


MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE GOVERNMENT OF THE FEDERAL REPUBLIC OF
NIGERIA**

AND

THE GOVERNMENT OF IRELAND

**REGARDING THE RETURN, DISPOSITION AND
MANAGEMENT OF CERTAIN FORFEITED ASSETS** 

Whereas the Governments of the Federal Republic of Nigeria and Ireland (each referred to as "Participant" and both jointly referred to as "Participants");

Welcoming their 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;

Recognising the commitment of the Government of Ireland to ensuring that Ireland is not a safe haven for the proceeds of corruption;

Recognising the efforts of the Government of the Federal Republic of Nigeria, in conformity with the United Nations Convention against Corruption (UNCAC), to return stolen assets, including through the Nigeria Financial Intelligence Unit (NFIU) Act, 2019, the draft Proceeds of Crime Agency (POCA) Bill, and to prevent the looting of public assets and the process of international cooperation in criminal matters through the effective implementation of the Money Laundering (Prevention and Prohibition) Act 2013 (as amended) and the Mutual Legal Assistance in Criminal Matters Act, 2019;

Whereas the Participants having ratified the United Nations Convention against Corruption (UNCAC), understand that the cooperation in this case represents the effective implementation of obligations under the UNCAC to afford one another the widest measure of co-operation and assistance in asset recovery and return of the proceeds of offences established under the Convention;

Whereas on 28 October 2014, the High Court of Ireland ("the High Court") made an order pursuant to section 2(1) of the Proceeds of Crime

Act 1996 (as amended, "the 1996 Act") in proceedings entitled *Criminal Assets Bureau v Mohammed Sani Abacha* (High Court Record no. 2014/10 CAB, "the Proceedings") prohibiting the said Mohammed Sani Abacha or any other person having notice of the making of the order from disposing of or otherwise dealing with funds in the amount of US\$ 6.3m, inclusive of interest (current equivalent value in Euros €5.49m) held by HSBC Life (Europe) Limited more particularly set out in the schedule to the originating notice of motion in the Proceedings ("the Assets"), the High Court being satisfied that the Property constituted, directly or indirectly, the proceeds of crime;

Whereas on the same date, the Court appointed a Receiver pursuant to Section 7 of the 1996 Act to take possession of said Assets, to manage same and to place the Assets in an interest bearing account, pending further Order of the Court;

Whereas on 16 March 2015, the High Court made an order pursuant to section 3(1) of the 1996 Act in relation to these proceedings and directed the Receiver appointed on foot of the earlier Order, to manage the said Assets and to lodge same to a Euro Account;

Whereas the Government of the Federal Republic of Nigeria, claiming ownership of the Property, having issued an application to the High Court by Notice of Motion dated 10th December 2019 seeking an order pursuant to section 3(3) of the 1996 Act discharging or varying the order made by the High Court on 16 March 2015 (the Section 3(3) Order);

Whereas the High Court on 15th June, 2020 in the exercise of its functions pursuant to Section 3(3) of the 1996 Act, ordered that the Assets be transferred to the Federal Republic of Nigeria subject to the execution of this Memorandum of Understanding;

Whereas on 25th February 2018, the Nigerian President approved the establishment of the Presidential Infrastructure Development Fund ('the PIDF') which is managed by the Nigeria Sovereign Investment Authority ('the NSIA');

Whereas the infrastructure projects outlined in Schedule I were approved by the Nigerian National Assembly under the Appropriation Act, 2018 and

procured and approved by the Nigerian Federal Executive Council in accordance with Nigeria's Bureau for Public Procurement Act, 2007 ('the Projects');

Whereas the NSIA was established by the Nigeria Sovereign Investment Authority (Establishment etc) Act, 2011 as an independent investment institution governed by a board of directors and operating under transparency guidelines and a corporate governance framework that is aligned with the Santiago Principles (a voluntary set of principles and practices developed by the International Working Group of Sovereign Wealth Funds);

Whereas in 2018 the NSIA, through the PIDF, took over the management of the three infrastructure Projects, one for each of the North, South-South/South East and South West of Nigeria: the Abuja-Kano Road; the Second Niger Bridge; and the Lagos Ibadan Expressway;

Whereas the NSIA incorporated a wholly owned subsidiary to own and manage each of the Projects;

Whereas the Government of the Federal Republic of Nigeria has proposed that the Forfeited Assets will be used to fund part of the Projects;

Now, therefore, the Participants have decided and express their intentions as follows:

Paragraph 1 Definitions

In this Memorandum of Understanding the following terms shall have the following meanings:

"the 1996 Act" means the Proceeds of Crime Act 1996 (as amended)



"Assets" means funds in the amount of EUR€5.49m, inclusive of interest, held by HSBC Life (Europe) Limited and as set out in the schedule to the originating notice of motion in the Proceedings;

"Competent Authority" in relation to any Participant has the meaning set out in Paragraph 4;

"Implementing Authority" in relation to any Participant has the meaning set out in Paragraph 5;

"NSIA" means the Nigeria Sovereign Investment Authority;

"Proceedings" refers to the proceedings before the Irish High Court entitled *Criminal Assets Bureau v Mohammed Sani Abacha* (High Court Record no. 2014/10 CAB),

"Projects" means the projects referenced in Paragraph 6(1) and further described in **Schedule 1**.

Paragraph 2 General Principles

1. The Participants confirm their intention to maintain effective cooperation based on trust and respect in order to enable a transparent and efficient return and disposition of the Assets for the benefit of the people of Nigeria.
2. The implementation of this Memorandum of Understanding by the Participants will be guided by the principles of ethics, mutual respect and cooperation.
3. The Participants recognise that they have a mutual interest in ensuring that Assets are not at risk of being misappropriated and also recognise they have obligations towards their own citizens for providing such assurances.



4. The Participants recognise the importance of ensuring that the highest possible standards of transparency and accountability are applied for the return and disposal of assets.

Paragraph 3 Scope of Cooperation

1. This Memorandum of Understanding sets out the understandings reached between the Participants concerning the return, disposal and management of the Assets.
2. The Participants accept that this Memorandum of Understanding does not apply to the return and disposal of any property, assets or funds falling outside the scope of the Proceedings.

Paragraph 4 Competent Authorities

1. The Competent Authority for the Government of the Federal Republic of Nigeria shall be the Honourable Attorney General of the Federation and Minister of Justice or a person designated by him for such purpose.
2. The Competent Authority for the Government of Ireland will be the Minister for Justice and Equality or a person designated by her for such purpose.
3. For purposes of this Paragraph, the term "Competent Authority" means the representative of each Participant duly authorised to sign this Memorandum of Understanding.

Paragraph 5 Implementing Authority

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1. The Implementing Authority for this Memorandum of Understanding for the Federal Republic of Nigeria shall be the NSIA.

Paragraph 6 IDENTIFIED PROJECTS

1. The Government of the Federal Republic of Nigeria has resolved to receive the Assets and apply them to the development projects as set out in Schedule 1 to this Memorandum of Understanding.
2. The Participants attach great importance to ensuring returned assets are used for the benefit of the people of Nigeria. The Participants therefore decide that the assets will be used in line with the budget of the Federal Republic of Nigeria for high impact projects that will benefit the poorest segment of society.
3. The Government of the Federal Republic of Nigeria will ensure that the activities financed by the assets are carried out in accordance with the provisions of relevant anti-corruption laws and guidelines.

Paragraph 7 Accountability, Monitoring and Reporting

1. The Participants are of the view that transparency and accountability in regard to the return, disposition and management of the assets are an important factor to sustain the mutual confidence and cooperation they wish to uphold.
2. The Participants jointly decide that, in accordance with the terms of this Memorandum of Understanding, the responsibility for the use and management of the recovered Assets is with the Government of the Federal Republic of Nigeria. The Government of the Federal Republic of Nigeria is responsible for ensuring that highest standards of probity and integrity are maintained at all times; that activities funded by the Assets will be recorded fully and accurately and that the Assets will be assigned to the project specified in Schedule 1.

3. The Government of Ireland assumes no liability or responsibility for the use of the forfeited Assets when returned.
4. The report on the use of the Assets will be published by the Government of the Federal Republic of Nigeria on the relevant website and a copy of the report will be provided to the Government of Ireland.

Paragraph 8 Disclosure

1. The disclosure of this Memorandum of Understanding and related documents will be in accordance with their respective laws and/or policies of each Participant on access to information.
2. The Government of the Federal Republic of Nigeria accepts that the Memorandum of Understanding and records related thereto may be subject to examination for possible release in accordance with the obligations of public bodies in Ireland under the Freedom of Information Act 2014.

Paragraph 9 Transfer of the Assets to the Government of the Federal Republic of Nigeria

1. The Participants jointly decide that the Assets, will be transferred directly to the account designated by the Central Bank of Nigeria on behalf of the Government of the Federal Republic of Nigeria.
2. The Government of the Federal Republic of Nigeria will acknowledge receipt of the Assets within fourteen (14) days to the Government of Ireland and will provide confirmation from the receiving bank, including reference number and the amount and date received.

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Paragraph 10 Anti-Corruption

1. The Participants jointly decide to combine their efforts to fight against corruption in connection with the Assets 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 relation to the Assets or this Memorandum of Understanding.
2. The Government of the Federal Republic of Nigeria will inform the other Participant in the event that any credible allegation or other indication of fraud or corruption in connection with the Assets or this Memorandum of Understanding comes to its attention.
3. The Government of the Federal Republic of Nigeria will:
 - a) take timely and appropriate action to investigate such allegations or other indications;
 - b) Inform the Government of Ireland on the progress of such investigation and, after its conclusion, on its findings and the actions the Government of the Federal Republic 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 reimburse any forfeited funds to the designated Account and take such other action as may be necessary or appropriate to remedy the damage caused by the fraudulent or corrupt act(s).

Paragraph 11 Settlement of differences

Differences or disagreements arising out of the interpretation, operation or implementation of this Memorandum of Understanding will be settled

amicably through consultations between the Participants through diplomatic channels.

Paragraph 12 Status

This Memorandum of Understanding is not eligible for registration as a treaty under Article 102 of the Charter of the United Nations.

Paragraph 13 Amendment

This Memorandum of Understanding may be amended by written arrangement of the Participants at any time.

Paragraph 14 Counterparts

This Memorandum of Understanding may be executed by each Participant in separate counterparts, each of which will be an original but which will together constitute the same Memorandum.

Paragraph 15 Entry into effect and duration

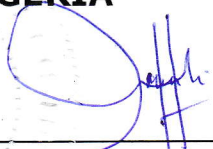
This Memorandum of Understanding will enter into effect upon signature by the authorised representatives of the Participants and will remain in effect until the Assets has been fully utilised for the purpose(s) set out under this Memorandum, or such other date as may be mutually decided upon by the Participants.



IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Memorandum of Understanding in two original copies in the English language.

Signedon this 11 day of August 2020

**FOR THE GOVERNMENT OF THE
FEDERAL REPUBLIC OF
NIGERIA**



Abubakar Malami, SAN
Attorney General of the Federation
and Minister of Justice

**FOR THE GOVERNMENT OF
IRELAND**



Helen McEntee, TD
Minister for Justice and Equality



SCHEDULE 1

PROJECT DESCRIPTION

The three Projects referred to in Article 6 of the Agreement are described in more detail below:

1. Lagos to Ibadan Expressway

The Lagos-Ibadan Expressway is a 127.6-kilometre-long (79.3 mile) expressway located in the southwest of the country. It connects Ibadan, the capital of Oyo State, to Lagos, Nigeria's most populous city and commercial capital. It is also the busiest interstate highway in the country and the major route to the northern, southern and eastern parts of Nigeria. It is anticipated that this would be completed by July 2022.

2. Abuja to Kano Road

The Abuja-Kano is a major artery that links the Federal Capital Territory (Abuja) to the northern parts of the country. The scope of work involves the rehabilitation, expansion and construction of a 375 kilometre dual carriageway. It is anticipated that this would be completed by April 2021.

3. Second Niger Bridge

The bridge is being constructed across the River Niger from Delta State in the South-South geopolitical region to Anambra State in the south east of the country. It is intended to ease traffic congestion and improve road safety. The scope of work includes the construction of 1.6 kilometre long bridge, 10.3 kilometre Highway, Owerri interchange and a toll station. It is anticipated that this would be completed by February 2022.

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