

Switzerland, Nigeria and the Repatriation of Looted Funds

Basic Details

In September 2005 in Washington DC (at World Bank HQ), the Nigerian and Swiss Governments signed an agreement for the repatriation of US\$458 million in stolen loot stashed by late Head of State, General Sani Abacha and his family in several banks in Switzerland. This represents about 90.7% of the total US\$505mn taken illegally out of the country to Switzerland.

In total, over US\$2bn has been identified as looted by General Abacha and stashed in foreign banks. Over US\$1.3bn was lodged in the UK alone and an estimated 150 banking institutions around the world were involved in the dictator's elaborate money laundering scheme (see figure 1)

In May 2005, the Swiss Government announced it would finally pay back the money based on a judgement by the Supreme Court. This however would happen in two stages with a first slice of US\$290million to be handed over immediately. The second would be contingent upon good performance under the "supervision deal" agreed with the World Bank (see below for further commentary on this point). The funds handed back to Nigeria are to be spent on health, education and infrastructure projects.

The return of these funds is one of the first cases of looted funds actually being repatriated, and can serve as an important legal precedent.¹ Shortly afterwards, the Nigerian Government announced recovery of US\$149million from accounts in Jersey.

To achieve recovery of the stolen loot, President Obasanjo liaised with the authorities in the countries in which the former dictator had stashed his loot in. They responded by freezing the accounts in which the stolen wealth was contained. For example, a British court ordered accounts belonging to the Abacha family in 19 London banks frozen. In May 2000, Luxembourg authorities at Nigeria's request confiscated 8 accounts totalling US\$620mn. Physical repatriation of these funds represented another matter however and Obasanjo was forced to threaten legal action against Switzerland. In the UK, the banks concerned were keen to emphasise a legal resolution to the problem.

The Swiss campaign lasted some five years before final resolution this year. Legal fees totalling US\$14million are to be deducted from final amount. The repatriation follows (and depended on) a large mobilisation by civil society groups in Nigeria and Switzerland, huge international and diplomatic efforts by the Nigerian President and Finance Minister, involvement of the Swiss Ambassador to Nigeria, significant public and parliamentary debate in Nigeria and Switzerland and the willingness of the Swiss Government and Swiss Supreme Court to act.

In separate efforts to obtain stolen loot, Obasanjo has also entered into an out of court settlement with the Abacha family under which Nigeria would recover US\$1.2bn in stolen

¹ US\$50million was repatriated in 1999 by Switzerland

funds while the Abacha family would retain US\$100mn. The family would also be assured freedom from further litigation in respect of the looted cash. This has provoked some resentment in Nigeria. One commentator remarked that the signal this sends is that *“with money you can take the laws into your hands and then use the money at your disposal to purchase your freedom”* Obasanjo described the decision *“as one of the hardest decisions I have had to take in my life”*.

Limitations of the deal

- **The deal strengthens the role of the World Bank**

The deal is tied to the PEMFAR (Public Expenditure Management and Financial Accountability Review). This review mechanism gives an important role to the World Bank and Swiss Government to monitor repatriated funds and ensure they are spent satisfactorily. According to the World Bank *“every effort will be made to ensure participation of civil society organisations in this work”*. World Bank President Wolfowitz has commented that he welcomes the supporting role the World Bank can play as *“facilitator and adviser”*. The danger is of course that the World Bank could steer priorities in the spending of the repatriated funds (rather than priorities being locally identified) as well as swallow up significant portions of this money in “expert” assistance and advice - not to mention the cost and administrative burden associated with the so-called PEMFAR system.

The time required to set up this monitoring system also caused delay to the repatriation of the stolen funds. Indeed, the repatriation of the US\$500mn had been factored into the government’s 2004 spending. It was then forced to issue treasury bills to cover the shortfall when the funds failed to arrive.

- **A significant number of necessary conditions need to be in place**

The repatriation of these stolen funds depended on a broad collaboration (over five years):

- Commitment of President Obasanjo to the issue: when he was voted to office, he declared that debt cancellation and repatriation of stolen funds would be key priorities. This created expectations among Nigerian citizens;
- Debate in National Assemblies of both countries concerned;
- (Eventually) the willingness of Swiss Government to act;²
- Involvement and favourable judgement of the Swiss Supreme Court;
- Mobilisation of Nigerian and Swiss civil society;
- Wider media interest and coverage.

² According to the Envoy to the Swiss Ambassador to Nigeria, *“Switzerland is open and committed to conducting an international dialogue at different levels, to developing relevant recommendations to deal with the question of the illegal assets of politically exposed persons, and to making the return of these funds established international practices”*. Obasanjo however had had to threaten Switzerland with legal action because it was dragging its heels.

Strategic questions for civil society

- **Ensuring repatriated funds are well spent**

The international community is making increasing noises about “good governance” in developing countries. The rhetoric we hear from Northern Governments is that we must ensure that donor/creditor/taxpayers funds are used judiciously and transparently and that robust public expenditure management systems need to be in place. This trend is also a feature of the debate on repatriation of stolen loot. The Swiss Government was only prepared to release funds on the guarantee that they would be used on development activities hence the monitoring arrangement agreed with the World Bank. These concerns are not the exclusive preserve of Northern Governments however. Some civil society groups in Nigeria were also demanding assurances that the money would not line the pockets of corrupt officials and that they would have a say in the projects that would be funded with the returned loot.

How should this be assured practically? In this case, a monitoring and review mechanism was put in place with a key role for the Swiss and the World Bank. This “solution” however may not seem ideal to many since it gives key leverage to already very powerful institutions and governments. The cash is also, after all, Nigeria’s and not the Bank’s.

Various proposals were put forward by civil society group in Nigeria. These include: trust funds; prior establishment of projects and budget for which the cash will be used; creation of an independent body to administer and monitor the funds; and memoranda of understanding.

Civil society groups must however be very clear in their message on this point – in the current political climate the focus on good governance and corruption is unlikely to go away even though many may view this as unfair. As one Nigerian commentator put it: *“the international community cannot sit on the fence and say the South are the corrupt guys, while they are prepared to stash the cash in their banks to develop their own capital markets”*. Obasanjo has said, *“the thief and the receiver of stolen items are guilty of the same offence, especially when the owner has made a good case to establish the ownership”*.

Other issues for consideration:

- Length of campaign: five years
- Cost: legal fees (US\$14million to be deducted from final amount in the case of Nigeria/Switzerland)
- Has the potential to compound image of “dictator debt” in North

Roles of N&S NGOs

- Support fact-finding and public awareness missions of eminent nationals of the country to promote stolen wealth campaign
- EU: Lobby European Parliament to pass a resolution calling on European banks to cooperate into investigations into stolen assets

- Pressure by Northern NGOs on their governments
- Debt audits to expose looted assets and promote their repatriation (creditor and debtor audits). Debt audits also have a role to play to promote exclusion of ECA debt cancellations from ODA figures (recent example of Nigeria with Paris Club)

Opportunities e.g. global political trends

There are some incentives to the international community to put in place mechanisms to facilitate the fight against international corruption and “terrorism”. For example, in the aftermath of September 11th, many banks relaxed their privacy policies to assist the tracking of “terrorist” flows of money.

Many N&S NGOs are also stepping up efforts to campaign on “odious” debt. The US also recently admitted that Iraq’s debt was in effect “odious”. At the moment however, the Paris Club is simply opting to cancel much of this debt rather than take on board arguments of odious debt. But the pressure from campaigners is unlikely to go away for the foreseeable future. Debt audits can have a very useful role in exposing individual illegitimate loans and thereby advance the broader doctrine of odious and illegitimate debt. Campaigners in the North can use freedom of information laws to obtain important documents in relation to specific loans – although export credit agreements do prove much harder to obtain due to commercial privacy laws – nevertheless it could be useful for Northern campaigners to focus on the loan portfolio of their country with two or three developing countries to really expose the reality.

Other country examples:

- Pakistan;
- Philippines;
- Zaire (DRC)

Table 1: banking institutions identified by Nigerian, US and European investigators as holders of stolen loot. Obasanjo sat on the list for some time before he did anything about it.

Australia and New Zealand Banking Group, ANZ, London branch
ANZ, New York
ANZ, Frankfurt
Bank in Liechtenstein A. G. Vaduz
Bank Len, Zurich
Bankers Trust Company, London
Bankers Trust Company, Frankfurt
Bankers Trust Company, New York
Banque Barring Brothers, Geneva
Barclays Bank, New York
Barclays Bank, London
Banque Edouard Constant, General
Banque Nationale De Paris, Geneva
Banque Nationale De Paris, London
Banque Nationale De Paris, Basle
Citibank N. A. London
Citibank N. A. New York
Citibank N. A. Luxembourg
Citibank Zurich
Credit Lyonnais , New York\
Credit Suisse , New York
Credit Suisse, General
Credit Suisse, Zurich
Deutsche Morgan Grenfell, Jersey
FIBI Bank (Schweiz) A. G. Zurich
First Bank of Boston , London
First Bank of Nigeria Plc, London
Goldman Sachs and Company, Zurich
Gothard Bank, Geneva
Inland Bank (Nigeria) Plc, Lagos
LGT Liechtenstein Bank, Vaduz
Liechtenstein Landesbank, Vaduz
M. M. Warburg and Company, Luxembourg
M. M. Warburg and Company, Zurich
M. M. Warburg and Company, Hamburg
Merrill Lynch Bank, New York
Merrill Lynch Bank, Geneva
Midland Bank, London
National Westminster Bank, London
Nigerian Intercontinental Merchant Bank Limited, Lagos
Paribus, London

Paribus, Geneva
Royal Bank of Scotland , Leeds
Standard Bank London Limited, London
UBS AG, Zurich
UBS AG, Geneva
Union Bancaire Privee, Geneva
Union Bancaire Privee, London
Union Bank of Nigeria , London Branch
Universal Trust Bank of Nigeria Limited, Lagos
Verwaltungs Und Private Bank A. G., Vaduz