RESTITUTION AND REPATRIATION OF STOLEN FUNDS IN NIGERIA: AN EXAMINATION OF INTERNATIONAL LEGAL IMPEDIMENTS

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The principles of restitution and reparation are proven international best practices in the globe; however, like every other legal principles, it has its imperfections and must be meticulously applied with prudence taking all factors into consideration; otherwise, they become counter-effective. This research paper seeks to expound the application of restitution and reparation to cases of funds which were carted away in different regimes by the corrupt Nigerians government officials. This research examines some cases of grand corruption in Nigeria which were enhanced by some foreign elements. Consequently, this paper analyses and argues that restitution and reparation as best international practices which would have enhanced Nigeria recover her stolen funds are being impeded by various policies put in place by some countries where the stolen funds are lying. That being the case, it becomes apposite to state that if these principles would get Nigeria anywhere, something has to be done with respect to the international impediments highlighted in this paper.

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INTRODUCTION

Restitution is the restoring to the rightful owner what has been lost or taken away. Reparation is the restoring to original, or good enough, condition of something that has been damaged. Restitution and reparation have the same root, restoration, which is itself a kind of rectification or compensation. But each emphasizes different aspects of the idea of restoring. About US$170 billion from the Nigerian public treasury is currently looted into private bank accounts in some anti-corruption and anti-money laundering-preaching Western nations. In expressing his concerns about the endemic looting of the public treasury by the successive Nigerian leaders, the former World Bank president, Wolfowitz noted that, “about 75 percent of Nigerians now live on less than one dollar per day “yet over the past 40 years, about US$300 billion oil wealth has disappeared from the country”. He further stressed that “Nigeria presents a classical example of how people in a resource rich country could wallow in abject poverty”. However, the reason for this paradox lies in the corrupt nature of the ruling elite, which seems to have filtered down and infected the fabric of the socio-political, economic and cultural environment of the society in a way that some people have concluded that the Nigerian culture may have been embedded in monumental corruption. This paper argues that in achieving justice, apart from the general hurdles identified with the principle of restitution, there are other international legal impediments which have to be examined and surmounted by the State in ensuring that stolen funds are repatriated. Furthermore, it argues that in ensuring repatriation of stolen funds, sometimes the one who has caused the damage is not the only one who has a duty of restoration.

Others who are connected or who are in possession or have access to it could also be made to repatriate to the appropriate quarters.

This paper is divided into six parts. In the next part, reparation and restitution are explained.

Part I briefly expounds the elements of the principle of reparation and its place in international context; Part II briefly dwells on the restitution as a formidable legal instrument which can be applied to ensure refund of stolen funds. Part III discusses antecedents of stolen funds by the Nigerian past

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3 Ibid.
leaders and corruption in Nigeria including some negative roles played by some multi-national companies. Part IV considers international impediments some of which have frustrated efforts that the country had once put in place in order to repatriate its stolen funds lying in foreign accounts. In last Part, the paper concludes and makes necessary recommendations.

I. Reparation

Reparation is the act of making amends for a wrong. It is a compensation for an injury or wrong especially for wartime damages for breach of international obligation. It is the righting of a wrong or something done or paid as compensation for a wrong.

Reparation is the restoring to original, or good enough, condition of something that has been damaged. When objects are damaged it is different from when they are lost or taken away. When damage occurs the objects are still in the possession of the original owner. It is just that these objects have ceased to perform their normal function and are in that sense less valuable than before. Reparation also concerns payments for loss suffered when wrongs are done that undermine livelihood or significant interests. One may think of some of these cases as involving damage to earning capacity or the loss of opportunity that would have been beneficial. Reputation or status is also something that can be damaged and for which repatriations can be sought.

One of the issues that distinguished restitution from repatriation is that in restitution it is normally possible to return things to the status quo ante, whereas in repatriations, this is normally much more difficult to achieve.

Indeed, the legal literature has focused on the concept of satisfaction to mark the difference between return to the exact status quo ante and the approximate form of compensation that is called for in reparations, especially when the damage done is at least partially psychological. Psychological damage is hard to rectify, as courts have found, because of vast differences in how people react to damage or wrong both in terms of

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4 BLACK’S LAW DICTIONARY, 9th ed. 1325.
5 THE NEW LEXICON WEBSTER’S DICTIONARY OF THE ENGLISH LANGUAGE, 844.
6 Ibid., at note 1.
7 Ibid., at note 1.
how much they suffer at the time of the damage and in terms of what it would take to make amends. Apologies suffice for some, but others may require expenditures of resources.

The vocabulary of “reparatory justice” is laying a basis for redistributive policies associated with radical upheaval... Because of their versatility, reparatory practices have become the leading response in the contemporary wave of political transformation.

Satisfaction can take on this radical cast when redistribution of goods is called for.

The root idea behind the various forms of reparations is that payments are due, as a result of damage done, which will restore the aggrieved party to the position he or she was in before the wrong occurred. In the case of war reparations, the idea is that one party owes reparation to the other party for the ravages of war or for the costs incurred to fight the war. In the case of violence to ethnic groups, it is similarly the case that what is called for is payment for wrongs such as slavery or genocide that have harmed the group in question and made it suffer losses that need now to be compensated. Often, in both war and mass atrocity cases, it is highly controversial what it will take to restore things so that the damage of historical injustice or the perpetration of unjust war is in fact repaired.

One way to think of these cases is in terms of the harm to the status or reputation of the group, although such an analysis often fails to capture the severity of the wrongs, especially in terms of such hard to quantify factors as harms to emotional well-being.

The damage that is the focus of reparations is a wrong to the party in question not because of some loss of a physical thing, as in restitutions, but normally because of a loss of opportunity. In this sense, the loss is much more difficult to calculate in the case of reparations than in the case of restitutions.

Therefore, since this theory does not properly capture the refund of stolen funds, we turn to restitution.

II. RESTITUTION

Restitution is the restoration of some specific thing to its rightful owner or status. It is concerned with whether a claimant can recover a benefit from the defendant, rather than whether the claimant can be compensated for loss

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9 Ibid, at note 1.
suffered\textsuperscript{11}. Restitution occurs at the times claimants whose rights have been violated are awarded relief measured, not by reference to their own loss but according to the benefit gained by the defendant. He expressed the view that the relief was established by equity where by the defendant is required to account to the claimant for profits made as the result of a wrong\textsuperscript{12}.

It has been asserted that restitution is a legal response to unjust enrichment\textsuperscript{13}. It posits that there are two distinct aspects of the law of restitution, the cause of action in unjust enrichment and its sole resulting response of restitution, and the response of disgorgement that is available for certain wrongs. The law of restitution is the heart of corrective justice\textsuperscript{14}.

It must be noted that restitution and unjust enrichment are inextricably intertwined and are often used interchangeably. However, while unjust enrichment is a cause of action, restitution of benefits derived is the remedy available for unjust enrichment. In other words, while the principle of unjust enrichment underlines restitution claims, restitution as a remedy is also available where unjust enrichment is not a cause of action (at least in common law countries)\textsuperscript{15}.

Unjust enrichment is a legal term denoting a particular type of causative event in which one party is unjustly enriched at the expense of another, and an obligation to make restitution arise, regardless of liability for wrong doing. The principle of unjust enrichment is an equitable remedy. It is based on the principle that one should not be permitted to enrich himself at the expense of another, but should be required to make restitution for property received, retained and misappropriated.

Unjust enrichment arises when a party receives a gain or benefit as a result of another’s efforts or acts, but for which that other has received no compensation. Such benefit derived in this instance is derived by chance, mistake or another’s misfortune, for which the party enriched has not worked for or paid, morally or ethically, should not keep.

In \textit{Smith v. Versanyi}\textsuperscript{16}, Justice Andrekson puts it this way:

The doctrine of unjust enrichment is an equitable concept created to remedy injustices that occur where one person make a substantial contribution to the property of another without compensation.

\textsuperscript{15} Chitty on Contracts (ed.), volume 1 (eneral principles) chapter 29, 1632 (2004).
\textsuperscript{16} 26 Alberta L.R. 3(d) 381.
A. Nature and Scope of the Law of Unjust Enrichment and Restitution

In the United States of America, the North Dakota Supreme Court has ruled that five elements must be established to prove unjust enrichment\(^\text{17}\).

1. An enrichment;
2. An impoverishment;
3. A connection between the enrichment and impoverishment;
4. Absence of justification for the enrichment and impoverishment; and
5. An absence of a remedy provided by law.

The Supreme Court of Canada has recently taken the opportunity to review and analyse the law regarding unjust enrichment in the case of *Garland v. Consumers Gas Co*\(^\text{18}\). And it has re-affirmed and elucidated several principles. This was confirmed by J. Lacobucci,

As a general matter, the test for unjust enrichment is well established in Canada. The cause of action has three elements:

1. An enrichment of the defendant;
2. A corresponding deprivation of the plaintiff; and
3. An absence of juristic reason for enrichment.

This approach incorporates the other two elements as provided under the American law and this has also been adopted in this paper.

Under the first element, there must be some enrichment or benefit to the party against whom the claim is made. This may take the form of a direct addition to the recipient’s wealth, such as the receipt of money\(^\text{19}\), or an indirect one, for instance, where an inevitable expense has been saved\(^\text{20}\). In *Garland v. Consumer Gas Co*,\(^\text{21}\) it was held that the availability of the funds constituted a benefit to Consumer Gas, since the company received the monies represented as late payment penalties, and used that money to carry on its business.

Under the second element, the plaintiff must be able to show that the enrichment is to his detriment as a result of the defendant acting in breach of a duty owed to the plaintiff. This has been interpreted by the Court in the case of *Foskett v. Mckeown*\(^\text{22}\) where the Court held that the purchasers were entitled to more than a return of the premium paid and that the purchasers’ monies were wrongfully paid as premiums, the purchasers had a proprietary

\(^{17}\) B. A. Oni, Unjust Enrichment and Restitution as Mechanism for Curbing Corruption in Nigeria, 30 JPPL, 69, note 52.

\(^{18}\) Supra.

\(^{19}\) Kelly v. Solari [1841] 9 M & W 54.


\(^{21}\) Ibid.

right to the proceeds of the policy as reflected in their contribution. The House of Lords held further, that since the purchasers were unable to demonstrate that the value of the money paid was causal to proceeds paid out, the equities lay with the children and not with purchasers.

Under the third element, Lacobucci J. in *Garland’s case*\(^{23}\) stated that the proper approach to the juristic reason analysis is in two parts: the plaintiff must show that there is no juristic reason from an established category, or if the defendant can show that there is another reason to deny recovery\(^{24}\).

Maddaugh and McCamus have opined that:

...the in-parte formulation of the general principle appears to serve two functions. First the phrase “juristic reason” seems likely to have chosen to emphasise that relief in unjust enrichment is an exercise in applying legal doctrines rather than dispensing “palm tree” justice. Second, the statement of general principle signals that the law is capable of growth and development in the light of the general principle and accordingly, where the principle appears to apply to the facts, a presumptive case of unjust enrichment is made out by the plaintiff... the third element of the general principle also serves to emphasise, however, that in any case where the enrichment results from the fulfilment of a contractual obligation or from some other disposition of law, a presumption case is established.\(^{25}\)

In *Sorocham v. Sorocham*, the property right of common law spouses was in question. Dickson C. J. C. said this as regards the absence of juristic reason:

... in Pettikus, the court held that this third requirement would be met in situations where one party prejudices himself or herself with the reasonable expectation of receiving something in return and other person freely accepts the benefits conferred by the first person in circumstances where he or she knows or ought to have known it that reasonable expectation.

Lambert J. A. *IN JPMG (Trustee in Bankruptcy of Ellingsen) v. Hallmark Ford Sales Ltd* said:

But like most simple legal tests, it might be applied thoughtfully and not mechanically, particularly with respect to whether there is a juristic reason for the enrichment which said to have taken the enrichment out of the category of being “unjust”. The juristic reason may be legal or both. But it must be measured in accordance with the principle of equity which underlie the remedies of restitution and remedial constructive trust.

\(^{23}\) *Supra*.

\(^{24}\) The established categories include a contract, a disposition of law, a donative intent and other valid common law, equitable and statutory obligations.

So the “injustice” of an enrichment must be measured by the standard of “good conscience” and, in a commercial case, the “good conscience” must be good commercial conscience...

With respect to all the differentiation of the third element of unjust enrichment, it is believed, perhaps, that it was because of the different formulations of this aspect of the test by both the Canadian and English Courts. Canadian courts and commentators are equally divided in their approach to juristic reason and this was asserted by Borins J. A., in his dissenting judgment in *Garland v. Consumers’ Gas Co.*

Borins, while making reference to J. A. Smith’s article, suggests that it is not clear whether the requirement of “absence of juristic reason” should be interpreted literally to require that plaintiffs show the absence of a reason for the defendant to keep the enrichment, or as in English model, the plaintiff must show a reason for reversing the transfer of wealth.

It has been opined, with respect, that there is no difference between the applications of the third element of unjust enrichment. It has also been argued that there is no difference beyond semantic between the Canadian and English tests. Thus, if there is in fact a distinct Canadian approach to juristic reason, it is problematic because it requires the plaintiff to prove a negative, namely, the absence of a juristic reason. Because it is nearly impossible to do this, all courts over the world would be better off adopting the British model where the plaintiff must show a positive reason, that it would be unjust for the defendant to retain the enrichment.

Consequently, for the above reasons, the proper approach to the juristic analysis is in two parts; first, the plaintiff must show that no juristic reason from an established category exits to deny recovery. By closing the list of categories that the plaintiff must canvass in order to show an absence of juristic reason, Smith’s objection to the Canadian formulation of the test that requires proof of negative is answered.

If there is no juristic reason from an established category, then the plaintiff has made out a *prima facie* case under the juristic component of the analysis. However, the *prima facie* case is rebuttable where the defendant can show that there are other reasons to deny recovery. As a result, there is a *de facto* burden of proof placed on the defendant to show the reason why the enrichment should be retained. This state of analysis thus provides for a category of residual defence in which courts can look to all of the

26 Supra, note 19.
27 Ibid, at note 17.
28 *THE LAW OF RESTITUTION* 53 (Sweet and Maxwell, 2nd ed. 1990).
29 Ibid, at note 17.
circumstances of the transaction in order to determine whether there is another reason to deny recovery. However, as part of the defendant’s attempt to rebut, court should have regard to two factors; the reasonable expectations of the parties and public policy considerations\(^{30}\).

### III. STOLEN FUNDS: NIGERIA AS A CASE STUDY

As noted earlier, about US$170 billion from the Nigerian public treasury is currently looted into private bank accounts in some anti-corruption and anti-money laundering-preaching Western nations\(^ {31}\). In expressing his concerns about the endemic looting of the public treasury by the successive Nigerian leaders, the former World Bank president, Wolfowitz noted that, “about 75 percent of Nigerians now live on less than one dollar per day “yet over the past 40 years, about US$300 billion oil wealth has disappeared from the country”. He further stressed that “Nigeria presents a classical example of how people in a resource rich country could wallow in abject poverty”. However, the reason for this paradox lies in the corrupt nature of the ruling elite, which seems to have filtered down and infected the fabric of the socio-political, economic and cultural environment of the society in a way that some people have concluded that the Nigerian culture may have been embedded in monumental corruption\(^ {32}\).

Constantly available evidence shows that the presidency that has the political and moral mandate to use the huge oil resources of Nigeria to provide infrastructure, efficient public utility and necessary wealth redistribution geared towards growth and development have been employing the services of cronies, multinational corporations and accountants to loot the public treasury into private bank accounts abroad\(^ {33}\). Further evidence indicates that some members of the Senate and House of Representatives who were elected to make appropriate laws for the smooth running of the country and provide check and balances in the activities of other arms of government (including the presidency), have both been enmeshing themselves in fraud and bribery scandals\(^ {34}\). (The former American Secretary of State, Colin Powel, was quoted as describing Nigeria as a country of scammers. Available evidence shows that all the past military and so called democratic leaders have looted the public treasury

\(^{30}\) *Ibid*, at note 17.

\(^{31}\) *Ibid*, at note 2.

\(^{32}\) *Ibid*, at note 2.

\(^{33}\) *Ibid*, at note 2.

\(^{34}\) *Ibid.*
into private bank accounts abroad\textsuperscript{35}.

Some “Honourable” members (Senate and House of Representatives) have been colluding with the presidency, ministers and even multinational corporations to loot public treasury into private bank accounts abroad\textsuperscript{36}.

In fact, it has been allegedly concluded that the Nigerian Senate is full of fraudsters, nearly all members of the Senate take bribes and most of the members are corrupt\textsuperscript{37}. On a continental assessment, a report of a team of eminent persons from the African Union (AU) which was in Nigeria on a month-long review mission in March (2008) reveals that:

Corruption is still endemic in Nigeria despite the activities of the anticorruption agencies such as the Economic and Financial Crime Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC)\textsuperscript{38}.

Another continental report prepared by an African Peer Review Mechanism (APRM) team of experts who in March 2008 also undertook another one-month assessment of developmental projects in Nigeria laments that “corruption has ruined Nigeria”\textsuperscript{39}. The report further claims that if the US$300 billion a former World Bank President, Mr Paul Wolfowitz, claimed was stolen from Nigeria in four decades had been used for public good, Nigeria would have been an exemplary nation in Africa\textsuperscript{40}. The report gave a paradoxical conclusion that:

It was disheartening that a country that is the sixth largest oil producer in the world had the third largest concentration of poor people in the world\textsuperscript{41}.

It is the above internal monumental financial corruption and impunity that seems to have been encouraging looting of public funds in Nigeria without any serious action being taken to explore the option of the law of restitution having wasted lots of resources in criminal litigation with previous political leaders in Nigeria without any tangible success both home and abroad.

Multinational oil companies have continuously disobeyed Nigerian environmental safety regulations (see cases of Shell, 2007; Mobil, 2007), accounting standards (see the case of Chevron, 2007) and have consequently been implicated in environmental pollution, oil spillage and accounting

\textsuperscript{35} Ibid, at note 2.
\textsuperscript{36} Ibid, at note 2 footnote 4.
\textsuperscript{37} Ibid, at note 2.
\textsuperscript{38} See African Union Report, 2008.
\textsuperscript{39} Ibid, at note 2.
\textsuperscript{40} Ibid.
\textsuperscript{41} See APRM Report, 2008.
malpractices (see cases of Mobil, 2007; Shell, 2007)\textsuperscript{42}. Multinational oil companies have disobeyed court orders to compensate other aggrieved stakeholders in the area of their operation (see the case of Mobil and Akwa Ibom State Revenue Court, 2006; Shell, 2007; Shell, 2006)\textsuperscript{43}. Multinational oil companies have bribed the officials of the Federal Inland Revenue Services to reduce the amount of taxes payable to the Nigerian government (see cases of Halliburton, 2004; Bristow Helicopters, 2007), and sometimes collaborate with some public officials to avoid paying democratically assessed and agreed taxes on their operations in Nigeria (see the case of Daukoru and Shell, 2006)\textsuperscript{44}. Multinational companies have been implicated in bribery, kickbacks and other predatory enterprise culture to enable them win oil contracts in Nigeria. Multinational oil companies have purchased ammunition for and offered financial incentives to the Nigerian security forces to commit genocide on some other Nigerian stakeholders in the Niger Delta\textsuperscript{45}.

Over and above all, multinational corporations utilise the professional services of their accountants and external auditors to effect illegal capital flight out of the poor Nigerian economy\textsuperscript{46}.

The above internal and external exploitation have contributed to the high rate of destitution, hunger, diseases, deprivation and extreme poverty in Nigeria and may become an obstacle in the way of Nigeria in achieving the United Nations Millennium goal of eradicating poverty globally by 2015 and the Nigerian government, vision 2020, making Nigeria a developed economy by 2020\textsuperscript{47}.

IV. INTERNATIONAL IMPEDIMENTS

Based on the equitable principles which states that no person should be allowed to profit at another’s expense without making restitution of the unfairly received and retained, it must be reiterated that whilst considerable efforts are put in place by the country to ensure repatriation of stolen funds in Nigeria from the host countries, there are international impediments which have been thwarting these efforts. This makes it look like if some external factors are also contributing to poverty aggravation in developing

\textsuperscript{42} Ibid.
\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid.
\textsuperscript{46} Ibid.
\textsuperscript{47} Ibid.
countries in general and Nigeria in particular.

A. Foreign Bank Policies

Hither to Abacha’s scandal, some host countries did not come under any significant diplomatic pressure to freeze and repatriate stolen assets. Their laws and banking practices to check flow of dirty money from other countries were nothing to write home about. It was after Abacha’s scandal that some countries started to put some measures in place to check the future flow of looted money. For instance, Switzerland carried out some reforms in her law and banking practices. One of such reforms was the directive on politically exposed persons (PEP) issued to Swiss banks, which prohibited the acceptance of funds presumed to come from corruption. Under the PEP directive, banks were obliged to report all suspicious transactions, especially those involving PEPs (individuals holding political positions or those close to them)\textsuperscript{48}. The adoption of this regulation brought noticeable improvements to Swiss banking practices\textsuperscript{49}. The number of reports on suspicious transactions made to the Money Laundering Reporting Office rose from 303 in 1999 to 652 in 2002, representing a 56% increase; there was also a reported 50% increase in 2003 according to Swiss Federal Banking Commission in 2003\textsuperscript{50}.

However, some developed countries have not yet formulated and implemented such policies in their banking law and practices. Due to dearth of this kind of policies, Nigeria as a country would continuously find it very difficult to repatriate looted funds from her public treasury. Countries such as the United Kingdom, Luxembourg and Liechtenstein have not shown much enthusiasm towards meeting Nigeria’s request for the return of stolen funds.

B. Unwillingness to Disgorge Looted Funds in Host Countries’ Account

Most host countries that Nigerians considered as financial safe havens are unwilling to return the stolen assets. In the case of Abacha loot, Switzerland having repatriated $750 million USD in 2004/2005 after a protracted diplomatic exchanges between both governments (spanning about five years), made no further return of funds even though more funds of about $1 billion USD of Abacha loot are still said to be held up in Swiss

\textsuperscript{48} David U. Enweremadu, Nigeria’s Quest to Recover Looted Assets: The Abacha Affair, 48 (2) AFRICA SPECTRUM 51—70 (2013).

\textsuperscript{49} Ibid.

\textsuperscript{50} Ibid.
banks. This also goes for other political leaders of Nigeria whose illicit assets some host countries have refused to disclose rendering repatriation efforts by each of the successive government in Nigeria non-productive. For instance, President Obasanjo confirmed that at least $1 billion USD of Abacha loot remains in Swiss banks and stated that these funds should be recovered by Nigeria’s subsequent leaders. Under the presidency of Goodluck Jonathan, efforts put in place were frustrated\textsuperscript{51} which led the government to signing a memorandum of Understanding (MoU) with Switzerland in 2010 to a “broader partnership” beyond regular migration\textsuperscript{52}. In return, Switzerland pledged to ensure that its financial centres will no longer be used as safe havens by corrupt Nigerians. It also offered Nigeria continued cooperation for any ongoing cases\textsuperscript{53}. Shortly afterwards, however, the Swiss ambassador to Nigeria categorically denied the existence of any Nigerian funds in Switzerland, including the $1 billion USD mentioned by Obasanjo\textsuperscript{54}.

Just of recent, after some years had gone, Switzerland gave the Nigerian government conditions for repatriating $321m looted by a former military ruler, Abacha, to Nigeria, yet the federal government seem not to have readymade modalities for the repatriation as the Minister of Foreign Affairs, Geoffery Onyeama, said the government was working on the modalities for the repatriation.

C. Frustration of Efforts Put in Place by the Nigeria’s Government in Repatriating the Looted Funds

It would be recalled that in the post-Obasanjo era, the continued reform of Swiss banking and financial regulations and the repatriation of more looted assets ceased to be an urgent foreign policy priority for the Nigerian authorities. Obasanjo’s successors were not direct victims of Abacha’s tyranny and appear to have been discouraged by the limited success in asset recovery. Nonetheless, additional anti-money laundering legislation and regulations in Switzerland have continued to come into force as a result of mounting global concerns about tax evasion and terrorist financing\textsuperscript{55}. The most relevant include Anti-Money Laundering Ordinance of 8 December

\textsuperscript{51} See Nigeria Compass, Lagos, 14 November 2012.
\textsuperscript{52} Supra note 50.
\textsuperscript{53} Supra note 50.
\textsuperscript{54} Supra note 50.
\textsuperscript{55} Some of these new regulations have also been applied to the benefits of other countries. For instance, in 2011, Switzerland along with other states, froze the assets of certain persons associated with the government of Tunisia, Egypt and Lybia (FINMA 2011: 5).
2010 (FINMA 2011: 5), Restitution of Assets of PEPs Obtained by Unlawful Means (RIAA) 2011, and Article 22a of the Federal Personnel Act, 2011 which protects people who report crimes of offences. Apart from adopting tougher laws, the Swiss also convicted one of Abacha’s sons in 2009 for “participation in a criminal organisation” and ordered him to forfeit $350 million USD worth of assets, following his arrest and extradition by Germany. More recently, Swiss judicial authorities have not only upheld Mr Abba Abacha’s conviction following his appeal, but have also begun additional proceedings against him in Geneval for allegedly sponsoring a criminal organisation.

These gestures, however, cannot hide the means by which Swiss have tried to frustrate Nigerian’s demand for the repatriation of all stolen funds kept in foreign banks, especially those linked to Abacha and others who had stolen some public funds in Nigeria. For instance, the Swiss did not return the $750 million USD voluntarily or promptly. From the outset, the Swiss authorities showed strong hesitation to any release of Nigerian funds. Switzerland’s increased cooperation came as a result of the international embarrassment caused by the publicity given to Abacha affairs as well as intense diplomatic pressure and the threat of legal action by Nigeria. Nevertheless, Swiss based their release of Abacha’s funds on the condition that Nigeria:

1. Firstly begin of the accused at home;
2. Confirm the criminal origin of the funds and;
3. Sign an undertaking guaranteeing “transparent use” of any repatriated funds (World Bank and Federal Ministry of Finance, Nigeria, 2006), the latter was to be supervised by the World Bank.

Even after the Nigerian authorities agreed to these humiliating terms and took steps to implement them, the Swiss still remained reluctant to Nigeria’s request. It was only after protracted diplomatic exchanges between both governments (spanning about five years) that the sum of $750 million USD was released.

D. Host Country Using Looted Money for Investment

Based on the foregoing, the reasonable conclusion that any discerning
minds could reach is that host countries like Swiss, Germany and other are making investments with the looted money in their countries. Ever since the last repatriation, no further funds have released even though more funds are said to be held up in Switzerland. The former President, Obasanjo revealed that at least $1 billion USD of the Abacha loot remains in Swiss banks and stated that these funds should be recovered by his predecessor, President Jonathan Goodluck ⁶⁰. More recently, the current Nigeria’s minister of finance Kemi Adeosun in a statement said full amount being expected from Switzerland was $321 million USD. This implies huge amount of looted money is still lying in Swiss account which she has refused to return to where it was looted.

E. Insignificance of the Principle (Unjust Enrichment) in Nigerian Legal System

The principle of unjust enrichment has gained prominence as a remedy to the plaintiff to recover value of services rendered, ill-gotten gains, mistaken payment etc. However, with roots in both law and equity, the principle has generated more than its fair share of confusion, particularly in Nigeria. This is because the remedy has been in existence, but has not yet gained any significance ⁶¹. It is obvious that the acceptance and application of unjust enrichment and restitution in its totality would help Nigeria in seeking mutual legal assistance abroad in cases of unjust enrichment involving a grand corruption of holders of public offices. The strict application of the principles of unjust enrichment is not strange to countries like England, American, Germany, France, Canada, South Africa to mention a few. Once a judgment is obtained in Nigeria under unjust enactment claims, to facilitate remedies like reparation, restitution, restriction and compensation from imperative state will not be difficult. It was perhaps, the reason why the Attorney-General of the Federation and Minister of Justice expressed the optimism of suing Halliburton Company abroad for unjust enrichment and restitution.

F. Lack of Legal Framework for the Commencement of Simultaneous Action in Multiple Jurisdictions

This is also an impediment to the repatriation and restitution of stolen funds in Nigeria. In the present Nigerian legal system, institutional bodies

cannot commence simultaneously action in multiple jurisdictions. In the Price of Republic Ors v. Dovaller and Ors\(^\text{62}\), the claimants which had earlier instituted a civil france action against the defendant for plundering its assets applied in the interim of mareva injunction against the grant of the order. With improvements in procedure and legal framework in place, repatriation of stolen funds will become less herculean compared to what it is presently in Nigeria.

**Conclusion and Recommendation**

A continental report prepared by an African Peer Review Mechanism (APRM) team of experts who in March 2008, undertook one-month assessment of developmental projects in Nigeria laments that “corruption has ruined Nigeria”. The report further claims that if the US$300 billion, a former World Bank President, Mr Paul Wolfowitz, claimed that it was stolen from Nigeria in four decades had been used for public good, Nigeria would have been an exemplary nation in Africa\(^\text{63}\). The report gave a paradoxical conclusion that:

> It was disheartening that a country that is the sixth largest oil producer in the world had the third largest concentration of poor people in the world (see APRM Report, 2008).

> It is obvious that Nigeria’s endeavours to retrieve national resources diverted abroad by its corrupt leaders have been met with some impediments as highlighted above; nevertheless, its efforts have also been jettisoned by several factors such as insufficient judicial system, insufficient political will and limited international cooperation, especially from countries holding Nigerian assets.

> While it appears there is some improvement in determent of illicit transfer of assets as put in place by the present political administration, compliance with international standards is still not stoutly as bulk of stolen funds have not been repatriated.

> Therefore, the present administration must ensure that it complies with financial policies of countries where Nigerian’s public funds have been diverted. This would make repatriation easier and the countries where the money has been diverted would have no difficulty in disgorging the looted funds.

> More so, this would help Nigeria in seeking mutual legal assistance


abroad in repatriating the looted funds.

Also, there should be full-scale application of restitution and unjust enrichment principle in Nigerian legal system. This would encourage institutional bodies to simultaneously commence action in multiple jurisdictions.

Conclusively, it is apt to note that application of this principle in its full-scale is not going to be restricted to recovery of looted funds, but it would enable parties to pay for any benefits unjustly retained.