



## Nigerian proceeds of crime act, 2022: Accountability deficit on recovered proceeds of crimes

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### Abstract

Corruption is a deeply rooted phenomenon that constitutes a strong hindrance to the realisation of developmental goals and the general wellbeing of democracy. Though a global issue, corruption varies in intensity, sophistication, and forms, from country to country and has been described as a global devil that has devoided [sic] human intelligibility in its social context. Nigeria is not exempted and overtime, has established her own share of specialised institutions or agencies with enabling laws. A major lacuna in the country's fight against corruption however, has being the lack of a known and transparent framework for public accountability of recovered proceeds of corruption and the utilisation and expending of recovered proceeds. The Proceeds of Crimes (Recovery and Management) Act, 2022, was expected to form the foundation for transparent accountability processes due to its projected novel accountability provisions. This work therefore, examined the provisions of the Proceeds of Crime Act on accountability, and concluded that the provisions though laudable, yet, they appear more like pouring of 'old wines in new wine skins'.

**Keywords:** corruption, accountability, proceeds of corruption, Nigeria

### Introduction

The discovery of oil rather than being a blessing to Nigeria has become a malediction because; it is the main driver of corruption in Nigeria. The elites (political, religious and ethnic) together with their cronies' profits from the black gold while the other segments wallow in the after effects of oil exploration and its environmental hazards and the systemic failure of lack of basic amenities. It is widely accepted that the practice of corruption permeates the Nigerian social structure and political landscape. And the purpose of corruption is mainly to siphon money from the State, which takes the forms of rent seeking, bribery, embezzlement, cheating, and favouritism (nepotism) amongst others. While the underlining intention, is to amass personal wealth, capture and preserve power (electoral position, political fame, and judicial influence). Corruption in Nigeria is however not restricted to the political class or elites. It is visible and identifiable among the 'lowly and the 'high' such that it is either related to the norm of the people or assessed through the disposition of the political class in the abuse of power, position and misappropriation of national wealth belonging to the State that could have been used for developmental purposes.

Conversely, the poor will often not complain, keeping mute or 'suffering and smiling' in the words of Fela Anikulapo Kuti because, the proceeds of corruption trickles down to him from the elites by reason of his tribal, religious or family ties and often will chant the mantra of 'wait for your turn' or 'it is our turn (awa lo'kun)'.

The negative implication of corruption and its handwriting is palpable: identification of the country with unemployment, inflation, poverty, underdevelopment, insecurity, illiteracy, and hunger among others. The average Nigerian, has lost value and face (to use a local parlance) and also lost faith in the government's mantra of fighting corruption because, the anti corruption agencies (ACAs) in Nigeria, appear compromised and have failed to responsibly account for proceeds of corruption recovered so far<sup>[1]</sup>.

The ACAs' were set up with the sole mandate of tackling corruption and its ancillary vices but the question that presently agitates the mind of an average Nigerian and the international community, is how has the proceeds of corruption so far recovered, been harnessed to the benefit of the nation and relevant governmental organs and components that were disadvantaged by it on the one hand, and the citizens; where origins of recovered proceeds are traceable to private individuals? The Proceeds of Crimes (Recovery and Management) Act, 2022 which is the most recent piece of legislation in Nigeria's drive to curtail corruption, with its touted novel accountability provisions, have come into force and this work therefore, seeks to examine the provisions of the Act on accountability. My conclusion is that that there are no clear provisions for holding the relevant organisations and other relevant entities accountable in carrying out the responsibilities conferred by the Act. The provisions therefore, appear more to be a case of 'old wines in new wine skins'.

### Corruption

There are divergent views on what should constitute the exact definition of corruption. The reason for this is not far-fetched. As noted by Kana<sup>[2]</sup>, corruption wears multiple appearances and covers multifarious acts or omissions. It has also been said that what is considered to be corruption depends largely on the actors, the initiators, the profiteers and the manner by which or the place where it occurs<sup>[3]</sup>. Corroborating the above assertion, Aluko postulates that corruption actually covers a wide and multifaceted array of phenomena, of which, political corruption is only a part<sup>[4]</sup>. According to the Black's Law Dictionary, corruption is "*Depravity, pervasion, or taint; an impairment of integrity, virtue, or moral principle...a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others; an act carried out with the intent of giving some advantage inconsistent with official duty and the rights of others*"<sup>[5]</sup>.

The Independent Corrupt Practices and Other Related Offences Act <sup>[6]</sup>, defines corruption to “include bribery, fraud and other related offences while, the World Bank defined corruption as “the abuse of public power for private benefit.” <sup>[7]</sup>.

However the definitions one gives to corruption, it is incontrovertible that corruption across the world is comparable to an endemic, which has an alarming record of ascendancy. As stated by Wraith and Simpkins, corruption has been with societies throughout history <sup>[8]</sup>.

In Nigeria, there appear no significant improvements in the fight against corruption <sup>[9]</sup>. Studies suggest that public funds of between US\$300 and US\$400 billion have been lost to corruption since Nigeria gained independence in 1960 <sup>[10]</sup>. And in support of the above studies, the Economic and Financial Crimes Commission (EFCC), noted that about \$20 trillion was stolen from government coffers by public office holders between 1960 and 2005 <sup>[11]</sup>. An estimate of what has been stolen from 2006 till date is better left unimagined.

There is a strong view that cases of corruption and money laundering are not punished in Nigeria, due to the fact that most high-profile corruption cases remained inconclusive <sup>[12]</sup>. For instance, between 2003 and 2011, the Economic and Financial Crimes Commission prosecuted only 35 high-level political figures for corruption. While figures in the EFCC Operational Statistics for 2010 – 2019, shows that 73,948 petitions were received in the given period. Out of which, 5,767 were filed in court with 2,544 convictions <sup>[13]</sup>.

### Public Accountability

Ordinarily, accountability means that a person or an official who has been assigned duties should be held responsible for his actions and the corresponding consequences <sup>[14]</sup>. Akinseye-George defined accountability as the obligation of public officers and institutions, to submit their activities to scrutiny by the members of the public and by the organs and institutions of government detailed to carry out such scrutiny <sup>[15]</sup>. According to Takaya <sup>[16]</sup>, accountability may be regarded as an official (sic) personal obligation to perform activities or duties, which have been assigned to him, and to be responsible for the outcomes or results.

In defining public accountability, Meyer views it as the obligation of those entrusted with public resources to be socially and fiscally responsible <sup>[17]</sup>. He noted that accountability is one of the elements of good governance. Others include rule of law, efficiency, legitimacy and transparency.

Public accountability can therefore be regarded as the system whereby public officers are obliged to give account of their stewardship to the public.

The significance of accountability in the public sector in Nigeria cannot be over emphasised because, aside the imperative to eradicate or curb waste of resources, a graver danger is the perceived on going re-looting of recovered proceeds of corruption by relevant agencies of government and their officials.

The lower chamber of the Nigerian National Assembly in 2021 set up an ad hoc committee to investigate the status of looted funds recovered from 2002 to 2020 and their disbursements <sup>[18]</sup>. The revelations before the committee were mind boggling; ranging from ‘borrowing’ of looted funds to discrepancies among other infractions in the remittances to the Central Bank of recovered funds by the Accountant-General of the Federation’s office <sup>[19]</sup>.

### Proceeds

The Black’s Law Dictionary defines proceeds as “the value of land, goods, or investments when converted into money; the amount of money received from a sale” <sup>[20]</sup>. This definition qualifies as a general definition but the term ‘proceeds’ when dealing with corruption, goes deeper and encompasses any asset that was acquired by corrupt practices or corrupt means. It has thus, been defined as “assets of any kind corporeal or incorporeal, movable or immovable, tangible or intangible and any document or legal instrument evidencing title to or interests in such assets acquired as a result of an act of corruption” <sup>[21]</sup>.

### The Proceeds of Crimes (Recovery and Management) Act, 2022

The rationale for the conceptualisation of the Proceeds of Crime Bill, 2014 was in the main, the need for a piece of legislation that would govern the recovery and management of proceeds of crime as well as the harmonisation and consolidation of all existing legislative frameworks on recovery of proceeds of crime and other related matters in Nigeria. Prior to the 2014 Bill, the Economic and Financial Crimes Commission (Establishment) Act, the Corrupt Practices and Other Related Offences Act <sup>[22]</sup>, the Code of Conduct Bureau and Tribunal Act <sup>[23]</sup>, among other laws, all contained provisions for penal forfeiture of crime proceeds. There was therefore, no comprehensive legal framework for the recovery and management of the proceeds of crimes and by extension corruption in Nigeria. Administration of forfeiture and the recovered proceeds of such forfeiture orders vested on varied agencies of government depending on the nature of crime and the powers conferred by their establishment Acts.

The Inter-Governmental Action Group Against Money Laundering (GIABA) was a main driver for the enactment of a standalone Asset Recovery and Confiscation Law in Nigeria capable of addressing the lack of uniformity in the legal framework <sup>[24]</sup>.

The Bill made elaborate provisions for the legal and institutional frameworks for the confiscation, seizure, forfeiture, recovery and management of assets or proceeds derived from unlawful activities; and instrumentalities used or intended to be used in the commission of unlawful activities.

A major highlight of the 2014 was the provision for the establishment of a new body to be known as the Proceeds of Crimes Recovery and Management Agency (the Agency) with power to administer the Act when passed into Law. The functions of the agency under section 101 were wide and encompassed functions conferred on several existing agencies such as the Economic and Financial Crimes Commission (EFCC) and the Independent and Corrupt Practices and other Related Offences Commission (ICPC).

The seventh National Assembly did not however, pass the Bill into law and after a tortuous journey it finally became Law, although not in its original version, on 12 May 2022 under the ninth National Assembly.

The Proceeds of Crime Act, 2022 (the Act), s. 3 empowers each ‘relevant organisation’ to enforce and administer the provisions of the Act and to establish a Proceeds of Crime (Management) Directorate.

Relevant organisation under the Act, is defined to mean the 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 of the Federation may designate.

The Proceeds of Crime (Management) Directorate in each of the listed relevant organisations is mandated to

1. Take over and assume responsibility for the proper and effective management of properties forfeited to the Federal Government of Nigeria,
2. Set standards to be applied in the handling of properties forfeited to the Federal Government of Nigeria,
3. Ensure accountability in the management of all properties forfeited to the Federal Government of Nigeria,
4. Ensure the effective administration of properties forfeited to the Federal Government of Nigeria,
5. Recommend training on the management of the proceeds of crime and related matters, and
6. Appoint private asset managers and ensure that the assets managers are properly bonded and insured;

In addition, the relevant organisation is to establish and maintain assets management and disposal systems, and lists of approved auctioneers and valuers, and issue instructions for the realisation or security of assets whilst ensuring fair process.

Each relevant organisation is to establish and maintain a central database of all seized and recovered assets by the relevant organisation, asset managers, auctioneers, insurers, and other necessary support services.

The relevant organisations are to work with the Federal Ministry of Justice, in collaboration with other government bodies outside Nigeria that are carrying similar functions, to negotiate the return and management of all assets seized from foreign countries on behalf of the Federal or State Governments, or any other victim or for the benefit of Nigerians as well as maintaining statistics of the amounts recovered and managed.

They are to maintain an accurate inventory of all assets, with records of their location, value, condition, and description of their status in relation to any proceedings before the Court.

Where proceeds have been recovered, the relevant Directorate would recommend reparations for the victims of crime, and carry out such other necessary or expedient functions as may be assigned to it by the head of the relevant organisation to ensure the efficient performance of its functions under the Act.

The Act by section 4, further confers on the relevant organisations power to execute contracts or other arrangements they considers necessary, to dispose assets subject to forfeiture order of a Court that are perishable or susceptible to deterioration, or which may be excessively burdensome or expensive to maintain or administer thereby reducing the recoverable amount, and to do anything they

considers appropriate for facilitating, or which is incidental to the performance of their functions.

By section 5 of the Act, a Directorate that is directly involved with a case, must be informed of any property seized in the course of investigation, within 14 days or soon thereafter for the purpose of documentation. And such Directorate is to take possession of the property subject to forfeiture order from any person or entity in possession or entitled to possession of the property, and may appoint a receiver for that purpose. Subject to specific orders of the Court, the affected Directorate is to transfer for its effective management any forfeited property within 30 days and all forfeited properties are vest in the relevant organisation for and on behalf of the Federal Government of Nigeria.

Section 6 of the Act, requires the relevant organisations to synergise with other 'relevant entities' that is, any other institution or authority not listed as relevant organisation, in the performance of their functions and exercise of their powers under the Act.

The above provisions of section 3 to 5 are quite laudable and may be effective in an ideal State of which, Nigeria is presently not. The visible change between the pre and post the Proceeds of Crime Act, 2022 era, is the presence of a single legal framework, which is the Act, for recovery and management of proceeds of crimes. The status quo ante has being maintained in all other respects, in that, it is still the same actors (the existing agencies now referred to as relevant organisations), whose functions one way or the other, touches on crime that are still on stage, with even more powerful garbs, under the Act. In my view, the multiplicity of relevant organisations appear to be a replay of the Nigeria patron-client corruption factor and therefore, portend a grave loophole for the continued perpetuation of the alleged vicious circle of recovery and re-looting in Nigeria.

A worrisome omission in the Act, is the obvious lack of provisions for an accountability process to which the relevant organisations and their Directorates must be subject, and also, the absence of an independent review process for decisions of the relevant organisations in their handling and management of recovered proceeds of crimes.

Section 68 deals with the Confiscated and Forfeited Properties Account to be domiciled at the Central Bank of Nigeria into which relevant organisations are to pay all moneys realised by reason of sales, management or any other form of disposal of assets under the Act or the Code of Code Bureau and Tribunal Act, or moneys repatriated to Nigeria by a foreign country, among others<sup>[25]</sup>. In the words of Lord Steyn, "it is a notorious fact that professional and habitual criminals frequently take steps to conceal their profits from crime. Effective but fair powers of confiscating the proceeds of crime are therefore essential"<sup>[26]</sup>. The provisions on confiscation and forfeiture as well as having a dedicated account for recovered proceeds of crimes are all in keeping with best practices. However, there is no stated formula or accounting processes in place under the Act, for auditing moneys recovered for instance, from the sales, management or any other form of disposal of assets by a relevant organisation to ensure that what is declared, represents a true inventory of assets or moneys that were confiscated or forfeited. The Act confers so much discretion on the relevant organisations and Directorates.

There are also no safeguards against arbitrary use of these provisions for purposes of personal, political or tribal

vendettas by the relevant organisations' officials or the government. Although, by section 78 an aggrieved person or body has the right to institute a civil action against a relevant organisation, but the duration that such a case will usually take through the courts, the nature of the assets confiscated or forfeited as well as the management of those assets by the relevant organisation, may render a plaintiff's victory, if gotten, worthless.

### Conclusion

Corruption, as can be seen from this work is clearly visible in our day-to-day lives in Nigeria. But it is a demon that can be cast out with the appropriate instruments together with the collective will of both the ruled and the rulers. The four pillars identified as a guide against corruption in Singapore, include the foundation of the political will to weed out corruption, passing 'effective laws', having an independent judiciary, effective enforcement mechanisms and a responsive public service<sup>[27]</sup>. The enactment of more laws is not the problem in Nigeria but the 'how' that is, the transparency and the motive or drive behind the enactments' and the implementation process. The Proceeds of Crimes (Recovery and Management) Act, 2022 is a laudable piece of legislation that was projected to be our Uhuru in safeguarding the tracing and recovering of proceeds of crimes more particularly, proceeds of corruption. However, the intended purpose seems defeated as a result of lack of political will, rivalry among the various agencies now known as relevant organisations whose operations the law intended to harmonise for a more effective synergy, as well as underlying personal, religious and tribal sentiments or interests.

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