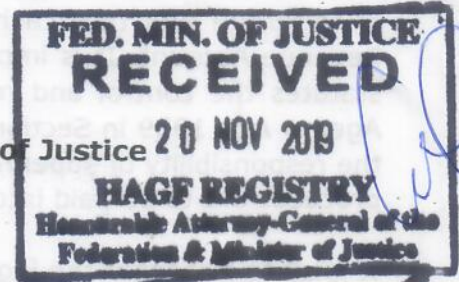




13th November 2019

The Attorney General of the Federation and Minister of Justice
Federal Ministry of Justice
Garki
Abuja



Dear Sir,

**DEMAND FOR THE WITHDRAWAL OF THE ASSET TRACING, RECOVERY AND
MANAGEMENT REGULATIONS 2019**

The above subject matter refers.

The office of the Attorney General of the Federation on the 31st October 2019 released the details of Asset Tracing Recovery and Management Regulations 2019 official gazette on 29th October 2019. This Regulation stated in Section 1 that the objective is to prescribe procedures for all Law Enforcement Agencies (LEAs) and Anti-Corruption Agencies (ACAs) to ensure effective coordination of the investigation of illegally acquired assets and proceeds of crime, tracing and attachment of assets and proceeds of crime, the seizure and disposal of assets and proceeds of crime, and the recovery of stolen assets within and outside Nigeria.

This Regulation has generated several media controversies; various media houses reported that the Regulation will reduce the powers vested in the LEAs and ACAs. Notably, on the 7th November 2019, Punch News conveyed in a report titled "Malami reduces EFCC, ICPC's powers, scraps asset recovery committees".

We hold the stance with respect to the Asset Tracing, Recovery and Management Regulations 2019 that it is overbearing and outreaching and will most certainly result in clashes between the office of the Attorney General of the Federation and the powers reposed in the LEAs and the ACAs.

The National Assembly enacted laws for the smooth operation of the LEAs and ACAs. The Economic and Financial Crimes Commission (EFCC) Act 2004 and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) Act 2000 made for the proper procedures for the custody of interim and final forfeiture and whose/where the custody of the forfeited properties. Section 30, 31 (1-3) of the EFCC Act makes for the procedure for the proper disposal of the seized assets. Particularly Section 31 (2) provides that upon receipt of the final order, the Secretary of the Commission shall take steps to dispose of the property concerned by sale or otherwise and where the property is sold, the proceeds thereof shall be paid into the Consolidated Revenue Fund of the Federation. Also, Section 37, 38 and 45 of the ICPC Act provides gives the Chairman and Officers of the Commission the powers to seize assets.

Section 35 -37 of the Trafficking in Persons (Prohibition) Law and Enforcement and Administration Act, 2015 states that whereupon the receipt of a final order, a person is

convicted the Director-General shall take steps to dispose of the property and that the proceeds shall be paid into the Victims of Trafficking Trust Fund. Similarly, Section 90-91 of the Immigration Act also states that upon conviction of an offense under the Act or under any relevant Law, the Nigerian Immigration Service shall apply to the Court for a final order of forfeiture and that cash assets be forfeited to the Federal Government Consolidated Revenue Account. It is important to note that each LEAs and ACAs have in their enabling statutes the control and management of assets seized. National Drug Law Enforcement Agency Act, 1989 in Section 38 also states that the Secretary to the Agency is saddled with the responsibility of supervising the auction of any forfeited or seized property and then the proceeds are to be paid into the Consolidated Revenue Account.

It is quite clear that the legislators factored in the appropriate channel for the final disposal of forfeited assets. The provisions of Sections 5 - 12 of the Assets Tracing, Recovery and Management Regulations, 2019 completely and outrightly transfers the powers vested in the LEAs and ACAs to the Attorney General of the Federation. And it is important to note at this juncture that Section 1(2) of the EFCC Act, 2004 states that the EFCC is the designated Financial Intelligence Unit in Nigeria charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria. Similarly, Section 3(4) of the ICPC Act 2000 also states that the ICPC shall in the discharge of its functions under the Act, not be subject to the discretion or control of any other person or authority.

The commencement clause of the Regulations states that the powers to make the Regulations were solely derived from the enabling statutes of the LEAs and ACAs. We must humbly hold that these powers do not override the provisions of the enabling statutes establishing the powers of the LEAs and ACAs and the powers referred to in the Commencement Clause of the Regulations merely presupposes discretion as against the mandatory powers vested in the LEAs and ACAs as stated above.

The enabling statutes of the LEAs and ACAs vests in them the powers to carry out their activities and these enabling statutes are made by the National Assembly. The National Assembly is vested with sole powers to make laws according to Section 4 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and Section 1 of the Constitution declares the supremacy of the Constitution, therefore we make bold to state that these Regulation trespasses into the scope of powers vested in National Assembly and amounts to disregarding the supremacy of the Ground Norm. The powers as stated in the Commencement Clause of the Regulations cannot override the powers vested in the LEAs and ACAs being Acts of the National Assembly.

Assets Tracing, Recovery and Management Regulations, 2019 is merely a duplicity of laws and adds no solution, harmony or progress but further rigidity and dilemma to the implementation of the functions of the LEAs and the ACAs by prescribing sanctions for non-compliance as seen in Section 14 of the Assets Tracing, Recovery and Management Regulations, 2019.

It is trite law that the Act of the National Assembly supersedes any other law, it is on this basis that we demand the immediate cancelation and nullification of the Asset Tracing, Recovery and Management Regulations, 2019 within 14 days from the receipt of this letter as the Regulations are ultra vires and a complete derailing from the powers vested in the office of the Attorney General of the Federation as in Section 174 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended); as a complete violation of the rule of law and democracy and abuse of powers vested in the office of the Attorney of the Federation under section 43 of the EFCC Act, 2004 and also Section 50 of the National Drug Law

Enforcement Agency Act, 1989. We have the mandate to promote the interest of the public and in the event that our demand is not acceded within 14 days of the receipt of this letter, we shall without further recourse to your office institute an action in court to demand the doing of same.

The public expects administrative coordination of the management and disposal of proceeds of crimes, in the absence of National Assembly's passage of the much-expected proceeds of Crimes bill, within the possession of anti-corruption agencies and not the usurpation of their powers. The Attorney General and his office is also expected to use the opportunity of the new leadership at the National Assembly to facilitate expeditious passage of

We anticipate a prompt response in this regard.

While we thank you for the prompt response, do accept our sincere regards.

Yours faithfully,



Olanrewaju Suraju
Chairman