention on the Law of Treaties, particularly the principles of *pacta sunt servanda* (Article 26) and the prohibition against reliance on domestic law to justify treaty non-performance (Article 27).[66] Consequently, Nigeria's obligations under the AUCPCC must be fulfilled through existing or complementary domestic legislation.

Article XVI of the AUCPCC establishes a robust asset recovery mandate, requiring State Parties to empower authorities to trace, freeze, seize, confiscate, and repatriate proceeds and instrumentalities of corruption.[67] Crucially, the Convention supports asset recovery independent of criminal conviction, allowing seizure and transfer of corrupt assets even where extradition is impossible due to death, disappearance, or escape of suspects.[68] Article XIX further reinforces international cooperation by encouraging measures to freeze foreign assets of corrupt officials and facilitate repatriation.

The AUCPCC forms part of Nigeria's legal and policy framework for forfeiture of corrupt assets primarily through harmonization rather than direct incorporation. Nigeria's ratification in 2007, while not conferring automatic domestic legal effect due to constitutional dualism under Section 12(1), establishes binding international obligations and provides the normative foundation for comprehensive domestic legislation. The AU Convention also stresses accountability and transparency in the management of recovered assets to ensure they are used to benefit the public. This regional treaty has strengthened Nigeria's ties with neighbouring countries in tackling cross-border corruption cases, emphasizing the need for unity in eradicating the scourge of corruption from the continent.

III. International Protocols And Covenants

United Nations Convention Against Corruption

The United Nations Convention against Corruption (UNCAC), adopted in 2003 and ratified by Nigeria in 2004, stands as a beacon of hope in the global fight against corruption. It provides a comprehensive approach to addressing corruption through prevention, law enforcement, and asset recovery. It establishes a framework for recovering assets obtained through corruption, tracing, freezing and confiscating funds through corruption. The United Nations Convention

[66] United Nations, *Vienna Convention on the Law of Treaties*, 1969, Articles 26 and 27.
[67] African Union Convention on Preventing and Combating Corruption, Article XVI (Confiscation and Seizure of the Proceeds and Instrumentalities of Corruption).
[68] fn.

against Corruption[69] which prescribes states that all member states domesticate a law that regulates the measures used by law enforcement and adequate authority to trace, seize, and freeze proceeds of crime.

What makes UNCAC truly transformative is its emphasis on asset recovery, detailed in Articles 51-59. UNCAC, adopted by the UN General Assembly in October 2003 and entering into force on 14th December 2005, constitutes the only universal, legally binding multilateral treaty devoted entirely to corruption. With 190 States Parties representing near-universal ratification, UNCAC provides the most comprehensive international framework for combating corruption. The Convention is structured around **four core pillars**: prevention, criminalization and law enforcement, international cooperation, and asset recovery.[70]

Prevention Measures (Chapter II, Articles 5–14)

Chapter II of the United Nations Convention against Corruption (UNCAC) establishes a comprehensive preventive framework requiring States Parties to adopt coordinated anti-corruption policies that promote the rule of law, transparency, and accountability.[71] It mandates the creation of independent anti-corruption bodies with sufficient autonomy and resources.[72] The Chapter promotes integrity in the public sector through merit-based recruitment, adequate remuneration, training on corruption risks, and transparency in political financing.[73] It further encourages ethical governance through codes of conduct for public officials, asset declaration regimes, and whistleblower protection mechanisms.[74] Transparent and competitive public procurement systems, effective public financial management, and robust auditing standards are also required.[75] Notably, the Convention extends preventive obligations to the private sector by imposing enhanced accounting and auditing requirements, promoting beneficial ownership transparency, and prohibiting fraudulent practices such as off-the-books accounts and false documentation.[76] In addition, it provides for comprehensive anti-money laundering

[69] Article 31, UNCAC
[70] United Nations. (2004). *United Nations Convention against Corruption.* Adopted by the General Assembly on 31 October 2003, entered into force 14 December 2005. United Nations Office on Drugs and Crime. Available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf
[71] UNCAC, art. 5.
[72] UNCAC, art. 6.
[73] UNCAC, art. 7.
[74] UNCAC, art. 8.
[75] UNCAC, art. 9.
[76] UNCAC, art. 12.

frameworks, including customer due diligence, suspicious transaction reporting, and the establishment of Financial Intelligence Units.[77]

Criminalization and Law Enforcement (Chapter III, Articles 15–42)

Chapter III of UNCAC establishes comprehensive criminalization and enforcement obligations requiring States Parties to criminalize core corruption offences, including bribery of national public officials, embezzlement and misappropriation of public funds, and money laundering of proceeds of corruption.[78] States Parties are further encouraged to criminalize bribery of foreign public officials, trading in influence, abuse of functions, and illicit enrichment, defined as a substantial increase in a public official's assets that cannot be reasonably explained by lawful income.[79] The Convention also extends criminal liability to the private sector by addressing bribery and embezzlement involving private entities.[80]

To ensure effective enforcement, States Parties are required to establish liability of legal persons for corruption offences, whether criminal, civil, or administrative.[81] The Convention mandates the imposition of effective, proportionate, and dissuasive sanctions, together with robust mechanisms for freezing, seizure, and confiscation of proceeds and instrumentalities of corruption.[82] It further requires the protection of witnesses, victims, and reporting persons, thereby strengthening investigative capacity and safeguarding the integrity of anti-corruption proceedings.[83]

International Cooperation (Chapter IV, Articles 43–50)

Chapter IV provides an extensive framework for international cooperation in corruption-related matters, recognising the transnational nature of corruption offences. It establishes extradition obligations based on the principle of aut dedere aut judicare (extradite or prosecute) and mandates States Parties to afford one another the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings.[84] Significantly, the Convention prohibits refusal of mutual legal assistance on the ground of bank secrecy, reinforcing transparency and aligning with regional and domestic anti-money laundering regimes.[85]

---

[77] UNCAC, art. 14.
[78] UNCAC, arts. 15, 17, and 23.
[79] UNCAC, arts. 16, 18, 19, and 20.
[80] UNCAC, arts. 21 and 22.
[81] UNCAC, art. 26.
[82] UNCAC, arts. 30 and 31.
[83] UNCAC, arts. 32 and 33; UNODC Legislative Guide.
[84] UNCAC, arts. 44 and 46(1).
[85] UNCAC, art. 46(8); AUCPCC art. XVII; Money Laundering (Prevention and Prohibition) Act 2011 (Nigeria), s. 13(4).

Additional cooperation mechanisms include the transfer of criminal proceedings, direct law enforcement cooperation, joint investigations, and the use of special investigative techniques such as controlled delivery and electronic surveillance.[86]

Implementation Review Mechanism

The Implementation Review Mechanism (IRM) of the United Nations Convention against Corruption was established by the Conference of the States Parties (CoSP) at its third session held in Doha in November 2009 to assess and promote effective implementation of the Convention by States Parties.[87] The Mechanism operates through successive five-year review cycles and is based on a peer review process in which each State Party is reviewed by two other States Parties selected by lot.[88] The review process involves a desk-based examination of a self-assessment checklist completed by the State under review, optional country visits or joint meetings, and the preparation of detailed country review reports, typically ranging from 80 to 300 pages, alongside shorter executive summaries of approximately 7 to 12 pages.[89] The first review cycle (2010–2015) focused on criminalization and law enforcement as well as international cooperation, while the second cycle (2015–2020) examined preventive measures and asset recovery under the Convention.[90]

Nigeria has relied heavily on these principles in cases like the repatriation of the 'Abacha loot, where funds stashed in foreign accounts by the late General Sani Abacha were recovered with the help of international partners under UNCAC guidelines. Moreover, UNCAC advocates for mutual legal assistance and the establishment of specialized anti-corruption bodies, principles that have shaped Nigeria's anti-corruption institutions and legal reforms.

3.1. INSTITUTIONAL AGENCIES FOR ASSETS FORFEITURE

1. Independent Corrupt Practices And Other Related Offences Commission (ICPC)

Over the years, there have been several attempts by former leaders of Nigeria to curb corruption through several initiatives.[91] However, the establishment of ICPC gave impetus to anti-

[86] UNCAC, arts. 47–50; UNODC Technical Guide.

[87] United Nations Convention against Corruption, Conference of the States Parties, *Resolution 3/1: Review Mechanism* (Doha, 2009).

[88] UNCAC CoSP, *Terms of Reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption*, paras. 16–19.

[89] United Nations Office on Drugs and Crime (UNODC), *Mechanism for the Review of Implementation of the United Nations Convention against Corruption: Basic Documents*.

[90] UNODC, *Implementation Review Mechanism: Background Information*; UNCAC CoSP, *Implementation Review Group Reports* (First and Second Review Cycles).

[91] These initiatives included General Olusegun Obasanjo's Jaji Declaration of 1977; President Shehu Shagari's Ethical Revolution 1981; General Muhammadu Buhari's War Against Indiscipline 1984; the National Orientation Movement of 1986; General Badamasi Babangida's Mass Mobilization for Social Justice and

corruption fight by paying attention to illegally acquired assets forfeiture and related matters. The major force behind the creation of this body was the stigma Nigeria faced internationally as a result of the corrupt practices and the unethical ways Nigeria and its citizens portrayed themselves.

This commission aims to eliminate or significantly reduce corruption in Nigeria by implementing preventive measures. Section 6 mandates it take reports from the public alleging corruption, investigate and, if necessary, prosecute, punish the culprits; confiscate illicitly acquired Assets; examine policies, practices, and processes used by government agencies, direct and supervise their evaluation if those policies or practices encourage corruption; as well as public education. Such property shall be removed from the custody or control of the person from whom it is seized and placed under the custody of such person or authority and at such place as an officer of the Commission may determine.

2. Economic And Financial Crimes Commission(EFCC)

The next institution which holds significant importance with regards to Assets Forfeiture is the Economic and Financial Crimes Commission. In a historical sense, the Commission was established in response to the urgent need to establish a special investigative body to look into economic and financial crimes in the latter half of the 1980s. Advance fee fraud was a serious problem at the time, and it had a severe impact on Nigeria. It is charged with responsibility of enforcing sundry economic & financial crimes.[92] In recent times the most prominent institutional development in anti-corruption and asset forfeiture and management would be in the Proceed of Crime (Recovery and Management) Act 2022.

Indeed, this Act is a huge milestone in Nigeria's fight against corruption. It aims to establish a strong institutional framework for the administration of the proceeds of crime, a non-conviction-based procedure for recovering corrupt funds. This Act has effectively put the existing legal institutions Nigeria to use to further drive enforcement of forfeiture laws.[93] The EFCC Act, 2004 established the Economic and Financial Crimes Commission (EFCC) as the primary institution responsible for investigating and prosecuting financial crimes in Nigeria. In

---

Economic Reconstruction of 1987; and Late General Sani Abacha's War Against Indiscipline and Corruption of 1996.

[92] EFCC | About us < https://www.efcc.gov.ng/efcc/about-us-new/the-establishment-act> Accessed on 20 August, 2023. The Commission is charged with the responsibility of enforcing the provisions of the Money Laundering Act 2004; 2003 No.7 1995 N0. 13, the Advance Fee Fraud and Other Fraud Related Offenses Act 1995; the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, as amended; The Banks and other Financial Institutions Act 1991, as amended; and Miscellaneous Offenses Act and other law or regulations relating to economic and financial crimes, including the Criminal code and Penal Code..

[93] Section 3, POCA

section 6, the Act outlines the Commission's powers to prevent, investigate, and prosecute economic and financial crimes, including asset tracing and recovery. Since its establishment, the EFCC has been instrumental in Nigeria's anti-corruption drive, recovering significant sums in assets domestically and internationally. The Act extensively covers the freezing of illicit assets in Nigeria.

The Act further stipulates that the chairman of EFCC or his delegate is to direct the bank or financial institution to provide details and documents regarding the account under investigation and halt any ongoing payments, or transactions which may include any bill of exchange.[94] It is pertinent to note that the provision of section 34(2) of the EFCC Act and section 37 of the ICPC Act has been given judicial interpretation in a number of cases and the consensus is that bank accounts of customers cannot be frozen by administrative bodies and agencies without a valid order of Court authorizing them to do so.

In *EFCC v. Uboh*,[95] the Court of Appeal of Nigeria held the view that a directive from the EFCC alone or any other law enforcement agency for that matter, to freeze a bank account of a suspect of economic crime or any other offence is illegal and void.[96] Whilst there is the need to strengthen the powers of security agencies in relation to asset tracing ,it must be borne in mind that such powers may be susceptible to abuse. It is on this basis that the courts have maintained such freezing order may only be obtained upon application to a competent Court putting forward material facts as to why freezing such assets may be desirable.

Recognizing tracing as key to the operations of the Commission, the EFCC Act prescribes in section 12 that mandatory establishment of the General and Assets Investigation Unit charged with investigation of assets and properties of persons arrested for committing any offence under this Act, identification and tracking of proceeds and properties involved in any offence under this Act and the forfeiture of such proceeds and properties to the Federal Government. However, beyond the above and the inherent powers of the Commission to conduct investigation and demand full disclosure/declaration of assets, the Act does not stipulate guidelines and procedures to be followed for proper tracing.[97] The persistent desire for a competent regulation

[94] Section 34(2), EFCC Act.
[95] (2022) LPELR-57968 (CA)
[96] *EFCC v. Global Formwork (Nig) Ltd & Ors* (2020) LPELR-51697(CA); GTB Plc v. Etuwewe & Anor (2021) LPELR-56768(CA)
[97] Section 28, EFCC Act

on Asset tracing led to enactment of the Money Laundering (Prevention and Prohibition) Act, 2022. Section 6 establishes reporting obligations.[98]

Proceeds of Crime & Recovery Management) Directorate

One of the most prominent breakthroughs in the institutional development for managing illicit assets forfeiture is the creation of the Proceeds of Crime Recovery & Management Management Directorate. It is a body saddled with the responsibility of overseeing and management of the proceeds of crime. This body was established by section 3 of the Proceeds of Crimes Act (POCA) 2022 and its major function is to supervise and oversee the database of forfeited assets, manage and regulate asset disposal, direct training on management of proceeds of crime. The Act established three main money laundering offences. Under Part 7are concealing, disguising, converting,transferring or removing criminal property. Section 327 deals with arranging or facilitating criminal property whilst section 328 is for acquiring, using or possessing criminal property.

The provisions of the Act is be enforced and administered by this Directorate which consists of the Economic and Financial Crimes Commission, Independent Corrupt Practices and Related Offences Commission, The Nigerian Police Force, the National Drug Law Enforcement Agency (NDLEA), and any more organizations that the Attorney General of the Federation may occasionally designate[99]. However, despite these developments there have been criticism as to why the Federal Government dropped its original proposal to create a Proceeds of Crime Agency to independently supervise and regulate the management and recovery of criminal proceeds. Furthermore, it is argued that by creating Proceeds of Crime Management Directorates under the guidance and supervision of the director of each relevant organization, the demand for transparency or checks and balances is negated. Therefore, rather than establishing a separate mechanism to oversee relevant institutions, the POCA Act gave

[98] It stipulates that a designated non-financial business and profession whose business involves cash transaction shall—(a) in the case of —(I) a new business, before commencement of the business ; and (ii) an existing business, within 3 months from the commencement of this Act, submit to the Special Control Unit against Money Laundering (SCUML), a declaration of its activities; (b) prior to any transaction involving a sum exceeding US$1,000 or its equivalent, identify the customer by requiring him to fill a standard data form and present his international passport, driving license, national identity card or such other document bearing his photograph as may be prescribed by the Special Control Unit Against Money Laundering (SCUML); and (c) record all transactions under this section in chronological order, indicating each customer's surname, forenames and address in a register numbered and forwarded to the SCUML.

[99] Section 58, POCA

the thumbs up to continuous self-regulation by key agencies—a practice that encourages fraud and corruption.[100]

Furthermore, Nigeria is signatory to the United Nations Convention against Corruption(UNCAC) 2003. It is an international treaty that aims to improve international collaboration in asset recovery and also mitigate, identify, and discourage overseas transfers of fraudulently procured assets. This treaty has extensively covered asset forfeiture and recovery. One of the novel interventions of this treaty is its Article 53 which allows for direct asset recovery, empowering a foreign state to file a civil lawsuit in a foreign country to prove ownership and legal title of property. Additionally, it implies that foreign states should be acknowledged as lawful proprietors and that courts ought to have the authority to award those damages or restitution[101]. Nigeria adopted the United Nations Convention against Corruption in 2004 and the Review Mechanism was created by the United Nations Convention against Corruption in 2009, which subjected Nigeria to two evaluations for its compliance with the Convention.[102]

3. Financial Action Task Force (FAFT)

The Financial Action Task Force (FATF), also known by its French name, *Groupe d'action financière* (GAFI), is an intergovernmental organisation founded in 1989 on the initiative of the G7[103] to develop policies to combat money laundering and to maintain certain interest. In 2001, its mandate was expanded to include terrorism financing.[104] The FATF comprises 38 member nations and several regional bodies, such as the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), of which Nigeria is a part.[105] The Financial Action Task Force (FATF) plays a pivotal role in shaping global standards for combating financial crimes, including corruption and money laundering. FATF's 40

---

[100] Chinelo Ogbozor Esq, Analysis of the Proceeds of Crime (Recovery And Management) Act 2022 being a paper delivered at the Rule of Law Development Foundation Webinar Series held on 23rd June, 2022 at the Conference Hall of J B Daudu & Co

[101] Article 53, UNCAC

[102] Lesotho and Montenegro conducted the inaugural assessment in 2014; Cote d'Ivoire and Myanmar conducted the second phase in 2019. There were an aggregate of 65 suggestions in the review reports between 2014 and 2019. The analysis discovered that Nigeria has advanced in enacting 51 of the 65 suggestions, with the asset recovery sector showing the most improvement. UN Civil Society Coalition, "Asset Recovery", <https://uncaccoalition.org/learn-more/asset-recovery/> Assessed 2 September, 2023.

[103] The Group of Seven (G7) is an intergovernmental political and economic forum consisting of Canada, France, Germany, Italy, Japan, the United Kingdom and the United States; additionally, the European Union (EU) is a "non-enumerated member". See https://en.wikipedia.org/wiki/United_Kingdom. Last accessed 2 January 2025.

[104] Usman W. Chohan, the FATF in the Global Financial Architecture: Challenges and Implications. *International, Transnational & Comparative Law Journal*, 1-21

[105] Samuel Ibrahim and Jane Aneubunwa, 'The Road to Full Compliance: Analyzing Nigeria's Progress Towards Meeting FATF Standards, *Business Day* (Lagos November 12 2024) 13

Recommendations, which are widely recognized as international best practices, have significantly influenced Nigeria's anti-corruption strategies.

Recommendation 4 specifically requires countries to implement mechanisms for tracing, freezing, and confiscating criminal proceeds. Nigeria's compliance with FATF guidelines has led to critical legislative advancements, such as the Money Laundering (Prevention and Prohibition) Act of 2022. It also emphasizes transparency in beneficial ownership, a measure aimed at unmasking individuals who hide stolen assets through complex corporate structures. This principle has enabled Nigerian authorities to pierce the veil of anonymity in high-profile cases.

4.1. JUDICIARY AND SPECIAL COURTS

The establishment of special courts under the 2015 Administration of Criminal Justice Act (ACJA) has expedited the prosecution of corruption cases, ensuring swift assets recovery. In a case where the forfeiture was made in furtherance or relation to criminal proceedings, where such person is discharged or acquitted by a Court of the offence, the Court may make an order of revocation or confirmation as the case may be, of an interim order made pursuant thereto and where such interim order is revoked by a Court all assets and properties of the person concerned shall be released to him by the Commission.[106] In other cases such as where there has been civil forfeiture, the provisions of relevant statutes are largely similar in that a person affected by an Order of interim or final forfeiture seeking to recover such property is required to file an application to a court of Competent jurisdiction stating grounds why the property ought not to have been forfeited. However, this is without prejudice to the right of the relevant authority to file an appeal against the order. The AFFA does not specifically state by when and by what means such an application should be made. However, a proper construction of section 17(2) leave no doubt that the High Court is empowered to entertain applications from aggrieved persons, corporate or financial institution in whose possession the property forfeited or sought to be forfeited is found or persons who may have interest in the property or claim ownership of the property to show cause why the property should not be forfeited to the Federal Government of Nigeria. The Courts have endorsed the view that such an application may be made to the Court on notice to the relevant agency supported by an Affidavit demonstrating that the subject property is not a proceeds of crime.[107]

---

[106] Section 33, EFCC Act

[107] See the unreported decisions of the Federal High Court in Suit No. FHC/ABJ/CS/938/2017 - *Usman Ibrahim v The Chairman, Economic and Financial Crimes Commission and Anor* delivered on 17th October 2023 and FHC/ABJ/CS/937/2017 - *Ibrahim Shehu Shema v The Chairman, Economic and Financial Crimes Commission*.

5.1 POLICY INITIATIVES

1. Mutual Legal Assistance Treaties (MLATs)

Mutual Legal Assistance Treaties[108] (MLATs) have proven to be an essential tool in Nigeria's arsenal for recovering stolen assets. For example, Nigeria has successfully leveraged MLATs in its agreements with the United States and the United Kingdom to recover stolen funds. The return of assets linked to Late General Sani Abacha's regime was facilitated through these treaties, demonstrating their effectiveness in overcoming jurisdictional barriers. [109] These treaties emphasize the importance of international cooperation in tackling corruption, serving as a reminder that no single country can fight corruption alone.

2. Stolen Asset Recovery Initiative (StAR)

The Stolen Asset Recovery Initiative (StAR), a joint program of the World Bank and the United Nations Office on Drugs and Crime (UNODC). It is dedicated to helping countries recover stolen wealth. StAR provides technical assistance and training to law enforcement agencies. It also advocates for transparency in the management of recovered assets, ensuring that the funds are channeled into developmental projects. Nigeria has worked closely with StAR on several high-profile cases, gaining access to expertise and international networks that have proven invaluable in recovering assets hidden in foreign jurisdictions[110].

6.1 CONCLUSION

This paper has interrogated the forfeiture regime in Nigeria. It submits that the enactment of the Proceeds of Crime Act, 2022 is a huge milestone for Nigeria especially its fight against corruption especially with the entrenchment of a comprehensive framework for civil forfeiture. The Act bolstered the impetus of section 17 of the Advanced Fee Fraud Act which was the forerunner of civil forfeiture in Nigeria. In civil forfeiture, the proceedings are directed against the suspected properties as against the suspected persons. This has helped to defeat objections to forfeiture proceedings of the presumption of innocence. Notwithstanding the laudable provisions in the Proceeds of Crime Act, 2022, this paper found that several provisions in the

---

[108] A mutual legal assistance treaty (MLAT) is an agreement between two or more countries for the purpose of gathering and exchanging information in an effort to enforce public or criminal laws. In relation to assets forfeiture, these agreements allow countries to share evidence, trace funds, and enforce asset recovery across borders.

[109] Ekundayo Oluwaremilekun Babatunde and Mutiat Mobolanle Abdulsalam, 'Towards Attaining Sustainable Development Goals in a Fantastically Corrupt World: Issues in International Legal Framework on Mutual Legal Assistance for Recovery of Proceeds of Corruption and the Nigerian Act', [2021] (Vol.12 No.3) *Beijing Law Review, 700*

[110] Press Release on UNODC Stolen Asset Recovery Initiative, Published May 28, 2019, <https://www.efcc,gov.ng/efcc/news-and-information/news/release/4335-efcc-commends-world-bank-unodc-stolen-asset-recovery-initiative> Accessed on 20 September 2024

Act are susceptible to abuse leading to constitutional infractions in the forfeiture process, particularly, the right to fair hearing under section 36 of the Constitution. Furthermore, the research found that the imputation of a legal requirement that a defendant is to prove that the monies in his possession are not derived from illegal activities places the burden of proof on the defendant rather than the prosecution.

7.1 RECOMMENDATIONS

(i) An order of interim forfeiture of property under section 17(1) of the Advance Fee Fraud Act cannot be validly granted as a matter of course. The requirement of reasonable suspicion stipulated under the Act is that the suspicion should not be baseless or whimsical or less than reasonable.

(ii) Prosecutorial agencies who apply for forfeiture order must adduce evidence of circumstances including information available from investigation that justify or provide reasonable basis for suspecting that the property is proceed of an activity that is made unlawful by the provisions of any of the legislation listed in S.17(1). The reasonableness of the suspicion is determined by whether the circumstances suggest the breach of any of the provisions in the statutes listed in S.17(1).

(iii) If the applicant fails to adduce such evidence that show that the suspicion is reasonable, then the application for an order of interim forfeiture of property made pursuant to S.17(3) of the said Act should be refused.

(iv) Courts must remain mindful of settled law to the effect that expropriatory statutes which encroach on a person's proprietary rights must be construed *fortissime contra preferentes,* that is, strictly against the acquiring authority but sympathetically in favour of the citizen whose property rights are being deprived.

(v) This paper found that there is no legislation at this material time which makes ownership or possession of unexplained wealth unlawful. In other words, there is nothing in the Advance Fee Fraud Act, Proceeds of Crime Act or any Legislation in Nigeria that stipulates that a forfeiture order can be made forfeiting the property of a person on the ground that he is living above his or her known means of income or that the property is disproportionate to his known legitimate earnings and requiring such person to explain its source or forfeit it to the State. It will help the fight against corruption if such a legislation is enacted by the National Assembly. It is recommend that the Proceeds of Crime Act, 2022 be further amended by inclusion of provisions similar to those contained in the Unexplained Wealth Act of the United Kingdom.

(vi) The Nigerian government and prosecuting agencies must be mindful that forfeiture proceedings is not a debt recovery or contract enforcement mechanism. In other words, the Advance Fee Fraud Act, Proceeds of Crime Act and similar legislation must not be abused by using the legal processes that violate the provisions of S.44(1) of the 1999 CFRN.

(vii) This paper recommends that an independent organization set up for the enforcement and management of the Proceeds of Crimes Act so as to ensure that its mandate is upheld and there is accountability and transparency in the system. To ensure this accountability the agency should publish publicly on its website a schedule of proceedings, status and their outcome as well as schedule of any asset confiscated and the amount that was confiscated. The Nigerian Government must also give account of what the money is being used for to prevent re-looting of forfeited properties.