



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 27, 2020

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate
Washington, DC 20501

Dear Chairman Grassley:

This responds to your letter to the Department of Justice (Department) dated April 1, 2020, requesting information about the Department's successful recovery and repatriation of millions of dollars looted from the Federal Republic of Nigeria (FRN) by its former dictator, General Sani Abacha, and his associates. The return of these funds represents more than twenty years of investigation, litigation, and cooperation between the United States and its international partners across three continents. This repatriation also reflects important principles of transparency and accountability in the return of stolen assets for the benefit of those people harmed by grand corruption.

The Department shares a firm commitment to rigorous and accountable oversight to ensure that repatriated funds are not re-stolen or otherwise diverted to an illicit or inappropriate purpose. The transfer and repatriation of approximately \$311.8 million recovered funds is governed by the February 3, 2020 trilateral agreement ("Agreement") among the United States, the FRN, and the Bailiwick of Jersey ("Parties").¹ As you will see, the Agreement includes numerous important safeguards that demonstrate this commitment, several of which are outlined below. As you requested, a copy of the Agreement is enclosed.

First, the Agreement directs that the returned funds be used exclusively for certain specific defined purposes. *See, e.g.*, Agreement, art. 3, 6, 7, and 12 and sched. 1 and 4. Constraining the use of the funds in this way promotes transparency and facilitates monitoring and auditing by independent bodies, as well as by the interested public. These funds will be dedicated to specified segments of larger, on-going crucial infrastructure projects in Nigeria for which these and other funds have been appropriated under Nigerian law. *See* Agreement, preamble para. 23-24, art. 3 and 6, and sched. 1 and 3.

¹ Additional funds traceable to corruption during the Abacha regime have been located in the United Kingdom and France. The status of these funds remains unresolved.

These on-going infrastructure projects are being administered by the Nigeria Sovereign Investment Authority (NSIA), which is an audited, quasi-independent agency governed by a board of directors, none of whom is a Nigerian government official. *See* Agreement, art. 5(1). Under the existing contracts directed by NSIA, the progress on the construction is monitored by an independent international engineering firm before progress payments are made, which is a standard requirement in infrastructure projects.

In accordance with the Agreement, the segments of the projects financed with repatriated funds will be audited by an additional, outside, independent auditor (*id.*, art. 8(1); *see also* sched. 8), and monitored by an additional, independent civil society organization (CSO) (*id.*, art. 9; *see also* sched. 6 and 7). Critically, both the United States and the Bailiwick of Jersey are playing active roles alongside the FRN in vetting and selecting these two independent oversight bodies through a competitive and transparent bidding process. *Id.*, sched. 7 and 8. Please note that *no funds can be disbursed* by the NSIA unless and until these oversight bodies are in place and the CSO's workplan has been approved by the Parties to the Agreement, including the United States. *Id.*, art. 12(5).

In addition to these safeguards, the Agreement also prohibits certain expenditures. Among the expenditures that are specifically disallowed is any use that would benefit the alleged perpetrators of the underlying criminal conduct, including the current governor of Kebbi State, Abubakar Atiku Bagudu. *See id.*, art. 3(4) and sched. 2. Should any of the Parties—including the United States—conclude that any of the returned funds had been used for an ineligible expenditure, a “claw-back” provision would then obligate the FRN to replace fully any such improperly diverted monies. *Id.*, art. 8(14).)

Furthermore, Article 10 of the Agreement requires that important documents concerning the disbursement of funds and the progress of the projects will be made available to the public. Additionally, Article 16 requires anti-corruption clauses in all contracts and subcontracts, along with annual certifications by all contractors and subcontractors acknowledging their ongoing obligations and agreeing not to make ineligible expenditures.²

The Department entered into the Agreement with the concurrence and approval of the U.S. Department of State, and only after securing the consent of the other parties to the above protections and accountability measures. In reaching this result, the Department relied on

² We understand that one of the firms implementing some of the pre-existing contracts is Julius Berger Nigeria, which was identified as a subsidiary of Bilfinger SE in a criminal information against Bilfinger regarding conduct occurring between 2003 and 2005. *U.S. v. Bilfinger*, 4:13-cr-00745 (S.D. Tex. 2013). On June 17, 2019, the charges were dismissed with prejudice at the Department's request based upon Bilfinger's compliance with its obligations under a deferred prosecution agreement, including payment of a fine, cooperation, implementation of an enhanced compliance program, and engagement of an independent compliance monitor, among other obligations.

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advice, input, and participation from the Department of State, including its assessment of the safeguards in the Agreement and the reputation of the NSIA.

Through the Agreement, the Department reaffirmed its commitment to responsible repatriation of recovered assets for those harmed by corruption, consistent with widely accepted principles of accountability and transparency, such as those adopted at the December 2017 Global Forum on Asset Recovery (GFAR) in Washington, D.C. The Department also shares your concern about protecting human rights and promoting the rule of law. Indeed, the Department has made religious freedom a priority. In addition to the transparency and accountability safeguards noted above, the Agreement also mandates that the civil society monitor have the necessary skills and experience to ensure that the funds are expended on projects implemented in compliance with standards for combatting human trafficking. Agreement, sched. 6.

We appreciate your support for the Department's law enforcement efforts. The Agreement and repatriation reflect our firm commitment not only to protecting the U.S. financial system from abuse by international kleptocrats, but also to the transparent return of recovered assets through a negotiated, lawful, and open process that will ultimately recompense, in part, the people of Nigeria for the harms they have suffered.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Boyd', with a long horizontal line extending to the right.

Stephen E. Boyd
Assistant Attorney General

Enclosure