

**Annex 1 to the
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 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***

9 March 2021

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SCOPE AND PURPOSE OF THE ANNEX

1. The UK Government and the Federal Government of Nigeria signed a Memorandum of Understanding (the “**MOU**”) in 2016 which sets out the provisions and understanding between the two governments (“the Participants”) for the modalities for the return of assets stolen from the people of Nigeria and recovered by the United Kingdom.
2. As stated in paragraph 1.3 of the MOU, the specific arrangements for each asset return will be covered by signature of an annex to the MOU. This annex sets out the specific arrangements related to certain assets stolen by the **former Governor of Delta State James Ibori and his associates**. It includes the arrangements for the return, monitoring and management of those assets and is subject to the provisions set out in paragraphs 1 – 6 of the MOU. This annex details the return of the first tranche of assets recovered as specified in paragraph 3. Any further assets recovered will require the signature of an additional annex which as far as possible should mirror the provisions of this annex.

THE RETURNED FUNDS

3. This Annex sets out the specific arrangements related to assets stolen by the former Governor of Delta State James Ibori and his associates in the sum of Four Million, Two Hundred and Fourteen Thousand, Seventeen Pounds and Sixty Six Pence (£4,214,017.66), which was recovered by the UK Government in proceedings resulting in confiscation orders made since 2010 (the “**Returned Funds**”).
4. The Returned Funds will be utilized by the Federal Government of Nigeria exclusively for the purpose of financing the projects as set out in Schedule 1 (the “**Projects**”).
5. The Returned Funds will be allocated to the Projects in addition to other sources of capital stated to be provided by the Federal Government of Nigeria as indicated in **Schedule 2**. Such other sources of capital include funds returned from other jurisdictions.
6. None of the Returned Funds may be disbursed, expended or used for the benefit of any of the alleged perpetrators of, or participants in the offences giving rise to the recovery of the Returned Funds, including as appropriate: family members, heirs, assigns, successors, privies, corporations, trusts, or legal entities of such alleged perpetrators or participants; or any person or entity barred from contracting with any party or International Financial Institution or from otherwise undertaking projects in Nigeria.
7. The Participants approve the use of the Returned Funds to fund segments of the following infrastructure projects that were approved by the Nigerian National Assembly under the 2020 Appropriation Act, and procured and approved by the Nigerian Federal Executive Council in accordance with Nigeria’s Bureau for Public Procurement Act, 2007 (“the Projects”), as further detailed in Schedule 1:
 - a. The Lagos to Ibadan Expressway
 - b. The Abuja to Kano Road
 - c. The Second Niger Bridge

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8. The Projects are also funded by funds returned to the Federal Republic of Nigeria from other countries. Where possible, all efforts have been made to align the requirements of this MOU and other memoranda/treaties which oversee funding to the same Projects.
9. The participation of civil society monitors will be determined through a public tender process under the terms of the *Agreement Among the Government of the Federal Republic of Nigeria and the Bailiwick of Jersey and the Government of the United States of America Regarding the Sharing, Transfer, Repatriation, Disposition and Management of Certain Forfeited Assets* (the "**Tripartite Treaty**") signed in February 2020. A copy of the Tripartite Treaty is set out in Schedule 6.

APPLICATION, MONITORING AND MANAGEMENT OF RETURNED ASSETS TO SPECIFIC PROJECTS

10. Paragraph 4 of the MOU states that the Participants attach great importance to ensuring returned assets are used for the benefit of the people and that the Participants therefore decide that returned funds will be used in line with the budget of the Federal Republic of Nigeria for Projects that will impact on the poorest segment of society, and to improve access to justice for all Nigerians.
11. The Participants approve the Projects in Schedule 1 as in line with this aim.

MANAGEMENT OF ASSETS

12. A detailed budget, work plan, expenditure schedule, reporting schedule and audit schedule for each project will be drawn up and agreed by representatives of the Federal Government of Nigeria. The funds will be managed with the utmost transparency. Information about the return and management of the Returned Funds will be made available to the public before the transfer is made, and accountability reports and reports of expenditure will be published annually by the Implementing Authority as defined in paragraphs 13 and 14 below. The monitoring arrangement will include Civil Society Organisation(s) described in paragraphs 28-33 and in Schedule 5.

IMPLEMENTATION OF THE PROJECTS

13. The Implementing Authority is the designated persons or organisation that will oversee the application of the Returned Funds to the use described in this Annex.
14. The Implementing Authority for this Annex to the MOU for the Federal Government of Nigeria will be Nigeria Sovereign Investment Authority (the "**NSIA**").
15. The Federal Government of Nigeria will procure that the NSIA:
 - a) applies the Returned Funds to the Projects in accordance with the separate Disbursement Plans for each of the Projects set out in Schedule 3, which will identify which segments of the Projects are to be funded with the Returned Funds;


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- b) fully implements all provisions of this Annex;
- c) maintains a project management team (the "**PMT**") that will be responsible for the implementation of the Projects and management of the Returned Funds. The PMT will comprise the members and functions listed in Schedule 4 and changes can be made through notification to the Participants by the Implementing Authority;
- d) produces a final public report (the "**NSIA Final Report**") on the expenditure of the Returned Funds and implementation of the Projects within one hundred and twenty (120) days of the final expenditure of the Returned Funds. The NSIA's Final Report will be published alongside the MT Final Report (as per paragraph 21(c)).

MONITORING OF THE PROJECTS

THE MONITORING TEAM

- 16. The Federal Government of Nigeria will establish a Monitoring Team (the "**MT**") for the purpose of monitoring the implementation of the Projects.
- 17. The members of the MT will include representatives of the following:
 - (i) the Nigerian Federal Ministry of Justice;
 - (ii) the Nigerian Federal Ministry of Finance;
 - (iii) the Nigerian Accountant General of the Federation; and
 - (iv) Civil Society Organisation(s) as described in Schedule 5.
- 18. Each Participant will be represented by a Competent Authority, as identified in paragraphs 19 and 20 below, for the purpose of ensuring that the provisions of this Annex are maintained throughout its operation.
- 19. The Competent Authority for the Federal Government of Nigeria will be the Honourable Attorney-General of the Federation and Minister of Justice or a person designated by the Attorney-General of the Federation and Minister of Justice for such purpose.
- 20. The Competent Authority for the Government of United Kingdom will be the Home Office.
- 21. The role of the MT will include the following:
 - (a) to meet every quarter to review the quarterly Technical Adviser's reports (where the Technical Advisor is as described in Schedule 4);
 - (b) to provide oversight functions to ensure that the NSIA has disbursed the funds as approved in the Disbursement Plan set out in Schedule 4 and
 - (c) to prepare and provide the Competent Authorities with copies of implementation reports (the "**MT Implementation Reports**") at the end of every financial year or upon reasonable request and a final report (the "**MT Final Report**") within ninety (90) days of the MT's receipt of the NSIA Final Report. The MT Implementation Reports

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and the MT Final Report will be published on the Nigerian Federal Ministry of Justice's website.¹

22. The Federal Government of Nigeria will ensure that all members of the MT have access to the NSIA Final Report, and all additional information as may be necessary to carry out their responsibilities.
23. If a member of the MT raises concerns about the implementation of the Projects to the Competent Authority of the Federal Government of Nigeria, such Competent Authority must ensure that the NSIA respond in writing to the MT within sixty (60) days. The written response must be sufficiently detailed for the MT to form an independent judgment about the issue(s) raised.
24. In the event that a member of the MT is not satisfied with the manner in which its concerns have been addressed or in the absence of an adequate written response within two (2) months, the MT will escalate the relevant issue(s) by notifying the Board of the NSIA, and will contemporaneously notify the Competent and Implementing Authorities of the Participants.
25. Where there is no satisfactory response from the Board of the NSIA or the relevant issue(s) is not resolved to the satisfaction of any member of the MT, such member of the MT may request the convening of a meeting of the Participants within ninety (90) days from the date of response of the Board of the NSIA, and the Participants will meet within that time period to resolve the relevant issue(s); the ninety (90) days will run from the date of the MT member's communication to the Board of the NSIA raising the relevant issue(s). Any activity described in paragraphs 26-27 will be included in the MT Implementation Reports (as relevant) and MT Final Report.

INELIGIBLE EXPENDITURES

26. Ineligible Expenditures include, but are not limited to, any expenditures which contravene paragraph 6, and any expenditures not directly related to the Projects.
27. Where the MT or any single member thereof, or a Competent or Implementing Authority of any Participant determines that any of the Returned Funds have been used for Ineligible Expenditures, the MT or Competent or Implementing Authority of the Participant will notify the Competent Authority of the Federal Government of Nigeria. The Competent Authority of the Federal Government of Nigeria will ensure that an equivalent sum is promptly returned to the NSIA Designated Account and that the NSIA and / or the appropriate government agency or agencies of the Federal Government of Nigeria take timely and appropriate corrective action, including to ensure that such Ineligible Expenditures do not recur.

CIVIL SOCIETY ORGANISATIONS

28. The Federal Government of Nigeria will engage one or more civil society organisation(s) to provide ongoing monitoring (the "Monitoring CSOs") as part of the MT as described in paragraph 21.

¹ Publication is tentatively expected in April 2022, but subject to change.

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29. The appointment of any Monitoring CSO will be subject to the prior approval of all the Implementing Authorities.
30. The Monitoring CSO(s) will have the skills and experience as set out in Schedule 5, and the role of the Monitoring CSO(s) will be to act in accordance with the Terms of Reference in Schedule 5.
31. The Terms of Reference of the Monitoring CSO(s) will be to design the implementation of a robust and transparent monitoring program that will include as part of their participation in the MT:
- (a) receiving all documents in referred to in paragraphs 21(c), and project-related documents upon request;
 - (b) conducting relevant site visits (including unannounced site visits);
 - (c) compiling and publishing regular reports. Such reports to be at least quarterly (the "**CSO Reports**") in addition to any contributions to MT reporting, and to be provided to the Competent and Implementing Authorities of the Participants;
 - (d) compiling and publishing a final report (the "**CSO Final Report**") within three (3) months of the NSIA Final Report. Such report to be provided to the Competent and Implementing Authorities of the Participants.
32. The Federal Government of Nigeria will ensure that the Monitoring CSO has access to the information necessary to carry out its functions as described in the Terms of Reference in Schedule 5. Monitoring CSO(s) can raise concerns as part of the MT (as per paragraphs 23-25).
33. Neither the engagement nor the monitoring activities of the Monitoring CSO(s) will create any financial obligations or additional commitments for the Participants.

TRANSPARENCY AND INFORMATION SHARING

34. The Participants, MT, and Monitoring CSO(s) will have access on request to all documents related to the Projects.
35. The Federal Government of Nigeria will ensure that the NSIA publishes regular reports on the Projects and the disbursement of the Returned Funds on a designated public page on the website of the NSIA (the "**NSIA Website Reports**").
36. Disclosures of information not contemplated by this Annex to the MOU are subject to the Participants' laws and policies on access to information.
37. The following documents will also be public documents:
- (a) the NSIA Website Reports and the NSIA Final Report;
 - (b) the MT Implementing Reports and the MT Final Report; and

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- (c) the Monitoring CSO report and the Monitoring CSO Final Report.

REPORTING

38. Expenditure and implementation reports will be produced and agreed by representatives of the Federal Government and the Monitoring CSO(s) (as per paragraphs 28-33 and Schedule 5), in accordance with the agreed reporting schedule, and published by the Federal Government of Nigeria. The reports to be submitted to the Competent Authorities shall include:
- (a) Independent Audit reports published by the NSIA. Reports will cover all activities financed by the Returned Funds.
 - (b) Quarterly Technical Adviser's Report
 - (c) Quarterly reports prepared by the NSIA on the anti-corruption due diligence carried out on contractors and sub-contractors during the reporting period
 - (d) The NSIA Final Report

TRANSFER AND EXPENDITURE OF ASSETS

39. The Government of the United Kingdom will transfer the Returned Funds (including accrued interest) in the sum of £4,214,017.66 within fourteen (14) days from the date of signing this Annex to the MOU to the British Pounds 'Designated Account' for Asset Recovery at the Central Bank of Nigeria.²

DISBURSEMENT


40. The Participants approve, subject to the provisions of this Annex of the MOU, the responsibility for the use and management of the Returned Funds being with the Federal Government of Nigeria. The Federal Government of Nigeria will ensure that the Central Bank of Nigeria transfers the Returned Funds to a pounds-denominated account designated by the NSIA (the "NSIA Designated Account") within fourteen (14) days of receipt of the Returned Funds from the United Kingdom.

OTHER FEES

41. The Federal Government of Nigeria will be solely responsible for the payment of any fees it resolves that it may owe for Attorneys or the NSIA's management of the Returned Funds and the implementation of this Annex to the MOU.
42. Expenditure and implementation of each of the Projects, including procurement of any related goods and services and quality assurance of delivery will be monitored by representatives of Federal Governments and Monitoring CSO(s) (as per paragraphs 28-33 and Schedule 5) as follows.

SETTLEMENT OF DIFFERENCES

² The 'Designated Account' is entitled 'CBN OAGF FGN ASSET RECOVERY (GBP) ACCOUNT'.

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43. Differences arising out of the interpretation, operation or implementation of this Annex to the MOU will be settled amicably through consultations among the Participants and in line with paragraph 25. Participants shall meet at least once a year during the implementation of the project for briefing and consultation on the progress made by the implementing authorities. Participants may also consult each other whenever the need arises.

AMENDMENTS

44. This Annex to the MOU may be amended by and with the written approval of all Participants at any time, for example where:

- a) one or more of the Projects is cancelled;
- b) disbursements are not made substantially in accordance with **Schedule 3**;
- c) a determination that Returned Funds have been used for Ineligible Expenditures has been made and an equivalent sum has not been returned to the NSIA Designated Account within ninety (90) days; or
- d) there is a material change in the Nigerian Implementing Authority or its ability to carry out its responsibilities in relation to this Annex to the MOU.

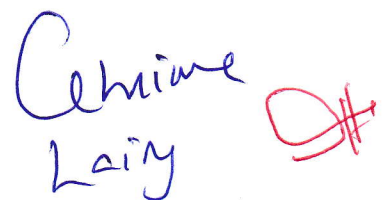
ANTI-CORRUPTION

45. The Participants will collaborate in ensuring that no offer, donation, payment, remuneration or advantage in any form whatsoever that may be 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 Projects, the Returned Funds or this Annex to the MOU.
46. The Federal Government of Nigeria will inform the other Participant immediately in the event that any credible allegation or other indication of fraud or corruption in connection with the Projects, the Returned Funds or this Annex to the MOU comes to its attention.

47. The Federal Government of Nigeria will:

- (a) take timely and appropriate action to investigate such allegations or other indications;
- (b) report regularly to the other Participant on the progress of such investigations and, promptly after their conclusion, report to the other Participant the actions that the Federal Government of Nigeria takes in response to the findings; and
- (c) in the event that the investigation substantiates that fraud or corruption has occurred, promptly reimburse the NSIA Designated Account in full for any funds that may have been lost, misappropriated or inappropriately disbursed, expended or used and take such other action as may be necessary or appropriate to remedy the damage caused by the fraudulent or corrupt act(s).

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48. The Federal Government of Nigeria will ensure that the NSIA will include anti-corruption clauses in all the future contracts and sub-contracts relating to the Projects. Such clauses will provide that in the event of any breach, the relevant contract or sub-contract will be voidable at the absolute discretion of the NSIA.
49. The Federal Government of Nigeria will ensure that the NSIA will include an annual certification requirement in all contracts and sub-contracts relating to the Projects that the contractor and its sub-contractors acknowledge and will abide by the limitations set forth in paragraph 26-27 regarding Ineligible Expenditures and use of the Returned Funds. Such clauses to provide that in the event of any Ineligible Expenditure or use, the NSIA, in its absolute discretion, may withhold payments to such contracting Participants, require repayment of funds, or void such contract or sub-contract.

DATE OF COMING INTO EFFECT OF THIS ANNEX

50. This Annex to the MOU will come into effect upon signature of all the Participants.

COMMUNICATIONS AND POINTS OF CONTACT

51. Notices among the Participants under this Annex to the MOU will be in writing and will be communicated to the points of contact for the Competent Authorities and Implementing Authority as set forth herein.

52. The points of contact for Competent Authorities are:

- a. For the Federal Government of Nigeria:

The Attorney General of the Federation and Minister of Justice
Federal Ministry of Justice, Abuja
Asset.Project@justice.gov.ng
<http://www.justice.gov.ng/assetrecovery>

- b. For the United Kingdom:

The Home Office
2 Marsham Street, London
International-AssetRecovery@homeoffice.gov.uk

53. The point of contact for Implementing Authority is:

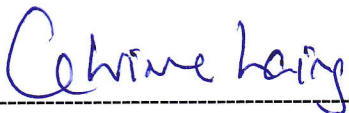
The Managing Director,
NSIA, Abuja
uorji@nsia.com.ng

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FINAL PROVISIONS

54. This Annex to the MOU will remain in effect until one hundred and eighty (180) days after the amounts held in the NSIA Designated Account have been exhausted and the Participants have received the NSIA Final Report, the MT Final Report and the Monitoring CSO Final Report.
55. This Annex to the MOU is intended solely for the purposes of mutual assistance, understanding and co-operation amongst the Participants. It does not give rise to any benefit on the part of any private person and is not intended to benefit third Participants.

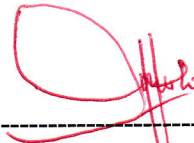
IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Annex to the MOU in two (2) original texts, in the English language, each text being equally valid.



Singed by: Catriona Laing CB
British High Commissioner to Nigeria

On behalf of the Government of the United
Kingdom of Great Britain and Northern
Ireland

Date: 9 March 2021



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

Signed on behalf of the Federal
Government of Nigeria

Date: 9 March 2021