



The African Center Blog Series – August 2023¹

ENGAGING THE NIGERIA CIVIL SOCIETY ORGANIZATIONS FOR AN EFFECTIVE IMPLEMENTATION OF THE PROCEEDS OF CRIME ACT 2022

INTRODUCTION

Recently the United Nations Office of Drugs and Crime (UNODC) met with civil society organizations (CSOs) in Nigeria to discuss their roles in ensuring the effective implementation of the Proceeds of Crime Act 2022. The African Center for Governance, Asset Recovery and Sustainable Development (the African Center) was represented by the Founder/Executive Director, Juliet Ibekaku-Nwagwu. In line with its mandate, the African Center, developed a framework setting out what should be considered by development partners that want to engage with CSO on the implementation of the POC Act.

The Proceeds of Crime (Recovery and Management) Act, 2022² was signed into law on 12th May 2022 by former President, Muhammed Buhari. The primary objectives of the Act are to create an institutional and regulatory framework for the handling of recovered proceeds of crime, as well as to enable relevant entities to work together to track down properties that are ostensibly linked to unlawful activities. It also provides for criminal and non-conviction-based procedures for forfeiture. The Act encompasses extensive rules for managing assets obtained through illegal

¹ Contributors: Juliet Ibekaku-Nwagwu, (Ph.D. in Law, Research Student, University of Sussex, UK), **Fellow, Compliance Institute of Nigeria (CIN)**, **Member, Association of Certified Anti-Money Laundering Specialists (ACAMS)**, and **Commonwealth Lawyers, Association (CLA)**, UK, Esther Agbaje, LL.B, B.L Member Compliance Institute of Nigeria (CIN), **Member, Commonwealth Lawyers, Association (CLA)**, Emmanuella OkonkwoAbutu, LL.B, B.L, Member, Institute of Chartered Conciliators and Mediators, Member, Compliance Institute of Nigeria (CIN), Abass Adekunle Alawode, LL.B.

² Proceeds of Crime (Recovery and Management) Act, 2022. Available at https://www.nfiu.gov.ng/Home/DownloadFile?filePath=C%3A%5CNFIU%5Cwwwroot%5Cdocuments%5CPOCp_SIP93U accessed on 28 August 2023.



activity and other connected issues, including their seizure, confiscation, forfeiture, and management.

DEFINITION OF PROCEEDS OF CRIME

The POC Act defines Proceeds to mean “property whether (a) wholly or partly derived, directly, or indirectly from an unlawful activity and (b) the property is situated within or outside Nigeria³.

The proceeds of stolen assets have also been defined to include the value (during and after its acquisition) of the property so acquired through the commission of the crime⁴.

To ensure that any asset reasonably believed to be the proceeds of criminal activity subject to confiscation or forfeiture in accordance with the law, the Act has stipulated for the involvement of some relevant stakeholders who are to facilitate the process of recovering assets.

These relevant stakeholders are addressed as the “relevant organization and other entities”. Section 1 (e) of the Act provides that the relevant organizations shall ensure the establishment of the Proceeds of Crime (Management) Directorate (the Directorate) to carry out the functions conferred on it under the Act. By virtue of section 82, the relevant organizations include but are not limited to the Economic and Financial Crime Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), National Drug Law Enforcement Agency (NDLEA), National Agency for Food and Drug Administration and Control (NAFDAC) and such other organizations as the Attorney General may designate⁵.

CIVIL SOCIETY ORGANISATIONS AS “OTHER RELEVANT ENTITIES?”

The definition of relevant organizations under the POC Act did not include Civil Society Organizations, however the African Center, argues that the interpretation of “other relevant

³ Section 82 of the POC Act 2022. This definition is in line with the Financial Action Task Force (FATF) and Article 2 (e) of the UN Convention Against Corruption 2003 definition.

⁴ Law Insider Dictionary, Proceeds of Crime Definition Available at <https://www.lawinsider.com/dictionary/proceeds-of-a-crime>. Accessed on 28th August 2023.

⁵ Section 82 of the POC Act 2022.



entities” under Section 6 of the POC Act includes any other institution or authority not listed as a relevant organization and that this could be extended to include “Civil Society Organizations.”

This argument finds its foundation in the provision of the Company and Allied Matters Act, 2020 that describes Civil Society Organizations (CSOs) as “entities” once they are registered as Incorporated Trustees by the Corporate Affairs Commission⁶ as well as the established international legal frameworks that have recognized the roles of CSOs in the United Nations Convention Against Corruption (UNCAC)⁷, the African Union Convention on Preventing and Combating Corruption (AUCPCC)⁸ and the Global Forum on Asset Recovery (GFAR) principles⁹ as part of the entities for the transparent management of proceeds of crime under relevant global and regional conventions and initiatives.

Article 13 of the UN Convention Against Corruption (UNCAC) states that

“Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as **civil society, non-governmental organizations and community-based organizations**, in the prevention of, and the fight against corruption and to

⁶ Dentons ACAS-Law Firm Blog Report (2020) – The CAMA 2020 and Civil Society Organizations, *Dentons ACAS-Law Firm Blog*, August 19th, 2020. Available at <https://www.dentonsacaslaw.com/en/insights/alerts/2020/august/19/the-cama-2020-and-civil-society-organisations> Accessed on 16th August 2023. Section 823 (1) and (2) of CAMA 2020 highlight the category of such organizations and by so doing, they become corporate bodies.

⁷ UN Convention Against Corruption, 2003 available at <https://www.unodc.org/unodc/en/treaties/CAC/> accessed on 28 August 2023

⁸ African Union Convention on Preventing and Combating Corruption (AUCPCC) available at <https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption> accessed on 28 August 2023

⁹ Global Forum on Asset Recovery Principles available at <https://star.worldbank.org/sites/default/files/the-gfar-principles.pdf> accessed on 25 August 2023



raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption”.

Article 12 of the African Union Convention on Preventing and Combating Corruption (AUCPCC) provides that:

- (a) “State Parties undertake to be fully engaged in the fight against corruption and related offences and the popularization of this Convention with the full participation of the media and Civil Society at large (b) to create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs; (c) Ensure and provide for the participation of Civil Society monitoring process and consult Civil Society in the implementation of this Convention; (d) Ensure the media is given access to information in cases of corruption and related offences, on condition that the dissemination of such information does not adversely affect the investigation process and the right to fair trial.

GFAR PRINCIPLES

At the Global Forum on Asset Recovery (GFAR), civil society's participation in the process of asset recovery was thoroughly examined and a set of global principles approved by State Parties and participating CSOs. The Global Forum of December 2017 which brought together four countries, namely, Nigeria, Sri-Lanka, Tunisia, and Ukraine, provided an opportunity for CSOs to participate in the discussions on the use of international recovered assets from these four countries¹⁰. The meeting was hosted by the United States of America, and the United Kingdom with support from the Stolen Asset Recovery (StAR) - a joint initiative of the World Bank and the United Nations Office on Drugs and Crime (UNODC). The civil society participation was led by

¹⁰ GFAR Civil Society Statement in 2017 available at <https://star.worldbank.org/sites/star/files/gfar-civil-society-statement.pdf> accessed on 28 August 2023



the UNCAC Coalition against Corruption¹¹. The GFAR objectives include (a) the need to reaffirm collective political will to strengthen international cooperation on asset recovery cases; (b) build capacity among practitioners; (c) make progress on ongoing asset recovery cases; and contribute to global thinking on the return and disposal of recovered assets back to the people that are harmed most by corruption¹². The Communique of the Washington 2017 meeting reiterated the principles of GFAR to include **ten principles, namely, Partnership, Mutual Interests, Early Dialogue, Transparency and Accountability, Beneficiaries, Strengthening Anti-Corruption and Development, Case Specific Treatment, Use of the Agreement framework set out under Article 57 (5) of UNCAC, Preclusion of benefits to Offenders, and Inclusion of Non-Government Stakeholders**¹³. With regard to the inclusion of non-state actors, Principle 10 re-emphasizes that “to the extent appropriate, and as permitted by law, individuals, and groups outside the public sector, such as civil society organizations, non-governmental organizations, and community based organization should be encouraged to take part in the asset return process, including by assisting in determining how harm might be remedied, contributing to the decisions on the return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets. These principles, thus reiterates the international legal basis for the inclusion of CSOs, and NGOs or CBOs in the ongoing dialogue for asset return and its social reuse¹⁴

¹¹ Information about the UNCAC Coalition is available here <https://uncaccoalition.org/about-us/about-the-coalition/> accessed on 28 August 2023

¹² Report of the International Expert Meeting on the return of stolen assets – “ADDIS II” 7-9 May 2019, Addis Ababa, Ethiopia available at https://www.unodc.org/documents/corruption/AddisEGM2019/Report_EGM_return_of_stolen_assets_Addis_II.pdf accessed on 28 August 2023

¹³ Communique of the Global Forum on Asset Recovery, Washington D.C. 4-6 December 2017 available at https://star.worldbank.org/sites/default/files/20171206_gfar_communique.pdf ACCESSED On 28th August 2023

¹⁴ UNCAC Coalition’s work in this area is an indication of the need for voiceless victims of corruption to be part of the negotiation of the use of stolen assets once returned.



Nigeria is one of the countries that have demonstrated in practical terms the involvement of CSOs in the recovery and management of proceeds of crimes in Nigeria. In 2017, the governments of Switzerland and the Federal Republic of Nigeria negotiated an asset return agreement for the return of approximately US\$322.5 million of the funds looted by Late General Sani Abacha with the mandate that the World Bank should work side by side with the civil society groups to ensure the proper disposal and management of the recovered funds¹⁵. A loose coalition of CSOs named Monitoring Transparency and Accountability in the Management of Returned Assets (MANTRA) was established to monitor the disbursement of the recovered funds coordinated by a Nigeria CSO, the Africa Network for Environment and Economic Justice (ANEEJ)¹⁶. Similarly, in 2020, the CLEEN Foundation was recruited through a competitive bidding process to monitor the project implemented under the Tripartite Agreement between FRN, USA, and Bailiwick of Jersey¹⁷.

In addition, the Nigerian Government signed a Memorandum of Understanding with the British Government¹⁸ to facilitate the return of stolen assets recovered from associates and families of

¹⁵ Memorandum Of Understanding Among the Government of The Federal Republic of Nigeria, The Swiss Federal Council, And the International Development Association (World Bank) On the Return, Monitoring and Management of Illegally Acquired Assets Confiscated by Switzerland to Be Restituted to The Federal Republic of Nigeria. Available at <https://www.justice.gov.ng/index.php/asset-recovery-documents>

¹⁶ Maguchu P. and Ghazi A. (2022) "The Role of Civil Society Organizations in Asset Recovery," Indonesian Journal of International Law: Vol. 19: No. 2, Article 5. Available at: <https://scholarhub.ui.ac.id/ijil/vol19/iss2/5> accessed on 16th August 2023. Also, Africa Network for Environment and Economic Justice Report (2019) The Disbursement of The Recovered \$322.5 Million Abacha Loot in Nigeria, AFRICA

¹⁷ CLEEN Foundation Report, (2022) Project sites. Available at <https://assetmonitoring.org/> See also Igoche E, Agabaidu C. and Ugwuala C (2020) Desk Research on The Proceeds of Crime Bill 2020 and Baseline Information on the Abacha III, 2020 asset Return Tripartite Agreement for African Network on Environment and Economic Justice (ANEEJ), Juliet Ibekaku-Nwagwu (2021) "International Asset Recovery Regime: Effectiveness and Challenges" available at https://www.academia.edu/85819181/International_Asset_Recovery_Regime_Effectiveness_and_Challenges" accessed on 28 August 2023

¹⁸ Memorandum of Understanding Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Federal Government of Nigeria on the modalities for the



James Ibori¹⁹, the former governor of Delta State while importantly stipulating that CSOs must be included in the monitoring of the recovered funds²⁰.

The above are significant milestones achieved in encouraging and mandating civil society organizations to be involved, directly or indirectly, in the recovery, disposal, and management processes of recovered assets in Nigeria. These cases present lessons that show that allowing CSOs to work with government in the monitoring of the use of returned assets at the domestic level will enhance the implementation of the Proceeds of Crime Act, 2022.

THE SPECIFIC ROLES OF CSOs TO ENSURE THE IMPLEMENTATION OF THE PROCEEDS OF CRIME ACT

From the analysis of the laws and practices set out above, it is appropriate to conclude that although the POC Act does not expressly mention CSOs as stakeholders in the implementation of the Act, however, it can be inferred that CSOs can assume the capacity of “other relevant entities” as provided under the Act to work together with the relevant organizations. Thus, the roles of the CSOs can be implied from the powers and roles of the relevant organizations and the directorate established under the Act, as well as roles already agreed within the UNCAC, AUCPCC and the GFAR principles.

return of stolen assets confiscated by the United Kingdom Annex in relation to first tranche of assets confiscated by the United Kingdom in relation to the former Governor of Delta State James Ibori and his associates. Available at <https://www.justice.gov.ng/index.php/asset-recovery-documents> Accessed on 30th November 2022 at 12:01pm

¹⁹ Elfredah Kevin-Alerechi (2021), The Ibori Loot: The Controversy Surrounding the Destination of the Returned Money at <https://cifar.eu/ibori-loot-the-controversy-surrounding-the-destination-of-the-returned-money/>

²⁰ United Kingdom Government, Return of Stolen Assets Confiscated by the UK: Agreement between the UK and Nigeria, Policy Paper (2021), available at <https://www.gov.uk/government/publications/return-of-stolen-assets-confiscated-by-the-uk-agreement-between-the-uk-and-nigeria> Paras 28–33 and schedule 5 of the agreement.



CSOs have crucial and decisive functions in all the stages of asset recovery and management. They can be involved in the following ways:

- **Awareness Creation:** CSOs aid to create effective awareness of the provisions of the Act. POC Act recently came into force in May 2022, therefore not many Nigerians are aware of or have sufficient knowledge about the content, objectives, and provisions of the law. To guarantee that the citizens are fully informed, CSOs can emphasize the value of recovering the proceeds of crime, disposing of them, and managing them through awareness campaigns. This would significantly enhance the understanding of the Act and its implementation by relevant authorities.
- **Advocacy:** Since the POC Act provides for the collaboration between relevant organizations and entities, CSOs can collaborate with other organizations to launch advocacy campaigns that can be geared towards reforming public policy, ensuring accountability on the part of the government, and demanding stronger prevention mechanisms against corruption and related crimes²¹. In order to ensure that the recovery and management processes adhere to the POCA's requirements, CSOs can act as monitors of government agencies. They can also advocate for the equitable distribution of these assets and the rights of marginalized communities.
- **Recovery and Management of the Confiscated Asset:** CSOs can monitor to ensure that confiscated assets are returned and disposed of in compliance with the provisions of the POC Act. They must effectively monitor the strategies used by the relevant organizations and participate in the management and disposal of confiscated assets. This is to ensure transparency and accountability. CSOs can also support legal actions and promote legal procedures and arrangements for managing assets²².

²¹ Ibid.

²² Sasa Dordevic (2022) Resilient Balkans: Social Re-use of Recovered Assets, Global Initiative Against Transnational Organized Crime report. March 2022. Available on



- **Monitoring the Use of Recovered Assets:** CSOs play a vital role in monitoring the re-use of recovered assets. Their active involvement and unbiased scrutiny ensure transparency and accountability in the asset recovery process. CSOs act as watchdogs, promoting good governance and pushing for effective asset management. They can ensure that recovered assets are used for intended purposes and benefit those who have been affected by corruption or other illicit practices.
- **Involvement in the Stages of Asset Recovery:** CSOs are crucial to the various phases of asset recovery and return. During the pre-investigative stage, they aid in gathering information, research reports and create awareness of the proceeds of crime. These reports aid the relevant organizations to initiate investigations. During the investigative stage, they can follow up and monitor the investigation and mount pressure on the prosecuting organization. For conviction-based recovery, CSOs can monitor court proceedings.²³

- **Drafting of Policy Documents**

CSOs can initiate dialogues with relevant organizations by drafting policy briefs that can be used as advocacy documents. These policy briefs can shape the conversation on the processes and procedures for the implementation of the POC Act. As discussed during the recent meeting between the CSOs and UNODC office in Nigeria, one of the policy briefs can be the drafting of a regulation or guidance notes on the various elements of the POC Act. This is an area that the African Center is poised to take the lead on and is already engaging with relevant organizations and other CSOs to coordinate comments and observations on an ongoing effort by the Federal Ministry of Justice to draft a regulatory framework as required under Section 81 of the POC Act.

<https://globalinitiative.net/wp-content/uploads/2022/02/GMFA-Social-Reuse-of-Confiscated-Assets-Eng.pdf> Accessed on 15th August 2023

²³ Sasa Dordevic (2022) Resilient Balkans: Social Re-use of Recovered Assets, Global Initiative Against Transnational Organized Crime report. March 2022. Available on <https://globalinitiative.net/wp-content/uploads/2022/02/GMFA-Social-Reuse-of-Confiscated-Assets-Eng.pdf> Accessed on 15th August 2023



CONCLUSION

There is no doubt that the Proceeds of Crime Act, 2022 gives room for the involvement of relevant stakeholders such as CSOs in its implementation to facilitate the process of recovering, disposing, and management of looted funds. The role, and capacity of the CSOs in the implementation of the Act cannot be overemphasized as it promotes and ensures strong accountability and transparency.