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# The Repatriated Ibori Loot and the Claim of Ownership by the Federal Government and the Counter-Claim by the Delta State Government: On whose side is Law and Equity?

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## Abstract

One of the Holy books has the record of the experience of a corrupt tax collector who, upon an encounter with the Savior, admitted to his guilt of the crime of corruption and offered to restore in four folds whatever he had taken unjustly from his victims as a demonstration of restorative justice. Justice is said to be a three-way traffic-justice for the defendant accused of a heinous crime; justice for the victim of the crime and finally justice for society at large. Justice served without a reflection of the interest of these three beneficiaries will fail to meet the minimum threshold. The recent signing of a Memorandum of Understanding (MoU) between the Attorney-General of the Federation for the Federal Government of Nigeria and the Officials of the British Government to pave the way for the legitimate repatriation of part of the funds looted but forfeited, upon his conviction in the UK, by James Ibori, a former Governor of Delta State, and his associates while in government, has generated so many comments from Lawyers, politicians, and analysts, all proffering various reasons why the funds, when repatriated, should either be held by the Federal Government or transferred to the Delta State Government. The validity of both arguments must derive legitimacy from the concept of ownership as recognized by law and equity as the highest interest or right a person can exercise, over anything capable of being owned, including resources. This right of ownership entitles the person, in whom it vests, the absolute power to utilize or apply the subject matter according to his or her whims and caprices, without any form of interference or hindrance from any quarters. It is in the light of the above that this paper seeks to add a perspective to the debate derived from the concept of ownership in law and equity.

**Keywords:** Restorative Justice and Criminal Cases

## 1. Introduction

Ownership as a right may be derived from custom, law or equity depending on the facts and circumstances of each case. It confers a legal right over the subject matter on the person it vests in. The Supreme Court in the case of *Hon. Francis Aluu Oko v Hon. Attorney-General of Ebonyi State* (2021) stated the nature of a legal right thus: 'A legal right is a right recognizable in law. It means a right recognized by law and capable of being enforced by the plaintiff. It is a right of a party recognized and protected by a rule of law, the violation of which would be a legal wrong done to the interest of the plaintiff, even though no action is taken. The determination of the

existence of a legal right is not whether the action will succeed at the trial but whether the action denotes such a right by reference to the enabling law in respect of the commencement of the action'. Sometimes both the law and equity may support a party's claim of ownership, in which case his exercise of the right is without qualification (absolute). There are also circumstances where law and equity in relation to a claim of ownership may not be on the same page or on the same person or entity (e.g. in cases of trust), in which case the legitimate exercise of the right becomes subject to the rule of priority as between the dictates of law and the demands of equity bearing in mind the facts and circumstances of each case.

The general rule of priority between a legal and an equitable right of ownership is that the legal right prevails and takes priority over the equitable right in the face of any conflict between the two, however, there are recognized exceptions to this general rule of priority where circumstances may permit an equitable right to defeat and prevail over a legal right in appropriate situations. The principle of 'proprietary estoppel' has this effect. The principle derives from the operation of estoppel by conduct, the effect of which has been restated by Ogunwumiju, JSC, in the recent case of *Bank of Industry Ltd v Ebenezer Obeya (2022)* as follows: 'I agree with the court below that where a representation intended to induce a course of conduct is made, an act or omission resulting from the representation will be to the disadvantage of the person who made such representation as a consequence of the act or omission'.

Once a legal right or interest over a thing is defeated by any equitable interest or consideration the legal right will then confer no recognizable or legally enforceable claim on the holder and the equitable right will override the legal right in such situations. These circumstances will be examined in greater details in the body of this paper.

The constitution, as the ground norm, recognizes and guarantees this right of ownership as well as puts in place mechanism for the enforcement of the right when violated or threatened. The various powers, duties, and responsibilities of both the Federal and State Government are well set out in the constitution. It has been stated that '[a] Constitution is usually the basic norm that establishes the organs and institutions of government, and thereby confers legitimacy on the exercise of governmental powers, establishes the organs and institutions of government, sets the scope and limits of governance and governmental powers, guarantees the basic fundamental rights of the citizens, and regulates the relationships between the organs and institutions of government among themselves, and with the citizens. The constitution is therefore not only the *fons et origo* for all other norms, but the "basic manual" for governmental exercise of powers in juxtaposition to the rights of the citizens, in a constitutional democracy. It is no longer just a "power map" of the society but also an instrument for addressing pressing social economic questions as well as "embodiment of consensus and constitutionalism"' (Shifji, 1988). The formula for sharing the revenue accruing to the Nation is equally provided for by the Constitution.

The ownership of any resources shared in line with the prescription of the Constitution between the tiers of government and the manner of application of each state's share by that State Government is not ordinarily subject to the control or directives of the Federal Government, provided there is in place a budgetary framework enabled by the appropriation Laws enacted by the respective States Houses of Assembly.

This state of affairs does not derogate from the power of the agencies of the Federal Government, in the exercise of their statutory and constitutional powers to intervene, vide the instrumentality of the existing anti-corruption bodies to ensure proper application of the funds in the manner appropriated by the Houses of Assembly of the various States and to properly assume control and ownership in situations of penalties or forfeiture<sup>1</sup>. Furthermore, the Federal Government can also intervene by reason of existing regulations, conventions and treaties it has with other Nations in a bid to tackle corruption in whatever form or guise.

There are legal instruments put in place to ensure that state actors who have access and control over state resources do not take advantage of their position of trust to plunder these resources. According to Sorace, & Torricelli, (2010) '[t]here are a variety of mechanism through which the government can be called to account for its policies, decisions and actions between elections. Such may, on the one hand, include external accountability mechanisms, such as legislative law-making procedures and oversight, judicial review/scrutiny in court, financial scrutiny by auditors, including queries from the office of the Auditor-General, and response to questions by the media, the public, political parties and politicians, and non-governmental organizations; and on the other hand, such internal accountability mechanism such as legislative frameworks and procedures for the

day-to-day business of government, hierarchical command and responsibility of civil and public servant/officers, administrative, adjudication procedures, and executive leadership and oversight over the administration among others'.<sup>2</sup> But where, in flagrant disobedience to these laws, a state actor unjustly enriches himself in abuse of his position of trust, as in the Ibori's case, there are laws that prescribe punishments for such corrupt practices.<sup>3</sup> These laws equally make provisions for how assets or funds recovered from such persons, after all due process of the law is complied with, should be applied. These legal structures emplaced by the law to prevent corruption by public officers are not insulated from the general inefficiencies and weaknesses that have undermined their capacities to deliver on their statutory mandates.

It is important to state that the trial and conviction leading to the forfeiture of the sum of money, which is the subject of the controversy between the Federal Government and the Delta State Government, was not under any local law in Nigeria. Therefore, the prescription of our local laws relating to how forfeitures of assets made pursuant to these Laws should be disposed may, arguably, be said to be inapplicable. For instance, the EFCC Act circumscribes the powers of the Attorney-General of the Federation to make rules and regulations relating to forfeited assets to those forfeited pursuant to the Act.

Nation States recognizing the devastating effects of corruption have collaborated to ensure that illicit financial advantages derived by politically exposed persons are not retained to the disadvantage of the country from where the dubious acquisitions were made. It is the manifestation of this collaborative effort that has led to the agreement by the British Government to repatriate the recovered proceeds of corrupt enrichment by James Ibori and his associates to Nigeria.

This paper examines the established principles of law and equity to conclude that the Delta state Government has sufficient basis, legal and equitable, to lay justifiable claim to the ownership of the repatriated funds.

## 2. Background

James Ibori was elected Governor of Delta State on the return of the country to democratic governance, on the platform of the Peoples Democratic Party (PDP), in 1999 for his first term and got reelected, on the same political platform in 2003 for a second term of four years. His electoral fortunes were despite the controversy surrounding his eligibility to contest on the ground that he was alleged to be an ex-convict by reason of his purported earlier trial and conviction by a Federal Capital territory, Upper Area Court, sitting in Bwari, in 1995.<sup>4</sup>

At the end of his tenure of office, the Economic and Financial Crimes Commission (EFCC) went after him on the allegation of corruption. He was charged and prosecuted for corrupt practices, but he picked his way through our criminal justice system and was eventually let off on technical grounds. He continued to enjoy his freedom until he found his way to Dubai from where the International network against criminals was activated leading to his arrest and with the support of the Federal Government of Nigeria, he was taken to the UK to answer for the corrupt practices he perpetrated in Nigeria and funneled the proceeds to locations in the UK against the British Laws, while he was in office as the Governor of Delta State.

At the conclusion of his trial he was convicted and sentenced to 13 years jail term for fraud and the looted fund and assets acquired from the proceeds of the corrupt practices were forfeited. During the trial the Federal Government was accused of not keeping to her obligation to render legal assistance to the UK Government, in breach of the provisions of the Mutual Legal Assistance Treaty. In a similar non-cooperative stance the Government of Delta state claimed that nothing was taking out of the fund meant for the State by James Ibori while he was the Governor.

He eventually served out his prison term and returned to a heroic welcome and reception by the people and Government of Delta State, who despite the order of forfeiture made against the fund and assets traced to James Ibori and his associates as proceeds of crime committed against the State, made no request or asserted any claim of entitlement to it, to the Federal Government of Nigeria or to the British authorities. This fact may constitute estoppel by conduct. The Supreme Court restated the application of this equitable doctrine in the case of, *Attorney- General, Rivers State v Attorney-General Akwa-Ibom State* (2011) as follows, ' the doctrine of

estoppels by conduct, though a common law principle has been enacted into our body of laws as section 151 of the Evidence Act. It is in these terms: when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and act upon such belief, neither he nor his representative in interest shall be allowed in any proceedings between himself and such person or person's representative in interest, to deny the truth of that thing... Also called estoppel in pais... forbids a person from leading his opponent from believing in and acting upon a state of affairs, only for the former to turn around and disclaim his act or omission. Both the common law and statutory law do not permit this conduct...'

In fact the present State actors were nudged on to the assert a claim to ownership of the forfeited fund by reason of the memorandum of understanding executed between the British authorities and the Nigerian Government, containing specifications as to when repatriation would be made and how the funds should be applied.

The above facts represent the basis for the agitation by the Delta State Government on the one hand and the Federal Government of Nigeria on the other with each side asserting its right to the fund.

### **3. Are Plateau and Bayelsa States Experiences Not Precedents?**

The very distinguished and erudite Femi Falana, SAN, has argued eloquently that the Plateau and Bayelsa States experiences when repatriated looted funds, retrieved vide the operations of the UK laws, were handed over to the officials of both States, are binding precedents upon which he argued in favour of the claim of entitlement by the Delta State Government over the funds<sup>5</sup>. He argued further that the signed Memorandum of Understanding cannot override the Constitutional prohibition against discrimination in the face of the similarity in the experiences of Plateau and Bayelsa States and that any variation in the treatment of Delta State will amount to discriminating against the Government and people of Delta State.

The Delta State Government is equally anchoring her demand for the fund on the basis of the precedents in Bayelsa and Plateau States. According to a statement credited to an official of the state '[t]here have been precedents. When such funds were recovered for Plateau and Bayelsa, they were given to the two States, so the same rule should apply in Delta's case'.

There is no doubt that the Bayelsa and Plateau States experiences share so many similarities with the present situation relating to Delta State. First the funds and assets were all trapped in the UK whose Government, in obedience to its obligation arising from the UN Convention, repatriated the funds to Nigeria.

Secondly, all the concerned actors from whom the funds and assets were confiscated were Governors within the same period, that is, 1999 to 2003. This makes it safe to conclude that the corrupt practices were perpetrated within the same period. They also won re-elections for their second terms in office as Governors in their respective States in 2003 under the same political party, the PDP. Furthermore, the PDP on whose platform they won and held offices as respective Governors of their States was the dominant political party at the Federal level as at that time.

Despite the above similarities there are some radical differences between the Plateau and Bayelsa States experiences. While the Joshua Dariye and DSP Alameyeseigha, the then Governors of Plateau and Bayelsa States respectively, fugitively returned to Nigeria after their arrest by the British authorities before proper commencement of criminal proceedings, leaving behind the assets and funds which were confiscated and later repatriated to Nigeria, James Ibori, on the other hand was arrested outside the UK but brought to that country where proper criminal processes were issued leading to a full trial, conviction, sentencing and forfeiture of the funds and assets recovered.

Furthermore, Joshua Dariye and DSP Alameyeseigha were both impeached following their inglorious escape to Nigeria after their arrest in the UK, James Ibori, on the other hand, served out his second term without suffering the same fate. The implication of the impeachment of both Dariye and Alameyeseigha are clear pointers to the fact that the constitutional machinery prescribed for the sanctioning of the nature of misconduct perpetrated by them was fully activated by the respective Houses of Assembly of Plateau and Bayelsa States. That is to say, the States never offered any form of support to their conduct. In the case of Ibori, even though the EFCC came after him following the expiration of his tenure of office, the Delta State Government mounted legal hurdles on the

way of the EFCC claiming that no money belonging to the Delta State Government was traceable to Ibori. That denial by the Delta State Government is the main plank of a counter-affidavit filed by the State against the trial of Ibori by the EFCC for allegedly offering a bribe of fifteen million US dollars to Nuhu Ribadu the then Chairman of the EFCC. The denial offered by the Delta State Government was absolute and without any form of qualification.

Another point to note is that the fact of the impeachments of Dariye and Alameyeseigha through the legitimate channel of the Houses of Assemblies of Plateau and Bayelsa was in a bid to remove the toga of immunity from them and leave them vulnerable to the application of all laws that sanction their conduct within and outside the country. This can be interpreted to mean lending support within the sphere of influence of their respective States apparatus to any punitive action initiated against them locally or on the International stage where the two states lack the competence to act.

The above factual analysis show that much as there are similarities in the Plateau and Bayelsa States experiences to support the argument of the learned silk, Femi Falana, supporting the claim of Delta State to the funds, there are equally very potent and radical distinctions as well, but utilitarian and other equitable considerations canvassed in this paper, we submit, are sufficient to justify the application of the Plateau and Bayelsa States experiences in the treatment of the present Delta State situation, as eloquently canvassed by the erudite Silk.

We shall now focus our attention on the position of the law and equity in the circumstances of the facts of this present case involving the looted funds by James Ibori and his associates that have been reportedly repatriated.

#### **4. Legal Ownership and Its Attributes in the Context of the Repatriated Ibori Loot**

The law has set a template for the way and manner resources accruing to the country are shared amongst the three tiers of Government in Nigeria. Once shared the various States have absolute control over how their resources are deployed. Other than the statutory disbursements to the States, Federal funds may get into state coffers for purposes of counterpart contribution to fund joint projects between the Federal and the States Government. These issues of joint projects funding are usually in the areas of the Universal Basic Education and the Primary Health Care sectors. Such counterpart funds provided by the Federal Government are managed by the States.

So, while it may be valid argument to postulate that all funds constituting the Delta State share from the Federation account belongs absolutely to the State Government, it will be fallacious to extend the same argument to such funds, in the coffers of the State, provided by the Federal Government to meet its obligation to counterpart funded projects between the Federal Government and the Delta State Government. Thus, the funds over which James Ibori superintended as then Governor of Delta State between 1999 and 2007 undoubtedly belong to the Delta State Government and, to the extent of counterpart contribution by the Federal Government for joint projects, to the Federal Government in trust for the execution of such projects.

In the context of the mixed-bag nature of the funds standing to the credit of the Delta State Government within the period under consideration, unless and until there is express evidence of sorting or complete exhaustion of such counterpart funds provided by the Federal Government within the period, also in the same coffers of the Delta State Government, it will be illogical to argue that all the funds available and accessible to James Ibori when he was in the saddle as Governor of Delta State, were all funds wholly belonging to the Delta State Government. But since there is no public record of any counter- part funded project, within the tenure of Ibori, that was abandoned and the Federal Government's discharged financial commitment embezzled, it is safe to argue that, *prima facie*, the looted funds were monies standing to the credit of Delta State Government.

There is also an argument that equates the repatriated funds to donor funds due to the fact that neither the Delta State Government nor the Federal Government was responsible for the prosecution of Ibori leading to his

conviction, and in any event the order of forfeiture was made in favour of the British Government and not the Federal Government nor the Delta State Government.

Prof. Ojukwu (2021), equating the repatriated funds to donor funds argued that Nigeria and not Delta State should take benefit of the fund and apply it strictly on the terms of the memorandum executed between the Federal Government and the British Government, stating further that any deviation from the agreed purpose for the return of the fund may give rise to some consequences. He states:

Donor funds must be utilized according to the donor's instructions, otherwise the donee runs the risk of a refund or blacklist from future donations. At the time of the agreement with the Federal Government, 4.2 million was not Nigeria's money or Delta State money but UK money.

While the argument may be correct, because the forfeiture order was made in favour of the British Government and not the Delta State Government or the Federal Government, it will, in our opinion, be unjust for the British Government to have retained the money when the real victim of the crime can be traced. The victim in this circumstance is the Delta State Government as there is no record of the ex-convict ever serving at the federal level of Government that would have exposed him to funds belonging to the Federal Government.

It is important to note that by the terms of the memorandum of understanding, the repatriated fund is meant to be applied towards the completion of the second Niger Bridge, Abuja-Kano road, and Lagos-Ibadan Express road. These projects clearly indicate the desire of the British Government to have the fund applied towards improving key infrastructure in Nigeria. This charitable inclination of the British Government could still be realized if the money if returned to Delta State Government to be specifically committed to key infrastructure like road, health care, education which will positively impact on the lives of the residents of the State.

## **5. Equitable Interest in the Fund**

The intervention of equity in appropriate cases to support a proprietary claim has been very well articulated in the following argument by, Webb, C. and Akkough, T. (2008):

'A proprietary claim is an assertion of some proprietary interest in an asset held by the defendant. In its most basic form it amounts to saying "that thing is mine". So, a claim that a particular asset in the defendant's hand is held on trust for you is equivalent to pointing to that asset and asserting that it is (beneficially, and in equity) yours. The courts give effect to that claim by recognizing your interest and allowing you to call for the defendant to transfer it to you. Anything that can be held on trust, i.e. anything the law recognizes as property, can be the subject matter of a proprietary claim. This therefore includes both tangible (e.g. cars, houses, notes and coins) and intangible (e.g. shares, bank accounts and other debts) assets.'

From the above it is clear that equity's ingenious device of trust can be applied in a number of different factual situations, as we seek to do in this paper. The learned authors, Keating and Sheridan, were quoted as stating the general nature of trust thus, '[a] trust... is the relationship which arises wherever a person called a trustee is compelled in equity to hold property... for the benefit of some persons ( of whom he may be one, and who are termed beneficiaries) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust'.

The trust dimension to this debate, no doubt, cannot be founded on any express trust anchored on the intention of the settlor, as there was never any such express intention on the part of either the Federal Government or the Delta State Government. But implied trust in the nature of constructive trust can be arguably invoked. The basis for the invocation of constructive trust, in appropriate situations, has been stated by Cardozo, J, in the case of *Beatty v Guggenheim Exploration Co (1919)*, as follows:

‘The constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee’.

It is possible to argue that in view of the earlier astute denial of any act of financial impropriety by Ibori, when he held office as Governor of Delta State, by the Delta State Government, constructive trust will not avail her. But the equitable concept of ‘proprietary inertia’ may operate to negative the effect of that denial. Simon Gardner, explaining the effect of the concept of proprietary inertia, states, ‘whenever the transferor has not demonstrably chosen to give his property away and succeeded in doing so, he should remain its owner’<sup>6</sup>.

Gardner went on to give the following illustration of the possibility of constructive trust arising from proprietary inertia as follows:

‘The other situation in which constructive trust arises on account of proprietary inertia is where I transfer property to you unintentionally, but in circumstances where my intention is flawed, say because I acted mistakenly, or under duress or undue influence. The flawed quality of my intention is recognized by a rule allowing me to rescind the transfer, i.e. reverse its effect. If I do so, proprietary inertia logic becomes applicable, as the intention underpinning your acquisition of the property has now been removed. So, although you for the moment still hold the legal title to the transferred property, you hold it on constructive trust for me. And that trust appears to operate retrospectively, so that you are treated as having held it on trust for me from the outset’.

On the footing of the above it may be argued that the earlier denial of any financial impropriety or economic and financial crimes on the part of Ibori by the Delta State Government is predicated on political duress or undue influence which flawed the process and effect of the denial, thus making the application of proprietary inertia ideal in the circumstance.

The validity of this argument of constructive trust arising from proprietary inertia is reinforced by utilitarian considerations, which posits:

‘Utilitarianism demands a consideration of the question whether a trust does better than harm, and proposes that the settlor be permitted to make it if, but only if, the answer is yes. It is possible to be selective about the kinds of factors to be included in the calculus of good and harm, but at its widest it involves taking account, on the one side, of the general utility of according rights to private property, the more specific social advantages of the trust device in general, and more specifically still the benefits of the particular type of trust in question; and on the other, of any hurt done to the trust’s beneficiaries, to particular other people outside the trust, and to society in general’.

In this circumstance the social advantages that the people of Delta State stands to benefit (in terms of the provision of basic amenities of good health care delivery system, pipe borne water, basic school infrastructure, etc) from the imputation of constructive trust on the Federal Government, in relation to the repatriated looted funds, far outweigh any hurt or harm that may befall other Nigerians, in general, living in other parts of Nigeria, outside of Delta State, if the trust is imputed.

A Lawyer arguing in favour of Delta State Ownership of the repatriated funds canonically stated thus:

The starting point in analyzing this issue would be to identify the owner of the monies stolen and siphoned by the ex-Governor. Indeed, it is the owner of the stolen monies that is the victim of the theft and is entitled to the repatriated funds. See *David v Federal Republic of Nigeria* (2008) LPELR- 43679(CA).

In pointedly concluding that the ownership of the repatriated fund vest in the Delta State Government as trustee for the residents of Delta state, the Lawyer argued further that:



[a]nother way to view the issue is to answer the question, [h]ad the ex-Governor not embezzled, stolen or siphoned the monies, who would have taken benefit of the monies? Certainly, the monies would have been available to the benefit of the people of Delta State exclusively. It is my view therefore, that the repatriated funds be paid exclusively to the Delta State Government.

As we stated earlier justice is three-way traffic. The interest of the victim must never be compromised under any guise as doing so would amount to perpetuating injustice against him. Delta State been the victim here, must be properly restituted for the loss it suffered as a result of the criminal conduct of the ex-Governor.

## 6. Conclusion

The ownership of Delta State to her share of any fund distributed from the Federation Account is secured, guaranteed, and protected by the Constitution, which is the groundnorm. This right cannot be taken away by the provisions of the Economic and Financial Crimes Commission Act, the Money Laundering Prohibition Act or any other enactment. In the case of *Attorney-General of Abia State & Ors v Attorney-General of the Federation* (2002), the Supreme Court held: 'The Constitution is what is called the groundnorm and the fundamental law of the land. All other legislations in the land take their hierarchy from the provisions of the constitution. By the provisions of the constitution, the laws made by the National Assembly come next to the constitution; followed by those made by the House of Assembly of a State. By virtue of section 1(1) of the constitution, the provisions of the constitution take precedence over any law enacted by the National Assembly even though the National Assembly has the power to amend the constitution itself'.

The right of ownership constitutionally vested in Delta State Government, over resources accruing to it cannot validly be taken away under the guise of forfeiture. The peculiarity of this repatriated fund should give rise to a resulting trust in respect of the funds in favour of Delta State residents thereby occasioning a constructive trust on the Federal Government with respect to the fund.

Furthermore, the Delta State residents, as direct victims of the crime giving rise to the repatriated fund, deserve to be restituted in the provision of basic infrastructure much more than the Federal Government. This is particularly so in view of the popular maxim of equity that 'equity will not suffer a wrong to be without a remedy'.

Even if the money is to be properly viewed as donor fund to be administered or applied in line with the directive of the British Government in the manner stated in the memorandum of understanding, there is a proposed list of similar projects forwarded by the Delta State Government to the Federal Government, the listed projects are 'the Asaba-Illah-Ibaja Highway, the deplorable Benin-warri section of the East-West road and the Agbor-Abraka-Sapele Highway', that the fund can be directed towards for the benefit of residents of Delta State and other South-South States and not the Lagos-Ibadan Express way or any of the other projects stated in the memorandum of understanding that will have no direct impact or benefit to the people of Delta State.

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- At the global level there is the United Nations Convention against Corruption (UNCAC), which is a globally applicable anti-corruption treaty, Nigeria ratified this convention in December 2004. At the regional level there is the African Union Convention on Prevention and Combating Corruption (AUCPCC), Nigeria ratified this convention in September 2006. At the sub-regional level there is the Economic Community of West African States Protocol on the Fight against Corruption. ; See also, *The Asset Tracing, Recovery and Management Regulation, 2019* (which created the Federal Government of Nigeria Asset Recovery

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- S.120(2) CFRN; Dadem. Y.Y. (2013). *Managing Federal Finance: Constitutional Challenges of the Sovereign Investment Fund. Nigerian Law and Practice Journal*, 12,(p 217).
- S.162 CFRN
- S.44 (2) (b) CFRN, (which provide justification for compulsory acquisition of property by way of punishment, or forfeiture arising from any breach of law, civil or criminal).; S.30 Economic and Financial Crimes Commission( Establishment, etc) Act, 2004, which provides, ‘where a person is convicted of an offence under this Act, the Commission or any authorized officer shall apply to the court for the order of confiscation and forfeiture of the convicted person’s assets and properties acquired or obtained as a result of the crime subject to an interim order under this Act.
- S.6 CFRN
- See for instance 31(3) EFCC Act, which provides: ‘ where any part of the property included in a final order is money in a bank account or in the possession of any person, the commission shall cause a copy of the order to be produced and served on the manager or any person in control of the head office or branch of the bank concerned and the manager or person shall forthwith pay over the money to the commission without any further assurance than this Act and the commission shall pay the money received into the Consolidated Revenue Account of the Federation’.
- See S.43 of the 1999 constitution of the Federal Republic of Nigeria,1999 (hereinafter referred to as ‘CFRN’)
- See the case of *Attorney-General of Abia State & Ors v Attorney-General of the Federation* (2002) 6 NWLR (pt.763) p.264 at 479-480 where the Supreme Court held: ‘The Constitution is what is called the groundnorm and the fundamental law of the land. All other legislations in the land take their hierarchy from the provisions of the constitution. By the provisions of the constitution, the laws made by the National Assembly come next to the constitution; followed by those made by the House of Assembly of a State. By virtue of section1(1) of the constitution, the provisions of the constitution take precedence over any law enacted by the National Assembly even though the National Assembly has the power to amend the constitution itself’.
- See the various oaths provided for in the 7<sup>th</sup> schedule to the CFRN; see also the prescribed code of conduct for public officers contained in the 5<sup>th</sup> schedule to the CFRN; Sorace, D. and Torricelli, A. *Monitoring and Guidance in the Administration of Public Contracts*. In Noguellou, R. and Stelkens, U.(Eds) (2010) *Comparative Law on Public Contracts* (pp 212-213) cited in O. Oyewo, O. *op cit* n.3. pp 17-18; see also Ss. 88 and 128 CFRN.
- Shivji, I.(1998).Problems of Constitution-Making as a Consensus-Building: The Tanzanian Experience. In O. Sichone (Ed), *The State and Constitutionalism in Southern Africa* (SAPS Books, Harare, 1998) cited in O. Oyewo, Law, Democratisation and Social Change in Nigeria, O. Oyewo and E. Ojomo (Eds),(2012) *Law, Democratisation and Social Change*, NALT Conference Proceedings, 2012., p. 43 ( Stating that, ‘ [a] Constitution is usually the basic norm that establishes the organs and institutions of government, and thereby confers legitimacy on the exercise of governmental powers, establishes the organs and institutions of government, sets the scope and limits of governance and governmental powers, guarantees the basic fundamental rights of the citizens, and regulates the relationships between the organs and institutions of government among themselves, and with the citizens. The constitution is therefore not only the *fons et origo* for all other norms, but the “basic manual” for governmental exercise of powers in juxtaposition to the rights of the citizens, in a constitutional democracy. It is no longer just a “power map” of the society but

also an instrument for addressing pressing social economic questions as well as “embodiment of consensus and constitutionalism”)

*The Guardian Newspaper* (2012, April 17) Former Nigeria State Governor James Ibori Receives 13-year Sentence. < available at <https://www.theguardian.com/global-development/2012/apr/17/nigeria-governor-james-ibori-sentenced>> retrieved on 9 August 2022

*The Guardian Newspaper* (2009, December 18) Court Clears Ibori of Graft Charges, EFCC Kicks.< available at <https://guardian.ng/news/nigeria/national/court-clears-ibori-of-graft-charges-efcc-kicks/>> retrieved on 9 August 2022.

The Money Laundering (Prohibition) Act, 2011.; S. 46 Economic and Financial Crimes Commission Act, which defines ‘Economic and financial crimes’ as follows: ‘... the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited good, etc.’ Independent Corrupt Practices Commission Act.

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Webb, C & Akkough, T *Trusts Laws*, (Palgrave Macmillan, New York 2008) pp. 358-359.

Wikipedia. (2021, August 17) <https://en.m.wikipedia.org/wiki/jamesibori>

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