

**OFFICIAL
DOCUMENTS**

MEMORANDUM OF UNDERSTANDING

AMONG

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA,

THE SWISS FEDERAL COUNCIL

AND

THE INTERNATIONAL DEVELOPMENT ASSOCIATION

**ON THE RETURN, MONITORING AND MANAGEMENT OF ILLEGALLY-ACQUIRED
ASSETS CONFISCATED BY SWITZERLAND TO BE RESTITUTED TO THE
FEDERAL REPUBLIC OF NIGERIA**

PREAMBLE

Whereas the Government of the Federal Republic of Nigeria and the Swiss Federal Council (hereinafter called the "Governments");

Welcoming the excellent cooperation in the fight against corruption at domestic and international levels;

Recalling their long-lasting partnership and pioneering role in asset-recovery that is based on the principles of national interest, trust and mutual respect;

Appreciating that pursuant to the partnership between the two countries, an approximate sum of Seven Hundred Twenty-Three Million United States Dollars (USD 723,000,000) which was illicitly acquired by the late General Sani Abacha family, was restituted to the Federal Republic of Nigeria in 2005 by Switzerland, in cooperation with the International Development Association (hereinafter called the "World Bank") which provided the necessary institutional support to ensure the sustainable use of the restituted funds;

Welcoming the fact that approximately Three Hundred Twenty-One Million United States Dollars (USD 321,000,000) of funds illicitly acquired by the late General Sani Abacha family, initially deposited in Luxembourg and confiscated by the Judiciary Office of the Public Prosecutor of the Republic and Canton of Geneva pursuant to a Forfeiture Order dated 11th December, 2014 can today be restituted to the Federal Government of Nigeria, (hereinafter called the "Funds");

Recalling the Letter of Intent signed by the Parties on 8th March, 2016 in Abuja, Nigeria, and confirming that this restitution contributes significantly to the implementation of social programs for the benefit of the Nigerian people and is carried out in an efficient and accountable way, subject to a monitoring framework by the World Bank;

Recalling and aware of the need for the international community to develop good practices on asset return, as stipulated in Article 25 of the Addis Ababa Action Agenda, as well as of the need to undertake the restitution in a transparent and accountable manner that satisfies the scrutiny of civil society organizations and the international community;

Recalling Goal 16 of the 2030 Agenda for Sustainable Development that highlights corruption as one of the main factors preventing a supportive and sustainable socio-economic development;

Considering Chapter V of the United Nations Convention against Corruption (hereinafter called the "Convention") that is the international legal framework in the field of asset recovery;

Referring to Article 51 of the Convention that provides that States Parties shall afford one another the widest measure of cooperation and assistance in this regard;

Referring to Article 57, paragraph 5 of the Convention, which provides that State Parties may also give special consideration to concluding agreements on mutually acceptable arrangements on a case-by-case basis for the final disposal of confiscated property;

Whereas the Governments have agreed that the Funds shall be used to support a program of Targeted Cash Transfers (as hereinafter defined) under the National Social Safety Net Project (the "Project") to be financed by a credit (the "IDA Credit") extended by the International Development Association (hereinafter the "World Bank") pursuant to the Financing Agreement dated January 27, 2017 between the Federal Republic of Nigeria and the World Bank (as it may be amended from time to time, the "Financing Agreement"), which is publicly available on the World Bank website;

Whereas by letter dated April 3, 2017, the Public Prosecutor of the Republic and Canton of Geneva confirmed that the World Bank's customary monitoring in its operations would be sufficient for purposes of the aforementioned Forfeiture Order; and

Whereas at the request of the Governments, the World Bank (and collectively with the Governments, the "Parties") has agreed to carry out the monitoring and other activities as set forth below;

Now, therefore, the Parties hereto agree as follows:

ARTICLE 1 GENERAL PRINCIPLES

1. The Parties confirm their intention to maintain a fruitful cooperation based on trust and respect in order to enable a transparent and efficient restitution of the Funds for the benefit of the people of Nigeria.
2. As foreseen in the aforementioned forfeiture order, the return of the Funds to Nigeria is conditioned on confirmation that the World Bank shall monitor the use of the Funds.
3. The implementation of this Memorandum of Understanding by the Parties shall be guided by the principles of ethics, mutual respect and cooperation.
4. The Parties shall maintain regular exchanges and engage constructively in carrying out their respective activities under this Memorandum of Understanding.

ARTICLE 2
SCOPE OF COOPERATION

1. The scope of this Memorandum of Understanding is to define the mechanisms for the return of the Funds to the Federal Government of Nigeria for the benefit of the people of Nigeria as well as the monitoring of the Funds by the World Bank.
2. The Funds shall be utilized by the Federal Government of Nigeria exclusively for the purpose of financing Targeted Cash Transfers, as defined in the Financing Agreement.

ARTICLE 3
COMPETENT AUTHORITIES

1. The Competent Authority for the Government of the Federal Republic of Nigeria shall be the Honorable Attorney General of the Federation and Minister of Justice.
2. The Competent Authority for the Swiss Federal Council shall be the Head of the Federal Department of Foreign Affairs or a person designated by him for such purpose.
3. The Competent Authority for the World Bank shall be the Country Director for Nigeria.

For purposes of this Article 3, the term "Competent Authority" means the representative of each Party duly authorized to sign this Memorandum of Understanding.

ARTICLE 4
IMPLEMENTING AUTHORITIES

1. For the Government of the Federal Republic of Nigeria, the National Cash Transfer Office (NCTO) shall be the implementing authority for this Memorandum of Understanding.
2. For the Swiss Federal Council, the Swiss Agency for Development and Cooperation (SDC) shall be the implementing authority for this Memorandum of Understanding.

ARTICLE 5
MONITORING AND IMPLEMENTATION OF THE PROJECT

1. The World Bank undertakes to:

- a. monitor the use of the Funds deposited in or disbursed from the Naira Designated Account (as hereinafter defined) in the same manner as it monitors the use of the IDA Credit;
 - b. review Financial Reports (as hereinafter defined) upon receipt from the Federal Government of Nigeria, and forward the same to SDC, together with any comments by the Bank on issues arising in such reports; and
 - c. provide the SDC with copies of the implementation status and support reports (ISRs) and aide-memories prepared by the World Bank setting out the results of its semi-annual implementation support missions for the Project.
2. The Federal Government of Nigeria undertakes to use the Funds in accordance with the provisions of the Financing Agreement, *mutatis mutandis*. To such end, the Federal Government of Nigeria shall:
- a. carry out activities financed by the Funds in accordance with the Project Implementation Manual (as defined in Section I.B of Schedule 2 to the Financing Agreement);
 - b. ensure that the activities financed by the Funds are carried out in accordance with the provisions of the Anti-Corruption Guidelines (as defined in the Financing Agreement);
 - c. ensure that the Targeted Cash Transfers financed by the Funds are carried out in accordance with Section I.E of Schedule 2 to the Financing Agreement;
 - d. include as a separate line item the anticipated use of the Funds in the annual work plans and budgets for the Project submitted to the World Bank in accordance with Section I.E of Schedule 2 (Targeted Cash Transfers) to the Financing Agreement;
 - e. observe its obligations under Section I.D (Safeguards) of Schedule 2 to the Financing Agreement with respect to any activity financed by the Funds;
 - f. ensure that the Project Reports (as defined in the Financing Agreement) required by Section II.A of Schedule 2 to the Financing Agreement cover activities financed by the Funds; and
 - g. ensure that the uses of the Funds are included, on both an aggregated and disaggregated basis, in the financial reports and statements required by Section II.B of Schedule 2 to the Financing Agreement ("Financial Reports").

ARTICLE 6
INCLUSION OF CIVIL SOCIETY ORGANIZATIONS

The Federal Government of Nigeria shall engage, under modalities and terms of reference agreed by the Parties, civil society organizations (CSO) to participate in the monitoring of Targeted Cash Transfers where the Funds will be applied. Neither this engagement nor the monitoring activities of CSOs will create any financial obligations on the part of the Parties under this Memorandum of Understanding.

ARTICLE 7
INFORMATION SHARING

1. The Swiss Federal Council shall have access to all Project related documents at any time.
2. The Project documents and reports shall be published on the website of the Government of the Federal Republic of Nigeria.
3. Notwithstanding the foregoing, access to and disclosure of documents and reports in the possession of the World Bank are subject to its policies on access to information.

ARTICLE 8
TRANSFER OF THE FUNDS TO THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

1. The Swiss Federal Council shall transfer the Funds (including accrued interest) to an account (the "Dollar Designated Account") denominated in US Dollars held by Government of the Federal Republic of Nigeria at the Bank for International Settlements (BIS).
2. The Swiss Federal Council shall transfer the Funds within two weeks after the entry into force of this Memorandum of Understanding into the Dollar Designated Account in accordance with written information provided by the Federal Government of Nigeria setting out the details of said account (e.g., name, number, holder and purpose).

ARTICLE 9
DISBURSEMENTS

1. Disbursements out of the Dollar Designated Account shall be made exclusively into a separate designated account denominated in Naira (the "Naira Designated Account") established under the Project for the purpose of financing Targeted Cash Transfers.

2. Disbursements from the Dollar Designated Account into the Naira Designated Account shall be made every six months, commencing no later than two months after the entry into force of this Memorandum of Understanding, in amounts required to cover the Government of the Federal Republic of Nigeria's contribution to the Targeted Cash Transfers for the following six month period, as set out in projections agreed by the Government of the Federal Republic of Nigeria and the World Bank.

3. Disbursements from the Naira Designated Account will be subject to the same conditions of disbursement as apply to the IDA Credit under Section IV.B.1(c) of Schedule 2 to the Financing Agreement.

4. Unless otherwise agreed by the Federal Government of Nigeria and the World Bank, disbursement of the Funds and the IDA Credit will be made so that, for any given six-month period, they finance the Targeted Cash Transfers in a ratio between 80:20 and 90:10, respectively, during such period.

ARTICLE 10 RESPONSIBILITY

1. The Parties agree that the responsibility for the use of the Funds is with the Government of the Federal Republic of Nigeria. The World Bank assumes no liability or responsibility for the use of the Funds.

2. Should the World Bank determine that any amounts of the Funds were used to finance ineligible expenditures and notify the Governments to that effect, the Federal Government of Nigeria shall ensure that such amounts are promptly returned to the Naira Designated Account and take timely and appropriate corrective action (including, if applicable, actions foreseen in Article 13 below).

3. In carrying out the monitoring and other activities set forth in this Memorandum of Understanding, the World Bank will follow its applicable policies, procedures and practices, and exercise the same level of care as it customarily exercises in supervising its investment project financing (IPF) operations. Nevertheless, the Parties agree and understand that the World Bank will need to engage in some incremental activities in connection with this Memorandum of Understanding.

4. It is agreed and understood that neither the Federal Republic of Nigeria nor the World Bank can guarantee the success of the Project in meeting its development objectives.

5. Nothing in this Memorandum of Understanding shall constitute a limitation upon or waiver of the privileges and immunities of the World Bank or its officers, directors and employees, which are specifically reserved.

**ARTICLE 11
DISCLOSURE**

The disclosure of this Memorandum of Understanding and related documents will be made by each Party in accordance with their respective laws and/or policies on access to information.

**ARTICLE 12
COMMUNICATION**

The Parties will agree on, and abide by, an appropriate communications strategy with respect to return of the Funds and the other activities contemplated by this Memorandum of Understanding. Among other things, the Parties will liaise as appropriate about shared press lines and public statements in respect of the activities linked to the restitution prior to the release to the media or other external sources.

**ARTICLE 13
ANTI-CORRUPTION**

1. The Parties combine their efforts to fight against corruption in connection with the Project and assure that no offer, donation, payments, remuneration or advantage in any form whatsoever, considered as an illicit act or a form of corruption, has been or will be granted to anyone, directly or indirectly, with the aim of obtaining a benefit in the context of this Memorandum of Understanding.
2. Each Party agrees to inform the other Parties in the event that any credible allegation or other indication of fraud or corruption in connection with the Funds comes to its attention. The Federal Government of Nigeria shall:
 - (a) take timely and appropriate action to investigate such allegations or other indications;
 - (b) report regularly to SDC and the World Bank on the progress of such investigation and, promptly after its conclusion, on its findings and the actions the Federal Government of Nigeria intends to take in response to the findings; and
 - (c) in the event that the investigation substantiates that fraud or corruption has occurred, promptly return any affected Funds to the Naira Designated Account and take such other action as may be necessary or appropriate to remedy the damage caused by the fraudulent or corrupt act.
3. The World Bank reserves its rights under the Financing Agreement with respect to any such allegation or indication to the extent that it also involves the IDA Credit.

**ARTICLE 14
ENTRY INTO FORCE**

This Memorandum of Understanding shall enter into force upon the signature of this Memorandum of Understanding by the authorized representatives of the Parties.

**ARTICLE 15
SETTLEMENT OF DIFFERENCES**

Differences arising out of interpretation, operation and implementation of this Memorandum of Understanding shall be settled amicably through consultations among the Parties.

**ARTICLE 16
AMENDMENT OR CANCELLATION**

1. This Memorandum of Understanding may be amended at any time by mutual consent of the Parties. All such amendments shall be agreed upon in writing among the Parties.
2. In the event that the Project is cancelled, this Memorandum of Understanding will cease to have effect as of the date of cancellation. In such a case, the Governments shall agree on the use of the remaining Funds, and the Parties shall agree on monitoring arrangements in respect of such use under the conditions set forth in Article 1, paragraph 2.
3. In the event that the World Bank suspends its financing for Targeted Cash Transfers under the Financing Agreement (Category 6), the Federal Republic of Nigeria shall immediately suspend all disbursements out of the Naira Designated Account until such time as the World Bank lifts its suspension.
4. If the World Bank and the Federal Republic of Nigeria agree to restructure the Project, the Parties will consult in good faith as to the need to modify the arrangements set out in this Memorandum of Understanding and/or alternative uses of the Funds.


**Article 17
DURATION**

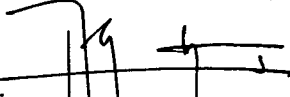
This Memorandum of Understanding shall remain in force until the amounts held in the Dollar Designated Account and the Naira Designated Account have been utilized for Eligible Expenditures under the Project.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Memorandum of Understanding in three (3) original texts, in the English language, each text being equally authentic.

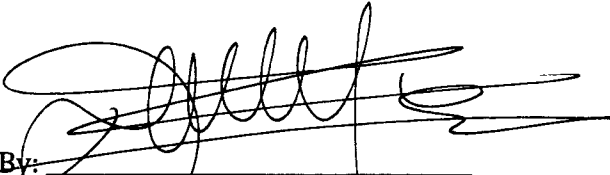
DONE at Washington D.C., United States of America on this 4th day of December 2017

GOVERNMENT OF THE REPUBLIC OF NIGERIA **SWISS FEDERAL COUNCIL**

By: 
Abubakar Malami
Attorney General of the Federation
and Minister of Justice

By: 
H.E. Amb. Roberto Balzaretto
Secretary of State and Director of
the Directorate of International Law

**INTERNATIONAL DEVELOPMENT
ASSOCIATION**

By: 
Rachid Benmessaoud
Country Director for Nigeria