

The Examination of Anti-Money Laundering Laws in Nigeria as International Law Overview

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Abstract. *The money laundering along with other economic and financial crimes continues to increase unabated. It remains one of the major problems of the country which has retarded immensely its growth and economic development. This research aims to examine the provisions of the current Anti-Money Laundering Act in Nigeria, as the country is under obligation to comply with the international standard, having signed and ratified "Vienna Convention and Palermo Convention". This research used a doctrinal method which examined and analysed the provision of the Money Laundering (Prohibition) Act 2011. A deducible impression that this created is that it is either those laws are not effective or there is no political will to execute. Combating money laundering therefore requires more than having an array of legal framework. The implementation of those laws is germane for a desire result.*

Keywords: International; Money; White-Crime.

1. INTRODUCTION

The inextricable relationship between money and crime is enormous such that majority of economic and financial crime are deeply rooted in money laundering. This crime has resulted into great financial loss all over the world¹. It's worth was reported to be about US\$ One trillion yearly, while the cost of loss is estimated to be about US\$20 billion annually. Incidentally, launderers are always in search for a convenient place. They appear to have been succeeding through a systematic exploitation of loopholes and identifiable differences in the existing legal framework on money laundering and combating terrorism financing AML/CFT of various nations to move their funds through any noticeable jurisdictions where the legal and institutional framework are either weak or ineffective.

A detailed international standard on measures to combat this dreaded monster has been put in place since 1990 and this is contained in the FATF 40 Recommendations with another 9 that is directed toward combating financing terrorism. The international nomenclature of money laundering however necessitates the need for cooperation and compliance by various domestic regimes with the international standard to achieve

¹ Zuraidah Mohd-Sanusi, Yusarina Mat-Isa, Ahmad Haziq Ahmad-Bakhtiar, Yusri Huzaimi Mat-Jusoh, Tarjo Tarjo. (2022). Interaction effects of professional commitment, customer risk, independent pressure and money laundering risk judgment among bank analysts. *Journal of Money Laundering Control*, Volume 25 Issue 3. <https://www.emerald.com/insight/content/doi/10.1108/JMLC-05-2021-0046/full/html>

meaningful result globally. United States is the trail blazer when it comes to enactment of legislations to combat this menace. The Bank Secrecy Act of 1970 in the United States was the first legislation that was directed to deal with the crime. However, the first specific legislation to mention the term is the Money Laundering Control Act 1986, though the Act did not criminalized money laundering and this Act was closely followed by another Act tagged the Anti-Drug Abuse Act 1988. However, the United States and many other countries including Nigeria has subsequently design legal framework to combat the menace².

The focus of this paper is therefore the examination of the provisions of the current Anti-Money Laundering Act in Nigeria, as the country is under obligation to comply with the international standard, having signed and ratified "Vienna Convention³ and Palermo Convention⁴" respectively⁵.

2. RESEARCH METHODS

This paper by employing a doctrinal research method examines and analyse the provision of the Money Laundering (Prohibition) Act 2011, which is the current law in that regards in Nigeria and compare it with the previous law to determine the adequacy and effectiveness of the law⁶.

3. RESULTS AND DISCUSSION

The term became prominent in the 1920s in the United States. It was used about the illegal activities of Mafia that set up "front businesses" which will enable them to mix the profit therein with proceeds of their illegal dealings in other to conceal its illegal origin and confer on it a legitimate appearance⁷. Businesses such as Casino centres, launderette and Pizza restaurants were some of those businesses that they engaged in

² Mathew Ekundayo Rotimi, Ojo Joseph IseOlorunkanmi, Gift Grace Rotimi, Mishelle Doorasamy. (2022). Re-examining corruption and economic growth nexus in oil dependent economy: Nigeria's case. *Journal of Money Laundering Control*, Volume 25 Issue 3. <https://www.emerald.com/insight/content/doi/10.1108/JMLC-05-2021-0046/full/html>

³ The United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances held at Vienna was the first United Nation's conference to address the issue of money laundering. Nigeria signed the document on 1st March, 1989 and subsequently ratified it on 1st November, 1989. The issue of money laundering was specifically addressed under Article 3(b) I & ii of the United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance adopted in Vienna by the conference at its 6th plenary meeting on 19th December 1988. See Doc E/CONF.82/15 Corr.2 (Dec 1988). Source: UN conference for the adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Official Record, Vol.1.

⁴ Nigeria signed the Palermo Convention on 13 December, 2000 and ratified it on 28 June, 2001.

⁵ (Ige, 2011)

⁶ Abhishek Gupta, Dwijendra Nath Dwivedi, Jigar Shah, Ashish Jain. (2022). Data quality issues leading to sub optimal machine learning for money laundering models. *Journal of Money Laundering Control*, Volume 25 Issue 3. <https://www.emerald.com/insight/content/doi/10.1108/JMLC-05-2021-0046/full/html>

⁷ Norhashimah, Mohd Yasin " An Examination of the Malaysian Anti-Money Laundering Act 2001 (AMLA)", *Current Law Journal* (2002) 6CLJ.

as cover up. Attempt to turn 'dirty' money to clean one is therefore the main thrust of money laundering.⁸ It is a process of confining legitimacy to illegitimate.

The term as been described in various forms but basically the meaning remains the same

3.1. Historical Perspective of Nigeria AML

Financial crimes are issues that have always attract attention of the Nigeria government. Forfeitures of proceed of crime as a penal tool is equally an old tradition of the Nigerian criminal justice system. Financial crime however, did not attract a distinct statute or legislations at the early stage, although provisions dealing with fraud, corrupt practices and some other predicate offences that constituted money laundering and the use of forfeiture as sanction had been embedded in the criminal and penal codes⁹ respectively¹⁰.

The issue of money laundering had over time becomes more technical and provisions of these two codes¹¹ in Nigeria were inadequate to combat it. Therefore, prosecutions of most money laundering related offences become difficult to be successfully carried out. This is due to lack of adequate provisions of the criminal code and penal code. The need for a specific legislation or statute therefore becomes imperative especially when the constitutional provision¹² negates conviction of an accused for an offence that is not written or codified and which the punishment is not prescribed. This position had been demonstrated by courts in several cases¹³.

Despite these challenges, the Nigeria government was unable to have a specific legislation on issues relating to money laundering until 1989 when the then military government rolled out "Decree 48" known as 'Nigeria Drug Law Enforcement Agency Decree which was later refers to as Nigeria Drug Law Enforcement Agency Act' (NDLEA)¹⁴.

The quest to deal with the challenges posed by the illicit trading in narcotics drugs and psychotropic substances like other nations (globally) prompted the promulgation of Nigeria Drug Law Enforcement Agency Decree (NDLEA)¹⁵ which was essentially

⁸ Ibid.

⁹ Criminal code was introduced to Nigeria in 1904 by Lord Lugard, the first British colonial governor general who ruled the Southern and Northern protectorates of Nigeria and who supervised the amalgamation of the two protectorates to become one entity called Nigeria today in 1914 and subsequently introduced the Penal Code that is applicable in the Northern part of Nigeria in 1945.

¹⁰ See Criminal Code Cap. 77 of the Laws of Federation 1990, Sections 19, 20, 58, 68, 88, 248(a) and 483. See also Penal Code sections 111, 184, 190, 202, 394 and 395.

¹¹ Criminal and Penal codes.

¹² See Section 36(12) of the Constitution of Federal Republic of Nigeria (CFRN), 1999.

¹³ See the case of A.G of Federation v Dr. Clement Isong (1986) 1 Q.L.R.N, Pg. 86, where the Supreme court of Nigeria held that person cannot be convicted for an offence whose punishment is not prescribed. See also Aoko v Fagbemi (1963) 1 ALL N.L.R 400 where the decision of earlier court was set aside because the offence of adultery that led to the conviction at court of first instance is not an offence under the Criminal Code upon which the accused was tried.

¹⁴ See Chapter 253, Laws of the Federation of Nigeria 1990.

¹⁵ It later becomes Nigeria Drug Law Enforcement Agency Act (NDLEA)

connected with drug trafficking related matters¹⁶. This "Decree" was Nigeria's response to international directive as contained in the Article 3 of "The United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" (Vienna Conference) of 1988.¹⁷ The convention required under Article 3(i) and (ii) of the treaties that each party (member states) to domesticate legislations that will criminalize among others;

(i) The conversion or transfer of property, knowing that such property is derived from any offence or offences or from an act of participation in such offence or offences, for concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offence or offences to evade legal consequences of his action" and;

(ii) "The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established.... or from an act of participation in such an offence or offences;"

NDLEA centred on prohibition and criminalization of drug related offences. It equally embedded money laundering related offences in its provisions, but the scope is however short of specific provisions that can deal with most money laundering offences that go beyond linkages with drugs or those that does not have its root traced to the drugs related offences¹⁸.

In a desperate attempt by the military government to fill up the lacuna, several other decrees were promulgated. It suffices to state that within three years more than six ancillaries' decrees were put in place, yet, deficiencies were still noticeable.¹⁹

A specific money laundering statute for the first time in Nigeria came to force in 1995²⁰. The decree²¹ contains essentially money laundering preventive mechanism, meaning and identification of elements of money laundering and finally the miscellaneous part that sum up all the parts to be three in all.

One of the major defects of the decree is the confining the meaning and the scope of money laundering only to drug related issues²². This restrictive definition led to the

¹⁶ The extrinsic relationship between money and crime was identified that if the proceed of crime can be accumulated; it will portend a grievous danger because criminals will have enormous resources to cause more havocs. The proceed of crime must therefore be targeted to serve as a blockage to one of the major motives of involving in laundering,

¹⁷ Nigeria signed the treaty on the 1st March, 1989 and subsequently ratified it on the 1st November, 1989.

¹⁸ (Ige, 2011)

¹⁹ The government promulgated 6 different decrees within 1990 and 1993 to reinforce the measures to combat money laundering. The said decree includes; Advance Free Fraud and other Related Offences Act, Cap 13, Laws of The Federation (LFN) 1990; Code of Conduct Bureau and Tribunal Act, Cap 56, Laws of The Federation (LFN) 1990, National Agency for Food and Drugs Administration and Control Act (NAFDAC) 1993,

²⁰ (Ige, 2011)

²¹ Money laundering Decree No 3 of 1995 see (Adekoya, 2007)

²² The offence of money laundering created by money laundering decree 3 of 1995 repeated the major flaw of decree 48 of 1989 (the NDLEA Act) which limited the meaning and scope of

amendment of the statute in 2002²³ and 2003 when 'Money Laundering (prohibition) Act 2003' was enacted. The 2003 Act was however a resultant effect of the Nigeria civilian government's²⁴ ratification of Palermo convention on 28th June 2001 having earlier signed it on the 13th December 2000.

Nigeria was classified as a pariah state in 2001 which technically means that by FATF standard Nigeria was not doing enough to curb money laundering activities and did not put in place the necessary machineries to effectively combat money laundering and other predicate offences. Nigeria was then regarded as non-cooperating nation. FAFT therefore blacklisted Nigeria on this ground. The blacklisting was short lived as body was magnanimously enough to set a 2002 December date for a fresh evaluation. The urge to meet up with the target was therefore another necessary factor that brought about the Money Laundering (prohibition) Act, 2003.

The emergence of a specific anti-graft agency²⁵ that is saddled with the responsibility of investigating all financial and economics related crimes was equally a quick response by the government to demonstrate her commitment and rededication of efforts in dealing with financial crimes²⁶. The Economic and Financial Crime Commission was created with an enabling Act named The Economic and Financial Crime Commission (Establishment) Act of 2002 (EFCC)²⁷ whose provisions covered a wide range of financial and economic crimes. The EFCC Act vested the enforcement of all economics and financial crimes on the agency.

operation of money laundering to proceed emanated from illicit traffic of drugs and psychotropic substance neglecting the fact that so many other economic and financial crimes that are equally deadly. The wording of the legislation however was in tandem with the restrictive scope of the United Nation resolution at Vienna conference, 1988. The restrictive scope and aim were the order of the day and it lasted until 2000 where a broader definition was adopted by the United Nation at "Palermo" convention (United Nation convention against Transnational Organised Crimes. See Adegboyega A. Ige, "A Review of the Legislative and Institutional Framework for Combating Money Laundering in Nigeria," *NIALS Journal on Criminal Law and Justice Vol. 1 2011*, "A Review of the Legislative and Institutional Framework for Combating Money Laundering in Nigeria."

²³ The civilian government of the Nigeria third republic repealed the Money laundering decree 3 Of 1995 and substituted it with Money Laundering (Amendment) Act No 9, 2002.

²⁴ The civilian government led by president Olusegun Obasanjo took over the mantle of leadership in Nigeria as a democratically elected government on the 29th May, 1999 and this government amended the earlier money laundering decree 3 of 1995 and enacted Money Laundering (prohibition) Act, 2003 having signing the United Nation 'Palermo Convention' on the 28th December, 2000 and subsequent ratification on the 16th June, 2001.

²⁵ Economic and Financial Commission (EFCC) an agency that is saddled with investigation and prosecution of all financial crimes was hurriedly established in 2002 to meet up with the requirement of FAFT and to achieve reversal of the existing blacklisting verdict of the Paris based United Nation organ (FAFT). The Economic and Financial Crime Commission (establishment) Act 2002, was therefore enacted.

²⁶ Charles O Adekoya, "The Renewed Battle against Money Laundering in Nigeria", *Malawi Law Journal* 1, no. 1 (2007).

²⁷ Section 5, Economic and Financial Crimes (Establishment) Act 2002.

The two legislations²⁸ were short lived before they were repealed and substituted with more elaborates²⁹ legislations that were aimed essentially to strengthen legislations on money laundering and its enforcements. Economic and Financial Crimes Commission (Establishment) Act 2004 was passed into law and its provisions widening the scope of the commission.

Money Laundering (Prohibition) Act (MLA) 2004³⁰ was equally passed deliberately to ease and facilitate effective enforcement of provisions of the EFCC Act. Its provisions³¹ did not only strengthen the EFCC Act of 2004 but it introduced by a way of conferring more power on EFCC. EFCC Act provide as follows;

The Commission shall be responsible for

- (a). the enforcement and the due administration of the provisions of this Act;
- (b). the investigation of all financial crimes including advance free fraud, money laundering, counterfeiting, illegal charge transfers, future markets fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, etc.
- (c). the coordination and enforcement of all economic and financial crimes laws and enforcement function conferred on any other person or authority;

The MLA also introduced some other mechanics and tools that were targeted at easing enforcement, prosecution and deterrence while some critical powers were conferred on the commission. This is done by providing for stiffer sanctions in the 'Act'. The EFCC was equipped with power to lay surveillance on bank accounts and tool that can enable the trailing of the source of proceed of crimes³². One of the major developments in the quest of Nigeria government to combat money laundering and terrorism financing was the creation of Nigeria Financial Intelligence Unit (NFIU)³³ a coordinating entity for all financial disclosures. The NFIU is domiciled in EFCC³⁴.

The Money Laundering (Prohibition) Act (MLA), 2004 provided for classifications and the resultant effect of this is that, some institutions³⁵ were termed 'Designated Financial institution' (DFI) and others 'Non-Designated Financial Institutions' (DNFI) on which

²⁸ Money Laundering (Prohibition) Act 2003 and Economic and Crime (Establishment) Act 2002.

²⁹ In depth analysis of this will be discussed later in this chapter.

³⁰ Cap M18. Laws of Federation of Nigeria (LFN).

³¹ Money Laundering (Prohibition) Act (MLA), 2004, Cap M18. Laws of Federation of Nigeria (LFN).

³² See sections 12 and 13 Money Laundering (Prohibition) Act (MLA), 2004, Cap M18. Laws of Federation of Nigeria (LFN).

³³ Nigeria Financial Intelligence Unit (NFIU) was created in June, 2004 in line with the directives of FATF. It is backed up with the two legislations (The EFCC Act 2004 and Money Laundering (Prohibition) Act 2004) and draws its responsibilities from 40+9 FATF recommendations. It is vested with power to receive (financial disclosures on suspicious and currency transaction), analysis and disseminate such gathered intelligence to necessary end users. The creation of the financial intelligence unit (FIU) was indeed a mandatory condition required by FATF in other to be removed from non-cooperative countries as listed by FATF.

³⁴ Section 1(2) (c) EFCC Act, 2004

³⁵ See Section 24 Money Laundering (Prohibition) Act, Cap M18. Laws of Federation of Nigeria (LFN).

certain duties were imposed³⁶. The supervisory responsibility of DNFI was vested on the Special Control Unit against Money Laundering (SCUML)³⁷ which is currently domiciled in the Federal Ministry of Industry, Trade and Investment. However, the operational headquarters of SCUML is within the EFCC.

The weakness of the MLA of 2004 became manifested when it was subjected to judicial search light and rigorous judicial fireworks.³⁸ It was eventually repealed and Money Laundering (Prohibition) Act 2011 (MLA) was enacted. The MLA 2011³⁹ is broader. The provisions of the 'Act'⁴⁰ really expanded the scope covered by the repealed '2004 Act'. The designated non-financial institution (DNFI) was enlarged to contain various professionals.

Section 25 of the 'Act provide thus;

"In this Act,

"Designated Non-Financial Institution"

Its means dealers in jewellery, cars and luxurious goods, chartered accountants, audit firms, tax consultants, clearing and settlements company, legal practitioners, hotels, casinos, supermarkets or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities from time to time designate.

These categories of personalities⁴¹ and the designated financial institutions are required by the Act⁴² to identify their various customers and report any of their transactions that exceeded \$1000 to the appropriate authorities⁴³. Failure to comply⁴⁴ within 7 days attracts sanction. The AML 2011 has been subsequently amended in 2012 and it remains the main statute enacted on money laundering as at now. The provisions of the Money

³⁶ Duties such as record keeping of transactions, keeping surveillance on certain transaction, filling of report (to EFCC and NDLEA) on an individual transaction that are more than one million naira and five million for corporate bodies respectively. See section 10, MLA Act 2004.

³⁷ Special Control Unit against Money Laundering (SCUML) was established in 2005 by the Federal Ministry of Commerce and Industry Now Federal Ministry of Industry, Trade & Investment to take up the supervisory role of Designated Non-Financial Institutions (DNFI) created by MLA 2004.

³⁸ The restrictive provisions and definition given to money laundering by the 2004 Act constituted cog to the successful prosecution of many people like James Ibori former governor of Delta States, that money laundering is confined to drug related issues as contained in S14(1) of the MLA 2004 was corrected while so many other notable inadequacies were corrected such as widening those that constituted Non Designated Financial Institutions to now includes Lawyers, accountants and other professional in line with the international standards. S 15 of the 2011 Act is all encompassing in term of coverage of money laundering and related predicate offences.

³⁹ Money Laundering (Prohibition) Act 2011

⁴⁰ Ibid

⁴¹ Designated Non-Financial Institution (DNFI).

⁴² Section 5 of MLA 2011

⁴³ Reporting obligation is imposed on DFI and DNFI respectively under MLA 2011. The implication of this in line with other substantives and procedural laws will be discussed subsequently.

⁴⁴ With the imposed report obligation

Laundering (Provision) Act (MLA) 2011 is structured to comply and *pari materia* with FATF 'Forty Recommendations' and the content is hereby examined below.

3.2. Nigeria AML Regime

As it was reiterated earlier, Nigeria government, in line with this obligation amended the earlier Money Laundering (Prohibition) Act⁴⁵ and initially put in place Money Laundering (Prohibition) Act 2004 and Economic and Financial Crimes Commission (EFCC) (Establishment) Act 2004. The Money Laundering (Prohibition) Act 2004 was later repealed and Money Laundering (Prohibition) Act 2011 was passed into law to address the lacuna identified in 2004 Act to achieve compliance with international standard.

The Act⁴⁶ contained specific provisions to implement various aspect required by the FATF recommendations. It highlights in details the obligations of the financial and non-financial service provider⁴⁷ and rolled out strict customer's due diligence (CDD) measures. The Money Laundering (Provision) Act 2011 therefore appears to have addressed all key areas of the FATF recommendations⁴⁸ as will be shown later in this paper.

The MLA 2011 is intended to comply with the FATF forty recommendations and as such be in line with other acceptable international jurisdictions. It is divided into 3 parts as follows;

- Part 1 – Prohibition of money laundering
- Part 11- Offences
- Part 111- Miscellaneous

Part 1 is incorporated pursuant to the requirement of FATF forty recommendations on criminalization of money laundering and the imposition of duties on financial institutions to take some specific measures to combat money laundering and terrorism financing.

Part 1 consists of 14 sections which mostly has a direct relevance to reporting institutions in carrying out its businesses as financial institutions.

It consists of the following;

⁴⁵ The first money laundering legislation was Money Laundering Decree 3of 1995, then Money Laundering (Prohibition) Act 2003 which lasted for only 10 months before it was repealed and Money Laundering (Prohibition) Act 2004 was enacted. The 2004 Act now give way to the current Money Laundering (Prohibition) Act 2011.

⁴⁶ (*Money Laundering (Prohibition) Act, 2011*, n.d.)

⁴⁷ (Julius Otusanya et al., 2011)

⁴⁸ The Money Laundering (Provision) Act (MLA) 2011 had a wider coverage unlike the previous Acts, it provides broad list of predicate offences of money laundering and addressed in details all key aspects of the FATF forty recommendations which include; record keeping, reporting obligation, customer identification, secrecy provisions, compliance and others check and offences.

- S1. Limitation to make or accept cash payment
- S2. Duty to report international transfer of funds and securities
- S3. Identification of customers
- S4. Duties incumbent upon casinos
- S5. Occasional cash transaction by designated non-Financial Institutions
- S6. Suspicious transaction reporting
- S7. Preservation of records
- S8. Communication of information
- S9. Internal procedures, policies and controls
- S10. Mandatory disclosure by financial institutions
- S11. Prohibition of numbered or anonymous accounts, accounts in fictitious names and shell banks
- S12. Liability of directors, employees of Financial Institutions,
Designated Non-Financial Institutions, Financial Intelligence Unit, Regulators, the Commissions and the Agency
- S13. Surveillance on Bank Accounts
- S14. Determination of flow of transactions

Section 1 of the Act is targeted at the control of cash transactions; it limits the cash payment on transaction to 5million Naira by individual and 10million by corporate body respectively. Any transaction above this is prohibited unless the transaction is done through the bank. Apart from promoting banking and financial sectors, this provision has blocked one of major method of laundering. One of the most common techniques of laundering is the act of acquiring assets such as houses, lands, cars and other asset with illicit money and thereafter sell the property to give the proceeds a new look of legality.

With this provision, any transactions beyond this prescribed limit must pass through financial institutions and of course the Act has equally imposed keeping record of transaction and reporting obligation on Financial and Designated Non-Financial (DNFI) Institutions which will now enhance the proper monitoring of such activities.⁴⁹

Section 2 is essentially on Currency Reporting and it centred on Foreign Transaction Reporting (FTR). It imposes duty to report foreign transactions. The Act by this provision-

⁴⁹ (Chukwuemerie, 2006)

imposed duty to report any transfer of money or securities of a sum exceeding \$10000 or its equivalent to Central Bank of Nigeria, if it is money or to the Securities and Exchange Commission within seven days of the transaction.

The Act goes further to provide for declaration of transportation of cash more than \$10000 and false declaration when declared or failure to declare pursuant to Foreign Exchange (Monitoring and Miscellaneous Provision) Act will attract punishment accordingly.

3.3. Customer Identification

The Act under section 3 provides for necessary measures that must be taken to identify customer at on-board stage. The whole of this section relates to customer identification and opening of accounts. It is evident from this provision that strict customer due diligence (CDD) is imposed on Financial Institution and Designated Non-Financial Institutions. The ease with which criminals opens account thus becomes something of the past.

It should be noted that opening of bank accounts with fictitious names is one of strategies employed by launderer, most especially at the placement stage. Before the enactment of this 'Act', launderers opened accounts at banks with fictitious names or assumed names thus make it easier for them to operate as was rightly observed by Andrew I Chukwuemerie, (2004).⁵⁰ The measures to identify customers are therefore the main issue in section 3 and the section mandated banks to discharge this responsibilities contrary to what was obtainable prior the enactment.

Proper identification of customer has now been codified under section 3 of the Act inter alia as follows;

A financial Institution and a Designated Non-Financial Institution Shall-

- (a) "Identify a customer, whether permanent or occasional, natural or legal person or any other form of legal arrangements, using identification documents as may be prescribed in any relevant regulation;
- (b) Verify the identity of that customer using reliable, independent source documents, data or information; and
- (c) Identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information data obtained from a reliable source such that the Financial Institution and Designated Non-Financial satisfied that it knows who the beneficial owner is".

This position is further strengthened by Section 11 of the Act. The provision of section 11 prohibits the opening of numbered or anonymous accounts. This signifies zero tolerance for fake, fictitious and anonymous account holder as provided under section 3. The Act further expressly prohibit establishment or operation of shell accounts under

⁵⁰ (Chukwuemerie, 2006)

any disguise and violation of this provision attracted penalty of an imprisonment of nothing less than 5 years while fine of not less than N10, 000, 000 but not more than 50, 000, 000 for corporate body and while the principal officers will be prosecuted.⁵¹

Section 4 of the 'Act' imposed duties on casino to identify customers that transact business with it and keep in a register record of its transaction in a chronological order in the manner specified by the 'Act' and such register must be kept for a period of at least 5 years.⁵² Concerning Designated Non-Financial institution (DNFI) which the Act' refers to under section 3, the Act has extensively defined 'DNFI' and it has included dealers in jewellery, cars and luxury goods, casinos and all sort of professionals such as chartered accountants, audit firms, lawyers and others.

This definition of DNFI is contained under 'Section 5 of the Act'. It defines 'Designated Non-Financial institution' (DNFI) as those whose business involves cash transaction. They are required to submit to the Ministry of trade a declaration of its activities on business that has been transacted within three month of the commencement of the 'Act' and ensure proper identification of their customers which include filling of a specified identification form in previous transactions that exceed US\$1000 or its equivalent.

The information so filled must be submitted by the ministry within seven days to the commission and while such records are to be preserved for at least 5years, any defaulter among the DNFI will be sanctioned in the prescribed manner. The process however doesn't not preclude direct request of information by the commission.⁵³

3.4. Suspicious Transaction

Reporting of suspicious transactions (STR) is the focus of 'Section 6' of the 'Act'. Reporting institutions⁵⁴ are mandated to promptly report any suspicious transaction to the competent authority. The 'Act' unlike Section 6(b)(c) of MLA 2004 succinctly give a broader definition of what constitute a suspicious transaction. It defines a suspicious transaction as any transaction that falls within or;

- (a). Involves a frequency which is unjustifiable or unreasonable;
- (b). Is surrounded by conditions of unusual or unjustifiable complexity;
- (c). Appears to have no economic justification or lawful objective; or
- (d). In the opinion of the Financial Institution or Designated Non-Financial Institution involves terrorist financing or is inconsistent with the known transaction pattern of the account or business relationship;⁵⁵

Consequently, any such transaction as mentioned above is said to be suspicious and the origin of such money, the destination and the beneficiary of the money must be identified

⁵¹ Section 11 (1-4),(*Money Laundering (Prohibition) Act, 2011*, n.d.)

⁵² Section 4 (1)(b)(ii) and (2) (*Money Laundering (Prohibition) Act, 2011*, n.d.)

⁵³ Section 5(1)(a)(ii),(b) and (2-6) (*Money Laundering (Prohibition) Act, 2011*, n.d.)

⁵⁴ Financial Institutions and Designated Non-Financial Institutions (DNFI)

⁵⁵ Section 6(1)(a-d),(*Money Laundering (Prohibition) Act, 2011*, n.d.)

along with the aim of the transaction by the concerned Financial Institution and in such instance the Financial Institution is duty bound to block the laundering of illegal act or proceed of crime, make prompt report whether the transaction is complete or not and draw up a written report⁵⁶ that will contain all relevant information on the issue.⁵⁷ . Failure to comply is criminalized and attracts sanction of N1, 000,000 fines for each of the days with which the offence committed is continued.

The Act directed that the response of the commission must be prompt and the commission is empowered to issue stop transaction notice that has 72 hours' operational limit or approach Federal High Court for the blockage of the account where the origin of the money cannot be traced or ascertained within the said 72 hours. Official of the banks are to be liable personally if there is evidence of conspiracy.

The Act provides under section 6 ⁵⁸as follows;

(7). Where it is not possible to ascertain the origin of the funds within the stoppage of the transaction, the Federal High Court may, at the request of the commission or other persons or authority duly authorized in that behalf, order that the funds, accounts or securities referred to in the report be blocked.

(8) An order made by the Federal High Court under subsection (7) of this section shall be enforced forthwith.

(9) A financial Institution or Designated Non-Financial Institution which fails to comply with the provisions of subsection (1) and (2) of this section commits offence and is liable on conviction to a fine of N1, 000, 000 for each day during which the offence continues.

(10) The Directors, Officers and Employees of Financial Institutions and Designated Non-Financial Institutions who carry out their duties under this Act in good faith shall not be liable to any civil or criminal liability or have any criminal or civil proceedings brought against them by their customers.

The purport of Section 6(10) is that all banks' officers as well as that of DNFI are immune from criminal or civil liability that might arise from disclosure. Unfortunately, this gesture is not extended to a private informant that may voluntarily avail the authority with suspicious transaction as required under section 10(2)(a) and (b). This is a noticeable lacuna. Any person that volunteers a report ought to be protected from the consequence of such a report unless the report is given in bad faith.

If sequel to the blockage of account as stated under section 6, conspiracy is established against the concern officials, Section 12 of the Act prescribed criminal proceeding against directors and any other employees of Financial Institutions or DNFI that is found culpable. Conspiracy because of blockage of the account is therefore a criminal offence under the Act.

⁵⁶ (Chukwuemerie, 2006)

⁵⁷ Section 6(2)(a-c), and (3)(*Money Laundering (Prohibition) Act, 2011*, n.d.)

⁵⁸ Section 6(7-10) (*Money Laundering (Prohibition) Act, 2011*, n.d.)

3.5. Records Keeping

Retention of records is specified under 'Section 7. It provides for the preservation and keeping of customers records by Financial and Designated Non-Financial Institutions for a period nothing less than 5 years after the closure of the account or the severance of relation with customers⁵⁹.

With regards to records mentioned under Section 7, Section 8 provides the details. It specified that those concerned records are to be communicated on demand by the Central Bank or the National Drug Law Enforcement Agency (NDLEA) or as may be specified by the commission⁶⁰.

Those records to be kept as specified under section 7 accordingly include;

- Customer's identity
- Information relating to the transaction⁶¹

Section 9 specifies internal procedures, policies and controls. Employees of Financial Institutions and that of Designated Non-Financial Institutions (DNFI) are required by the 'Act' to possess high standard of integrity. Procedures to facilitate this are embedded under this section. The Section stated that Financial Institutions and DNFI are required to develop programmes that are targeted at combatting money laundering, proceed of crime and any other form of illegality which includes;

- The designation of compliance officers at management level at its headquarters and at every branch and local office;
- Regular training programs for its employees;
- The centralization of the information collected; and
- The establishment of an internal audit unit to enforce compliance with and effectiveness of the measures taken to enforce the provisions of this Act.⁶²

With this expected training programme, employees of Financial Institution and DNFI are therefore expected to be conversant with money laundering law and be equipped with the required skill to detect suspicious transactions. Failure on the part of Financial Institutions and DNFI to comply with the specified internal procedures, policies and control under section 9 is criminalized and penalty of nothing less than N5,000,000 for banks and N1,000,000 for other financial institutions which includes capital brokerage and operation licence granted to DNFI and Financial Institution could be suspended.

⁵⁹ Section 7(a),(*Money Laundering (Prohibition) Act, 2011*, n.d.)

⁶⁰ Section 8,(*Money Laundering (Prohibition) Act, 2011*, n.d.)

⁶¹ Section7 (a-b),(*Money Laundering (Prohibition) Act, 2011*, n.d.)

⁶² Section 9,(1)(a-d)(*Money Laundering (Prohibition) Act, 2011*, n.d.)

Section 10 is a direct compliment to section 1 of the Act, it provides for a 'Cash Transaction Report (CTR). The section requires a mandatory disclosure by financial institution. By this provision Financial Institutions or Designated Non-Financial Institutions are mandated to report any transaction that exceed the threshold level which the Act described as more than 5million by individual and 10million by corporate body within 7days to Economic and Financial Crimes Commission (EFCC) and failure to comply attracts penalty of within N250, 000 and not more than 1million for each day the contravention continues⁶³. Subsection 2 accommodates a voluntary report of transaction more than 1m and 5million by individual and corporate body respectively.

Thus, by Section 10, the secrecy obligations are overridden⁶⁴. Thus, Financial Institutions and Designated Non-Financial Institutions (DNFI) are not to abide by any secrecy provisions from any other law. Customer confidentiality in banking industries and sacrosanctity of client information of Legal Practitioner professional ethics are expected to be overridden by this provision. Section 10(4) provide thus;

Banking secrecy or preservation of customer confidentiality shall not be invoked as a ground for objecting to the measures set out in subsection (1) and (2) of this section or for refusing to be a witness to facts likely to constitute an offence under this Act, the Economic and Financial Crimes Commission (Establishment), etc.) Act or any other law.

Section 13 is intended to equip regulatory bodies with the necessary power to conduct surveillance on banks accounts, obtained communication of any authentic instrument or private contract and have unfettered access to any suspected computer system upon securing order of Federal High Court which is expected to be ex-parte. The Section under subsection 4 give money laundering issues an exception to the general rule of banking secrecy or preservation of customers.

While Section 14 specifies the power of the Economic and Financial Crime Commission in consultation with the Apex bank to determine the flow of transaction of any suspected person and the beneficiaries. Part 11 of the Act creates and defines various offences that constituted money laundering while the last part is on miscellaneous which focused on courts that have jurisdiction to try money laundering offences, power of the enforcement agency to demand and obtains records while any obstruction to the commission's work is criminalised.

3.6. Offences (part ii)

Nigeria signed and ratified the Vienna and the subsequent Palermo convention. The country is therefore duty bound to implement the money laundering counter measures that are contained in the provisions of FATF 'Forty Recommendations'⁶⁵.

MLA 2011 creates criminal offence of money laundering in consonant with FATF Recommendation 1 and 2 on scope of money laundering. Section 15(1) like all other sections is one of those specific provisions aimed at complying with FATF directives that

⁶³ Section 10 (2)(a)(b), "Money Laundering (Prohibition) Act, 2011."

⁶⁴ Norhashimah, Mohd Yasin " An Examination of the Malaysian Anti-Money Laundering Act 2001 (AMLA)", *Current Law Journal* (2002) 6CLJ.

⁶⁵ (Ige, 2011)

required member countries to criminalise money laundering. IT stated unequivocally as follows; “*Money laundering is prohibited in Nigeria*”. The current *Money Laundering (Prohibition) Act 2011* (as amended in 2012) therefore gives broader definition of money laundering against the narrow perspectives of the *Money Laundering (Prohibition) Act of 2004*⁶⁶ that limited money laundering to the old principles of narcotic drugs. Thus, in the country, money laundering act is currently⁶⁷ defined as committed by:

Any person or body corporate, in or outside Nigeria, who directly or indirectly;

- (a) Conceals or disguises the origin of;
- (b) Converts or transfers;
- (c) Removes from the jurisdiction; or
- (d) Acquires, uses, retains or takes possession or control of;

Any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act; commits an offence of money laundering⁶⁸

While imprisonment of nothing less than 7 years is prescribed for anybody that is found guilty of the offence the body corporate to pay a fine of nothing 100% of the fund or value of the properties involve. This is however at first instance. A subsequent conviction attracts revocation of the certificate or license.

The global trend requires that the wordings of legislations should be drafted in a way that it will be all encompassing, all embracing and unambiguous. Therefore, under the Act the term money laundering is widely defined in such a manner that it embraces all possible and conceivable meanings.

3.7. Jurisdiction of Court (Part iii- Miscellaneous)

The Act vested the jurisdiction to try offences created by the Act or any other predicate offences on Federal High Courts irrespective of the fact that the whole of the offence is committed in Nigeria or partly in Nigeria. Thus, the court will assume jurisdiction if the offence commences in Nigeria and completed outside the country and vice versa.

It should however be noticed that the jurisdiction on money laundering, economic and financial crimes is not to the exclusive jurisdiction of the Federal High Courts, State High Courts are equally vested with such jurisdiction.⁶⁹ Any person that obstructs the effective discharge of the responsibilities that is placed on the enforcement agency or its authorized personnel have committed offence under the Act and liable for punishment.⁷⁰

⁶⁶ CAP M18, Laws of Federation of Nigeria (LFN), 2004

⁶⁷ This is the extant legislative legislation of money laundering act

⁶⁸ Section 15 (2) (a-d), *Money Laundering (Prohibition) Act (2011)*

⁶⁹ Section 46 of Economic and Financial Crimes Commission (Establishment) Act 2004, interpretation section defines courts in the Act to mean, the Federal High Court or the High Court of the Federal Capital Territory or the High Courts of a State.

⁷⁰ Section 20(4), *Money Laundering (Prohibition) Act (2011)*

4. CONCLUSION

Nigeria Anti-Money Laundering legal frameworks to combat money laundering have been fashioned along with the international standards. It has equally been reported to be one of the best in West Africa region by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). The mutual evaluation report on Nigeria conducted by GIABA, confirmed that a reasonable commitment has been demonstrated by Nigeria on the issues of money laundering and combating financing terrorism. It further adjudged it to be the most elaborate.

5. REFERENCES

Journals:

A.G of Federation v Dr. Clement Isong (1986) 1 Q.L.R.N, Pg. 86, where the Supreme court of Nigeria held that person cannot be convicted for an offence whose punishment is not prescribed. See also Aoko v Fagbemi (1963) 1 ALL N.L.R 400 where the decision of earlier court was set aside because the offence of adultery that led to the conviction at court of first instance is not an offence under the Criminal Code upon which the accused was tried.

Abhishek Gupta, Dwijendra Nath Dwivedi, Jigar Shah, Ashish Jain. (2022). Data quality issues leading to sub optimal machine learning for money laundering models. *Journal of Money Laundering Control*, Volume 25 Issue 3. <https://www.emerald.com/insight/content/doi/10.1108/JMLC-05-2021-0046/full/html>

Charles O Adekoya, "The Renewed Battle against Money Laundering in Nigeria", *Malawi Law Journal* 1, no. 1 (2007).

GIABA is 'Inter-Governmental Action Group against Money Laundering in West Africa' established by heads of states of Economic Commission of West Africa States (ECOWAS). GIABA conducts Mutual Evaluations of Member States in accordance with FATF standards and in compliance with its enabling Statutes and its evaluations are based on the FATF Forty Recommendations (2003) and the Nine Special Recommendations on Terrorist Financing (2001), using the AML/CFT Methodology 2004.

GIABA," Mutual Evaluation Reports Anti-Money Laundering and Combating the Financing of Terrorism, 2007" www.giaba.org/reports/mutual-evaluation/Nigeria.htm accessed on 14th November, 2016.

Mathew Ekundayo Rotimi, Ojo Joseph IseOlorunkanmi, Gift Grace Rotimi, Mishelle Doorasamy. (2022). Re-examining corruption and economic growth nexus in oil dependent economy: Nigeria's case. *Journal of Money Laundering Control*, Volume 25 Issue 3. <https://www.emerald.com/insight/content/doi/10.1108/JMLC-05-2021-0046/full/html>

Nigeria Financial Intelligence Unit (NFIU) was created in June, 2004 in line with the directives of FATF. It is backed up with the two legislations (The EFCC Act 2004 and Money Laundering (Prohibition) Act 2004) and draws its responsibilities from 40+9 FATF recommendations. It is vested with power to receive (financial disclosures on suspicious and currency transaction), analysis and disseminate such gathered intelligence to necessary end users. The creation of the financial intelligence unit (FIU) was indeed a mandatory condition required by FATF in order to be removed from non-cooperative countries as listed by FATF.

Nigeria signed the treaty on the 1st March, 1989 and subsequently ratified it on the 1st November, 1989.

Norhashimah, Mohd Yasin " An Examination of the Malaysian Anti-Money Laundering Act 2001 (AMLA)", *Current Law Journal* (2002) 6CLJ.

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Zuraidah Mohd-Sanusi, Yusarina Mat-Isa, Ahmad Haziq Ahmad-Bakhtiar, Yusri Huzaimi Mat-Jusoh, Tarjo Tarjo. (2022). Interaction effects of professional commitment, customer risk, independent pressure and money laundering risk judgment among bank analysts. *Journal of Money Laundering Control*, Volume 25 Issue 3. <https://www.emerald.com/insight/content/doi/10.1108/JMLC-05-2021-0046/full/html>

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Money Laundering (Prohibition) Act 2003 and Economic and Crime (Establishment) Act 2002.

Money Laundering (Prohibition) Act 2011

Money laundering Decree No 3 of 1995 see (Adekoya, 2007)