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MONEY-LAUNDERING AND TERRORISM FINANCING IN NIGERIA: LEGAL AND INSTITUTIONAL REGIMES

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Abstract

Money laundering (ML) and terrorist financing (TF) pose serious threats to the integrity and stability of a nation's financial sector. This has the potential to threaten the global financial system given the financial interconnectivity. Robust anti-money laundering and combating the financing of terrorism regimes are essential in protecting the integrity of market system including the global financial framework in order to reduce the factors that facilitate financial abuse. The Money Laundering (Prevention and Prohibition) Act 2022 aims to provide a comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria. The primary goal of the Act is to improve the current system for preventing money laundering and other associated offences in Nigeria. The paper examines the Nigeria's money laundering and terrorism funding regimes in order to re-assess whether they are adequate or otherwise in the light of international financial systems. Additionally, it argues that effective implementation of anti-money laundering and counter-terrorism financing regimes will boost higher confidence in Nigeria's financial system which ultimately enhances the overall

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security in the global financial ecosystem. To further achieve this, international co-operation is vital to eliminate these transnational crimes. The paper adopts doctrinal research methodology in the analysis.

Keywords: Money Laundering, Terrorism Financing, Laws, Enforcement, Nigeria

1. Introduction

Money laundering and financing of terrorist organisations have both raised concerns on a global financial community. The development of information as well as technology has greatly increased global connectivity. This interconnectivity has made it easier to facilitate market relationship between the developed and developing economies alike.[1] However, challenges that come with such advancements in financial systems are numerous.[2] The crimes connected to the information economy are one of the topics that the global financial community is growing more concerned about. The most significant sector that is affected by ML is banks and other financial institutions. These institutions are therefore tasked with eliminating unlawful funds from unlawful sources. ML provides platforms for criminals to conduct and expand their criminal activities.[3] Money laundering makes illegally-obtained money to appear legal.[4] While the source of money is largely hidden, the proceeds of these crimes are packaged to give them a legitimate image.[5] Money laundering facilitates crimes such as drug trafficking and

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1 Mathias Raddant and Dror Kenett, 'Interconnectedness in the Global Financial Market' (2021) 110 *Journal of International Finance* 102

2 Ibid

3 Ibid

4 B. Tupman, 'What does the way crime was organised yesterday tell us about the way crime is organized today and will be tomorrow?'(2015) 18(2) *Journal of Money Laundering Control* 220-233.

5 Ibid.

terrorism, and can adversely impact the global economy.[6] Studies have shown that the risks of money laundering and its contagious effects are expanding in many countries.[7] The United Nations Office on Drugs and Crime estimates that annual laundering volumes range from 2% to 5% of global GDP.[8] In 2024, the estimate is between $2.22 trillion and $5.54 trillion.[9]

The above approximation may even have been underreported in view of the magnitude of money laundering worldwide. Given the illegal nature of the transactions, precise figures are not available. Therefore, it is difficult to produce a precise figure of the amount of money laundered annually on a global scale.[10] Further reason is that each scheme involving money laundering requires transferring money through various channels, using a number of ways, and via multiple financial transactions channels to satisfy the primary goal of obscuring the origin of money and thereby making criminal activity hidden.[11]

However, in terrorism financing, funds may originate from either legal or illegal sources.[12] Unlike money-laundering, the objective of terrorist financing is not necessarily to conceal the source of the funds but to hide the activity funded.[13] The techniques employed by terrorist organisations to fund their operations are

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6 Ibid .

7 MT Ladan, 'International Legal and Administrative Regimes for Combating Money laundering and Terrorist Financing' (2012) 6 *NJIL Journal* 168.

8 See UNODC, 'Global impact of money laundering in 2024' (2024) at <https://www.unodc.org/unodc/en/money-laundering/overview.html> accessed 20 August 2024.

9 See <https://www.paymentscardsandmobile.com/the-global-impact-of-money-laundering-in-2024/> accessed 20 August 2024.

10 United Nation, 'Money laundering overview' available at https://www.unodc.org/unodc/en/money-laundering/overview.html > accessed 20 August 2024.

11 Ibid.

12 Ibid.

13 EU, 'Fighting against money laundering and terrorists financing' at <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/fight-against-terrorist-financing> last accessed 20 August 2024.

all included in the concept of terrorism funding.[14] The cash may originate from lawful sources, such as business revenues and may also involve donations from non-profits.[15] Terrorist groups may also get their financing from illegal activities such as trafficking in weapons, drugs or people, or kidnapping for ransom.[16] To effectively combat the threat of terrorism, it is essential to stop terrorists from gaining access to financial resources.[17] However, many developing countries lack the efficient legal and institutional frameworks including the technologies needed to detect, investigate and prosecute terrorist financing and money laundering cases.

Internationally, there is a growing recognition that strong AML/CFT frameworks are essential for maintaining financial stability and that effort in this direction should be actively promoted.[18]Strong AML/CFT policies and measures are therefore crucial to mitigate the attendant threats.[19] Indeed, robust anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets including the global financial framework given that they help to reduce the factors that facilitate financial abuse.[20] The Financial Action Task Force (FATF) has advised nations to enact laws requiring financial institutions and other designated non-financial businesses and professions (DNFBPs) to file specific

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[14] Ibid.

[15] United Nation Office for Drug and Crime, 'Combating terrorists financing' available at <https://www.unodc.org/unodc/en/terrorism/expertise/combating-terrorist-financing.html>accessed 20 August 2024.

[16] Ibid.

[17] Ibid.

[18] John Hatchard, *Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity* (Cheltenham, Edward Elgar Publishing Ltd 2014) 13.

[19] Waziri Adisa, 'Transnational Organized Crime, Terrorist Financing and Boko Haram Insurgency in Nigeria' (2021) 1(1) *Journal of Terrorism Studies* 1-27.

[20] Ibid.

reports.[21] These reports are to be filed when a financial institution or DNFBP suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to terrorism financing.[22]

At the national level, the Nigerian government has demonstrated some commitment by establishing legal and regulatory frameworks to facilitate the application of international instruments for fighting money laundering and terrorism funding.[23] The commitment culminated in vesting enforcement powers to the law enforcement and regulatory agencies.[24] These bodies complemented the provisions of the laws by providing comprehensive regulatory and supervisory frameworks for combating money laundering and terrorism financing.[25]Despite the efforts of the enforcement and regulatory agencies, much is still left to be desired. This is because the perpetrators of these transnational crimes are professionals and highly placed persons in the society.[26] For these reasons, money laundering including terrorism financing continues to evolve assuming new scope and applying new tactics.

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[21] The FATF is an independent intergovernmental organisation that develops and promotes policies to protect the global financial system against money laundering and terrorist financing. Fatf, 'The Fatf Recommendations' (2003) available at <https://www.fatf-gafi.org/faq/moneylaundering/> accessed 30 July 2024

[22] Ibid.

[23] The Money Laundering (Prevention and Prohibition) Act, 2022 (the Act or MLA 2022) which repeals the Money Laundering (Prohibition) Act, No. 11, 2011, contains elaborate provisions on the legal and institutional framework for the prevention and prohibition of money laundering in Nigeria.

[24] Ibid.

[25] Christiana Attah, 'Financing Terrorism in Nigeria: Cutting off the Oxygen' (2019) 44 (2) *Africa Development* 5–26

[26] Rahmon Yussuf, 'Anti-money Laundering Framework in Nigeria: An Umbrella With Wide Leakage' (2017) 66 *Journal of Law, Policy and Globalization* 172.

The promulgation of laws and the establishment of regulatory frameworks including the enforcement institutions alone are not sufficient to combat money laundering and terrorism financing.[27] They must be supported by strong political will on the part of the government and real and meaningful implementation of the laws through investigations, prosecutions and convictions.[28] Similarly, global cooperation and mutual legal assistance in investigations, prosecutions and enforcement are necessary in view of the cross-border nature of money laundering and the financing of terrorism.

Beyond the introduction, part two is the clarification of the conceptual framework. Similarly, global and regional initiatives aimed at curtailing these crimes will be discussed. Part three is the regimes for anti-money laundering and the combating of financing of terrorism in Nigeria. Part four will dwell on the challenges of enforcing anti-money laundering regimes and its impact on financial system stability in Nigeria. Part five provides the recommendation and conclusion which summarises the discussions and ways forward.

2. Conceptual Framework

Money laundering is the process of concealing the origins of illegally obtained money typically by means of transfers through a legitimate business. Essentially, it refers to the many processes and techniques used to mask the true ownership and origin of illegal gains so that they appear to come from lawful source.[29] The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 defines Money Laundering as:

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[27] UNODC, 'Combating terrorists financing' (2003) at <https://www.unodc.org/unodc/en/terrorism/expertise/combating-terrorist-financing.html> accessed 18 August 2024.

[28] N Ogba-Ojukwu and PC Osode, 'The Legal Combat of Financial Crimes: A Comparative Assessment of the Enforcement Regimes in Nigeria and South Africa, (2020) *African Journal of Legal Studies* 1-23.

[29] OECD, 'Fatf crackdown on terrorist financing' (2010) at <http://www.oecd.org/fatf> accessed 20 August 2024.

> The conversion or transfer of property knowing that such property is derived from an offence for the purpose of concealing the illicit origin of the property, or assisting any person who is involved in the commission of such an offence to evade the legal consequence of his action.... It is the concealment or disguising the true nature, source, location, disposition, and movement, rights with respect to ownership of property, knowing that such property is derived from an offence or from an act of participation in such an offence.[30]

This definition has been criticised for failing to include other financial crimes.[31] Hence, the UN Convention against Transnational Organised Crime improved on this definition by providing for dual criminality in the definition of money laundering.[32] It defined the term as:

- The conversion or transfer of property, knowing that such property is proceed of crime, for the purpose of concealing or disguising the illicit origin of the property...
- The concealing or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is proceed of crime.[33]

Money laundering has been further defined as the use of money derived from illegal activity by concealing the identity of individuals who obtained the money and converting it to assets

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[30] Also known as Vienna Convention 1988, article 3(b) (i – ii). The Vienna Convention has been criticised for restricting the definition of money laundering to proceeds of drug trafficking alone to the exclusion of other criminal activities.

[31] John Madinger, *Money laundering: A Guide for Criminal Investigations* (3rd edn, Taylor & Francis Group 2012) 5.

[32] Also known as the Palermo (Italy) Convention 2000

[33] Ibid.

that appear to have come from a legitimate source.[34] According to anti-money laundering scholars, money laundering is the process of hiding the source of property that has been gained through illicit activity.[35]

Under the Nigerian legal regime, money laundering is defined as the conversion, transfer, concealment, disguise, removal from jurisdiction, acquisition, or retention of any funds or property with knowledge that those funds or assets are, or constitute a part of, the proceeds of an unlawful act, regardless of the fact that the various acts constituting the offence were committed in different countries or locations.[36] The unlawful act referred to in sub-section 2 of the MLA 2022 include but not limited to the offences of corruption, fraud, terrorist financing, theft, and participation in an organised criminal group among others.[37]
Typically, money laundering involves three steps: placement, layering and integration.[38] First, the illegitimate funds are secretly introduced into the legitimate financial system.[39] Then, the money is moved around to create confusion, sometimes by wiring or transferring through numerous accounts. [40] Thereafter, it is integrated into the financial system through additional transactions until the 'unclean money' appears clean.[41] This process creates a veil of legal cleanliness.[42]

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[34] Madinger (n 31) at 10.

[35] Janet Ulph, *Commercial Fraud: Civil liability, Human Rights, and money laundering* (Oxford University Press 2006) 124.

[36] See The Money Laundering (Prevention and Prohibition) Act, 2022. Hereinafter (the Act or MLA 2022), s 18 (2).

[37] Ibid, s.18 (6).

[38] R Rider, K Alexander, S Bazley, S. and J Bryant, *Market Abuse and Insider Dealing* (Haywards Heath, West Sussex: Bloomsbury Publishing 2016) 25.

[39] Ibid.

[40] A Idowu and K. Obasan, 'Anti-money Laundering Policy and its Effects on Bank Performance in Nigeria (2012) 6 *Business Intelligence Journal* 367-373.

[41] Ibid.

[42] N. Al-Suwaidi and H. Nobanee, 'Anti-money laundering and Anti-Terrorism Financing: A Survey of the Existing Literature and a Future Research Agenda' (2021)24(2) *Journal of Money Laundering Control*. 396-426.

On the other hand, terrorism financing under the UN Conventions applies to "any person who: ...by any means, directly or indirectly, unlawfully, and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- An act which constitutes an offence within the scope of and as defined in one of treaties listed.[43]
- Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act; by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.[44]

A person is *inter alia* deemed to commit the offence of financing of terrorism if he solicits, acquires, provides, collects, receives, possess or makes available funds, property or other services by any means to (i) terrorists or (ii) terrorist groups, directly or indirectly with the intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or in part in order to commit an offence under this Act.[45]

Similarly, it includes the possession of funds intending that it should be used or knowing that it will be used, directly or indirectly in whole or part, for the purpose of committing or facilitating the commission of a terrorist act by terrorist or terrorist groups.[46] Money laundering is frequently associated with terrorism, which is the deliberate, illegal, and indiscriminate use of force against non-combatants, innocent civilians, and

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[43] See the United Nations Convention for the Suppression of the Financing of Terrorism of 1999, art 2(1) (a-b)

[44] Ibid.

[45] See the Nigerian Terrorism (Prevention) (Amendment) Act, 2013, s.13

[46] Ibid.

public or private property in order to instil fear or advance ideological, political, or religious goals by non-state actors.[47] Moving money to fund terrorist organisations is one of a wide range of activities that are covered by the term 'terrorist financing.' This study is consistent with the numerous international frameworks or instruments put in place for addressing and combating terrorist financing.[48]

3. Conceptual Analysis

The economic classical theory proposed by Adam Smith identifies two fundamental factors that determine the behaviour of individuals. On the one hand, every person acts rationally and aims to maximise his personal utility, a principle which is considered for most decision making performed by the individuals.[49] Correspondingly, this principle also governs unlawful undertakings aimed at acquiring personal wealth.[50] On the other hand, the personal utility of an economic venture is mainly determined by anticipated costs and revenues, which are ruled by demand and supply laws. The theory stresses that the individual neither plans to promote public interest nor is he even aware of how much he is promoting, as the intention is for his corresponding security. In other cases, individuals or firms are led by an unseen hand toward a goal that was not the original intention, and thus, the government should protect people from

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[47] C. Meserole and D. Byman, 'Terrorist definitions and designations lists: What technology companies need to know global research network on terrorism and technology' (Working paper No. 7 Royal United Services Institute for Defence and Security Studies, London 2019) p. 3

[48] These include the Financial Actions Task Force (FATF), The United Nations International Convention for the Suppression of Terrorist Financing, 1999; Inter-Governmental Action Group against Money Laundering (GIABA) among others.

[49] H Geiger and O. Wuensch, 'The Fight Against Money Laundering: An Economic Analysis of a Cost-Benefit Paradox' (2007) 10(1) *Journal of Money Laundering Control* 91-105

[50] B. Raweh, C. Erbao, C. & F. Shihadeh, 'Review the Literature and Theories on Anti-Money Laundering' (2017) 5(3) *Asian Development Policy Review* 140–147.

violence and injustice.[51] Smith proposed the observable and unpretentious system of natural liberty. In such system, an individual can be left alone to follow his interests according to his ways, provided that he does not violate the laws of justice and to utilise his industry and capital to engage in competition with any other individual. [52]

ML is a practice that remains damaging to citizens because of the unlawful procurement of capital. The assumption of economic classical theory is questionable. These theories only work if actions are done within the legal framework.[53] Rules of AML do not always result in eliminating competition as economic laws and implementation differ in various countries.[54] Thus, AML rules and other regulations affect economies differently in developing and developed world. This is because state regulations actively set competitive incentives, which promote particular institutional structures. While the economic theory is relevant in order to provide a conceptual basis on money laundering and terrorism financing activities, the fact remains that the theory does not align with the practice.

4. Global Regimes on Anti-Money Laundering and Financing of Terrorism

Several international treaties outline the procedures for domesticating anti-money laundering and counter-terrorism financing regimes in Nigeria. The United Nations has actively promoted the harmonisation of countermeasures and the strengthening of international collaboration from the very beginning of the fight against money laundering on a global scale. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, was the first

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[51] Ibid.

[52] S. Awadallah, 'The economic effects of money laundering operations and the role of banks in fighting these operations' (2005) 1(2) *Journal of Law* 34.

[53] Ibid.

[54] Ibid.

international instrument to address the issue of proceeds of crime, and to require States to establish money laundering as a criminal offence.[55] The rationale of the fight against money laundering is to attack transnational criminal organisations network. Essentially, it makes sure that, if the right information systems are in place, the transfer of illegal funds in financial systems can be recognised. To ensure that illegal assets can be located, identified, and seized wherever they are, Member States have worked to develop these alert mechanisms since the end of the 1980s.[56] The UN Office on Drugs and Crime has the responsibility to support Member States in the implementation of their anti-money laundering policies, including the adoption of relevant legislation encompassing anti-money laundering measures and globally accepted standards in the regulation of financial services.[57]

The United Nations Convention for the Suppression of Financing of Terrorism, which came into effect in 1999, mandates that signatory nations criminalise terrorism financing and make it possible to identify, seize, and freeze the monies used to support terrorism.[58] The purpose of the Convention is to improve international co-operation between States in developing and

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[55] The Convention was open for signature at the UN Office in Vienna, from 20th December 1988 to 28th. UN, 'Narcotics drug and psychotropics substances' <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VI-19&chapter=6&clang=_en> accessed 29 July 2024.

[56] The Vienna Convention 1988 deals primarily with the illicit drug trade and related law enforcement issues. It is the first UN convention to define the concept of "money laundering," even though it does not use that term, and it calls on countries to criminalise the activity. This convention is criticised as being limited to drug trafficking offenses and does not address the preventative aspects of the crime.

[57] A further aim of the Vienna Convention 1988 is to ensure international cooperation through, for example, extradition of drug traffickers, controlled deliveries and transfer of proceedings.

[58] The Convention was adopted by the United Nations General Assembly in New York on 9th December 1999, and was opened for signature on 10th January 2000.

adopting effective measures for preventing the financing of terrorism as well as for its suppression via the prosecution and punishment of its perpetrators.[59]

The United Nations Convention Against Transnational Organised Crime is another global regime adopted in 2000.[60] The scope of money laundering under the terms of the Convention includes proceeds recovered from all serious crimes. The Convention urges State Parties to co-operate with one another in the detection, investigation and prosecution of money laundering.[61] The parties are required to strengthen the rules governing customer identification, record-keeping, and the reporting of shady transactions. Members are required to establish financial intelligence units (FIU) to gather, assess, and disseminate information for state parties.[62] In addition to the UN Conventions, all nations are required under the Security Council Resolution to make it illegal to finance terrorism.[63] Additionally, it calls for nations to halt any financial assistance to terrorist organisations and to seize the assets of those responsible for

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[59] Member states must also require financial institutions to identify and verify the particulars of their customers and file Suspicious Transaction Reports (STRs). State Parties are also to cooperate to prevent the financing of terrorism.

[60] Signed in Palermo (Italy) on December 15, 2000, GA Res 55/25, Annex 1, SS UN GADR Supp. (No.49) at 44, UN Doc. A/45/49 (Vol.I) (2001).

[61] The Palermo Convention 1988 is the instrument designed to combat the phenomenon of transnational organised crime. Under the Convention, four offences considered to compromise the structural characteristics of organised crime are required to be addressed by the States parties in their domestic law such as: criminal association, money laundering, corruption and obstruction of justice.

[62] Further to the events of September 11, 2001, UN Member States underlined the links between terrorism, transnational organised crime, the international drug trade and money laundering, and called on the States that had not done so to become parties to the relevant international conventions, including the 1999 International Convention for the Suppression of the Financing of Terrorism.

[63] UN, 'The Security Council Resolution 1373' at <https://www.un.org/documents/scres.html> last accessed 20 August 2024.

terrorist crimes.[64] While the measure can be accomplished by international collaboration in criminal investigations and information exchange regarding terrorist attacks, however, practice shows that not much has been achieved in this regard by state parties.

5. Regional Frameworks on Anti-Money Laundering and Counter-Terrorism Financing

In Europe, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was intended to facilitate regional co-operation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds of crimes.[65] The convention essentially promotes regional co-operation for investigative assistance, search, seizure, and confiscation of the proceeds of all forms of criminality, particularly drug offences, trafficking in weapons, terrorist offences, trafficking in children and young women, and other offences that result in significant financial gain. The provision of a tool compelling State parties to adopt effective measures in their national laws to combat severe crime and deny offenders the benefits of their illegal actions is another goal. However, this regime can be criticised given that criminals can take advantage of existing loopholes and differences in national laws to evade detection and punishment.

In Africa, the principal instrument against terrorism is the Organisation of African Unity (OAU) now African Union (AU) Convention on the Prevention and Combating of Terrorist

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[64] See UNODC, 'Combating terrorists financing' (2009) at <https://www.unodc.org/unodc/en/terrorism/expertise/combating-terrorist-financing.html> accessed 20 August 2024.

[65] The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, also known as the Strasbourg Convention 1990. The Convention adopts the FATF Recommendations with respect to the rules for preventing money laundering in the banking and financial system.

Financing.[66] The Convention requires the State parties to criminalise terrorist acts under their national laws as defined in the Convention.[67] It defines areas of co-operation among States and establishes State jurisdictions over terrorist acts.[68] Similarly, it offers a legal framework for extradition and extraterritorial investigations, as well as mutual legal aid between the State parties.

A Protocol to the 1999 Convention was approved in response to the Dakar Declaration against Terrorism, which acknowledged the urgent need to improve interstate co-operation throughout the continent.[69] The 2002 African Union Plan of Action on the Prevention and Combating of Terrorism, for example, aims to strengthen the current commitments and obligations of States parties in order to enforce the 1999 Convention. Since then, the African Union has adopted a number of other significant terrorism-related instruments.[70]

Arguably, while much progress appears to have been made, including in relation to strengthening the regional frameworks for countering terrorist threats, however, significant challenges remain. For instance, lack of political will majorly affects the implementation of the 2004 Protocol's ratification by African

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[66] The OAU Convention on the Prevention and Combating of Terrorist Financing, 1999. Hereinafter referred to as the Algiers Convention. The Convention was adopted on 1st July 1999 and entered into force on 6th December 2002.

[67] Ibid.

[68] Ibid.

[69] This Protocol recognises the growing threat of terrorism in the continent and the growing linkages between terrorism, drug trafficking, transnational organized crimes, and money-laundering

[70] The 2002 Action Plan of the African Union High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa included ten specific measures to suppress the financing of terrorism, including national legislation to criminalise FT and ML, setting up FIUs, training personnel to combat and prevent ML, and co-operation with international financial system.

Union Member States.[71] Similarly, financial and human capacity constraints are other factors militating against its implementation. The fact that some Member States do not always prioritise terrorism over more urgent economic, environmental, developmental, and poverty eradication is a huge challenge. These criticisms among others are some of the reasons why counterterrorism programmes have historically been underfunded in Africa as a continent.

6. Money Laundering Regimes in Nigeria: An Overview

On February 24, 2023, the Financial Action Task Force, once again placed Nigeria on its 'grey list' due to insufficient measures taken to combat ML and TF.[72] The implication of this action is that Nigeria has not done enough in its money laundering and terrorism financing regimes to address the highlighted strategic inadequacies within a given timeframe, and as a result, would be subjected to increased scrutiny by the institution.[73]

In retrospect, Nigeria was placed on the greylist from 2002 to 2007 for the various deficiencies found in its legal and regulatory regimes for Anti-Money Laundering/Combating the Financing of

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[71] C. Attah, 'Financing Terrorism in Nigeria: Cutting Off the Oxygen' (2019) 44(2) *Africa Development* 5-25.

[72] Greylisting, in financial terms, is when the FATF puts a country under a stricter economic monitoring and regulation.

[73] Greylist signifies that a country has not completely met the FATF's standards for fighting money laundering and terrorist financing, but is earnestly trying to. It has the effect of compromising a nation's ability to receive legitimate capital transfers and jeopardises the interests of investors and policymakers in the global financial system. Ethiopia and Tunisia have been dropped from this list as a result of recent financial reforms that addressed money laundering and terrorism financing. Other African nations besides Nigeria, include Botswana, Ghana, Zimbabwe, and Mauritius. Due to strategic deficiencies in their anti-money laundering and counterterrorism financing architecture, all of these nations are high-risk countries for business. FATF, 'The Fatf Recommendations' (2023) <https://www.fatf-gafi.org/faq/moneylaundering> Accessed 20 August 2024.

Terrorism/Proliferation Financing (AML/CFT/PF).[74]This was previously the position notwithstanding her existing regulatory regimes on combating this menace.[75] However, Nigeria was temporarily removed from the grey list on October 18, 2013 when the nation substantially complied with the FATF action plan in terms of enacting significant reforms and enforcing its AML/CFT regimes.[76]

7. Anti-money Laundering and Combating Terrorism Financing Regimes in Nigeria

At the moment, the key statutory laws that control money laundering and terrorism funding in Nigeria are the Economic and Financial Crimes Establishment Act, 2004, National Financial Intelligence Unit (NFIU) Act 2018, the Terrorism Prevention Act 2011, as amended in 2013 and 2022 and the Money Laundering (Prohibition) Act 14 of 2022. These legal and institutional regimes will now be evaluated so as to bring out the challenges in Nigeria in order to make recommendations for future reforms.

(a) The EFCC Act 2004

By virtue of the EFCC Act 2004, the Economic and Financial Crimes Commission (EFCC) was established as a financial intelligence unit with the duty of co-ordinating the numerous institutions engaged in Nigeria's battle against money laundering and terrorism financing.[77] Financial institutions and designated non-financial entities are required by the Terrorism Prevention Act (TPA) 2022 to report suspicious transactions connected to

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[74] I Ofoeda, EK Agbloyor, JY Abor, KA and Osei, 'Anti-money Laundering Regulations and Financial Sector Development (2020) *International Journal of Finance and Economics* 1–20.

[75] S Ghoshray, 'Compliance Convergence in FATF Rulemaking: the Conflict Between Agency Capture and Soft Law' (2015) 59 (3) *New York Law School Law Review* 521-545.

[76] A Haruna, 'Money Laundering in Nigeria' (2019) 6(6) *Journal of Emerging Technologies and Innovative Research* 16-46.

[77] EFCC Act 2004, Ss 1, 6(b) and

terrorism to the EFCC as the regulating agency.[78] The EFCC Act also prohibits terrorism with the community reading of sections 1(e) and 17 of the Money Laundering (Prohibition) Act 2022.[79] The Act states that anyone who provides and collects goods or money with the knowledge that the money is meant for the execution of an act of terrorism is liable for terrorism financing.[80] The mental element is a requirement to determine that the accused has the knowledge that the money supplied relates to financing of terrorism.[81]

Further offences relating to terrorism, terrorist funding and the attempt to commit a terrorist act are provided in the Act.[82] Section 46 of the Act provides for the definition of terrorism. However, this definition is rather vague and overly broad. For instance, acts of terrorism mean a violation of the Criminal Code or the Penal Code which may endanger the life of any person.[83] According to the Act, terrorism includes any action that is deliberate or intended to incite fear, intimidate, or force any institution of government to take a certain action, adopt a certain viewpoint, or interrupt a public service.[84] This broad definition may open doors to floodgate of abuses and can be used by oppressive regimes for political ambitions.

In terms of prosecution and securing convictions against the alleged offenders, the EFCC as an institution has always been criticised for its bad conviction records.[85] It has been argued that

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[78] Terrorism Prevention Act 2022, s 16.

[79] H.Chitimira and O. Animashaun, 'The Adequacy of the Legal Framework for Combating Money Laundering and Terrorist Financing in Nigeria' (2023) 26(7) *Journal of Money Laundering Control* 110-126.

[80] EFCC Act 2004, s.14(1).

[81] Ibid; see *Ogwu Achem v FRN* (2014) LPELR 23202 (CA).

[82] EFCC Act 2004, s.15.

[83] Ibid, s.46.

[84] See sections 46(a)(i), (ii) and (iii) of the EFFC Act.

[85] F Anaedozie, 'Is Grand Corruption the Cancer of Nigeria? A Critical Discussion in the Light of an Exchange of Presidential Letters' (2016) 12 (5) *European Scientific Journal* 11-34.

improving prompt prosecution and conviction of such crimes would necessitate the establishment of specialised courts that would only be responsible for deciding cases of terrorism and financial crimes.[86] This approach could improve the combating of financial crimes in Nigeria if properly enforced.[87] In *Charles Ododo v Peoples Democratic Party*,[88] the Supreme Court of Nigeria maintained that terrorism, money laundering, kidnapping and human trafficking offences take precedence over other cases.[89] Although in *FRN v Mustapha Fawaz & Ors*,[90] the accused persons admitted to being members and financiers of Hizbollah, the court was of the opinion that membership of an organisation alone was not a crime in Nigeria. As a result of this, the first including the second accused was acquitted. However, in *AGF v Indigenous People of Biafra (IPOB)*[91] and *FRN v Jama'atu Ahlus-Sunnah Lidda Awati wal Jihad (Boko Haram)* including *Jama'tu Ansarul Musulumina Fi Biladis*,[92] the Federal High Court declared the IPOB and Boko Haram as terrorist organisations.[93] Comparing the motives and ideologies of these organisations, one may be tempted to argue that the decision of the court appears to be controversial but the mere fact that such matter was brought before the court is a firm indication that

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[86] Repetitive see (n.71) above CE Attah, (n.71) 5-25.

[87] Through the provisions of the Act, the commission is empowered to co-ordinate and enforce all economic and financial crimes laws and adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences or the properties the value of which corresponds to such proceeds.

[88] *Charles Ododo v Peoples Democratic Party* (2015) LPELER 24738.

[89] Sections 1(1)(b) and 2(a) of the Supreme Court Practice Direction 2013.

[90] Unreported Appeal No. CA/A/197C/2014).

[91] *AGF v IPOB* (Unreported Charge No. FHC/ABJ/CS/871/2017).

[92] *AGF v IPOB* (Unreported Charge No. FHC/ABJ/CS/871/2017).

[93] *FRN v Boko Haram & another* (Unreported Charge No. FHC/ABJ/CS/368/2013 on 24/05/2013). These organizations were banned in compliance with sections 9(4) and (7) of the TPA 2011 and gazetted in the Federal Republic of Nigeria Official Gazette No. 34, Volume 100.

financial crimes and terrorist-related cases are given priority in Nigerian courts.[94]

(b) The National Financial Intelligence Unit (NFIU) Act 2018

Section 1 of the National Financial Intelligence Unit (NFIU) Act 2018 provides for:

a. Creation of the Financial Intelligence Unit
b. Creation of the legal, institutional and regulatory framework to ensure transparency, effective and efficient management, administration and operation of the Nigerian Financial Intelligence Unit, institutionalise best practices in financial intelligence management in Nigeria;
c. Strengthening of the existing system for combating money laundering and associated predicate offences, financing of terrorism and proliferation of weapons of mass destruction;
d. the Unit to exchange information with Financial Intelligence Institutions or similar bodies in other countries in matters relating to money laundering, terrorist financing activities and other predicate offences; and
e. To make the Unit an autonomous body.

The NFIU as an institution collaborates with the Inter-Ministerial Committee on Anti- Money Laundering (AML) and Counter-Terrorism Financing (CTF) in accordance with Intergovernmental Action Group Against Money Laundering in West Africa (GIABA). The Secretariat is responsible for the co-ordination of the activities of the Inter-Ministerial Committee (IMC).[95]

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[94] *FRN v Mustapha Fawaz & Ors.* (Unreported Charge No. FHC/ABJ/CR/112/2013) and *FRN v Mustapha Fawaz & Ors.* (Unreported Appeal No. CA/A/197C/2014).

[95] TPA 2022, s 2(4).

The Unit also serves as the Secretariat to the Nigerian Sanctions Committee in accordance with Regulation 4 (d) of the Terrorist Prevention (Freezing of International Terrorist Funds and Other Related Measures) Regulation, 2022.[96] The Unit is also responsible for the receiving, request, analysis and dissemination of financial intelligence reports on money laundering, terrorist financing and other relevant information to law enforcement, security and intelligence agencies and other relevant authorities.[97] Since its inception, arguably, the Unit has not made any remarkable success in terms of delivering its statutory mandates. This is because laundering of money and financing of terrorist activities are yet to be substantially minimised.

(c) Terrorism (Prevention and Prohibition) Act 2022

This principal legislation is aimed at combating terrorism in Nigeria. It was originally promulgated in 2011 (Terrorism (Prevention) Act), but amended in 2013 and now repealed and re-enacted in 2022. It remains a major step in creating a legal framework for the prevention and combating of terrorism in Nigeria. Although the Act does not specifically define terrorism, nonetheless, it enumerates what constitutes "acts of terrorism" to mean an act wilfully performed with the intention of furthering an ideology, whether political, religious, racial, or ethnic.[98]

The Terrorism (Prevention and Prohibition) Act 2022 specifically provides for the prohibition of the acts of terrorism[99] including an attempt or threat to commit terrorism. [100] It criminalises a preparatory act to commit terrorism;[101] including an omission to prevent the commission of terrorism.[102] Similarly,

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[96] Ibid, s 2(5).

[97] National Financial Intelligence Unit (NFIU) Act 2018, s. 3(1)(a).

[98] Terrorism (Prevention and Prohibition) Act 2022, s 2(3).

[99] Ibid, s. 2(1).

[100] Ibid, s. 2(2)(a).

[101] Ibid s. 2(2)(b).

[102] Ibid, s.2(2)(c).

the assistance, funding or facilitation of persons engaged in terrorism[103] as well as the participation as an accomplice or contribution to acts of terrorism remain punishable under the Act.[104] The Act punishes any incitement, inducement or the recruitment of persons for any purpose of terrorism.[105] It also provides penalties for offences relating to terrorist attacks which carry not less than 25 years imprisonment or life imprisonment for the kidnap or grievous bodily harm against internationally protected persons or death penalty where this attack results in murder.[106]

The Act also designates various responsibilities to the National Security Adviser (NSA)[107] which is primarily dumsy to formulate policies for the effective implementation of concerted counter-terrorism and counter terrorism financing This is with a view to ensuring the effective implementation by law enforcement agencies of the investigation of the offences provided for under this Act.[108] Under the Act, the Attorney General of the Federation is responsible for the prosecution of terrorist acts.[109] However, the Act does not provide for the procedure for trial and prosecution of terrorism offences. Hence recourse will be had to extant criminal procedural laws.[110]

Although, the Act focuses on prosecuting, stopping terrorist's activities and financing, there are issues associated with the implementation of these laws, due to corruption and ineffective judicial system.[111] The Nigerian constitutional jurisprudence

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[103] Ibid, s.2(2)(d).
[104] Ibid, s.2(2)(e).
[105] Ibid, s.2(2)(f).
[106] Ibid, s.11.
[107] Ibid, ss 3(1)(c) and 4.
[108] Ibid, s.5(1)(a).
[109] Ibid, s.3(1)(c) and s.74.
[110] Administration of Criminal Justice Act 2015, s 2(1).
[111] J. Smith '*International Cooperation in Nigerian Counterterrorism*' (2023) 11(2) *Global Security Journal* 88-102.

authorises the Attorney General of the Federation (AGF) to prosecute all criminal cases in Nigeria.[112] Nevertheless, the AGF has some discretion in the exercise of such duties in Nigeria.[113] Whether the discretionary power has been exercised in good faith or otherwise is a matter of debate.[114] For instance, a person who used the proceeds of oil pipeline vandalisation to sponsor terrorism can be charged under the Act.[115]

Similarly, a kidnapper may be tried under the Act.[116]But, the prosecutorial power is very wide to the extent that it could be exercised indiscreetly for political reasons. For example, it was on record that a former AGF in Nigeria under the Buhari-led administration refused to prosecute the sponsors and financiers of terrorism because some of them allegedly belong to the same political parties even when they were arrested by security agents.[117] Similarly, a suspect with affiliation to the ruling political party may be arraigned for pipeline vandalisation or acts likely to cause breach of the peace under the Criminal Code, while a suspect affiliated to opposition party may be charged under the TPA 2022 related to the same crime.[118] The applicable difference remains that the prescribed punishment under the TPA

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[112] *State v Ilori* (1983) All NLR p. 84; see s174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)hereinafter, the Constitution.

[113] JT Ulmer, MC Kurlychek and JH Kramer, 'Prosecutorial Discretion and the Imposition of Mandatory Minimum sentences' (2007) 44(4) *Journal of Research in Crime and Delinquency* 427-458.

[114] T. Oshipitan and A. Odusote, 'Nigeria: Challenges of Prosecution and Defence Counsel in Corruption Prosecution' (2014) 10(3) 10 (3) *Acta Universitatis Danubius Juridica* 71-9.

[115] This can be Charged Under Section 1(7) of the Miscellaneous Offences Act, Chapter M17 LFN 2004.

[116] This can be charged under sections 364, 272 and 273 of the Criminal Code (CC) or the Penal Code (PC) Law or the Anti-Kidnapping Law of the various states. See section 3 of the Ebonyi State Internal Security Enforcement and Related Matters Law, Chapter 55 of 2009.

[117] H. Ojielu, 'Falana writes AGF Malami, Demands Prosecution of 'Arrested' 400 Sponsors of Terrorism' *Vanguard* (3August, 2022).

[118] Ibid.

2022 is more severe than the provision in the Criminal Code.[119] This leaves one to infer that the discretionary power of the AGF may be too wide and susceptible to abuse.

(d) Money Laundering Act 2022

Money Laundering Act was first introduced in Nigeria in 2003 after decades of money laundering and criminal activities went unchecked. Since then, there have been reforms of Nigeria's anti-money laundering regimes beginning in 2003 and its subsequent amendments in 2004, 2011 and 2022.[120] The Money Laundering (Prevention and Prohibition) Act 2022 enhances the existing Anti-Money Laundering laws and introduces new ones to curtail evolving criminal activities.[121] Its objectives are to provide for effective and comprehensive legal and institutional frameworks for the prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria.[122] The Act strengthens the existing system for combating money laundering and related offences.[123] It further makes provisions to prohibit money laundering by expanding the scope of money laundering offences and the appropriate penalties.[124]There is now an established Special Control Unit against Money Laundering under the Act.[125] Some further key provisions of the MLA 2022 are:

i. KYC for internet and ship-based casinos: This latest act also extended its compliance requirements to internet

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[119] Ibid.

[120] Emmanuel Agwu, 'Money Laundering (Prevention and Prohibition) Act 2022 in Nigeria – Key Provisions & Everything You Need to Know' (2023) available at <https://youverify.co/blog/money-laundering-prevention-and-prohibition-act-2022-in-nigeria> accessed 20 August 2024.

[121] Ibid.

[122] The Money Laundering (Prevention and Prohibition) Act, 2022, S 1(1a).

[123] Ibid, S.1(1b).

[124] Ibid, S.1(1c). Money Laundering Act 2022A provides for catalogues of offences such as the concealing or disguising the illicit origin of resources or properties derived from illicit traffic in narcotics, terrorism, terrorist financing, smuggling, tax evasion and illicit arms among others. See ibid, s18.

[125] Ibid, S.1(1)(e).

and ship-based casinos.[126] Businesses in this industry are now obligated to carry out KYC due diligence on the financial transactions of their customers.

ii. Higher restrictions on cash payment transactions: The Money laundering Act 2022 retained the threshold value on cash payments and transactions sum exceeding N10, 000,000 (ten million naira) for corporate bodies[127] and N5, 000,000 (five million naira) for individuals.[128]

Additionally, it criminalises attempts at breaking up transactions into bits to circumvent the threshold value stated in the Act and so on. Amongst other key points, it is important to note that the MLA 2022 has now provided a statutory basis for the independent existence and operation of the Special Control Unit against Money Laundering (SCUML) although its administrative operations still remain under the control of EFCC.[129] The Act designates SCUML as the body responsible for the supervision of DNBPs and their compliance with MLA 2022 provisions including other relevant laws.[130] The EFCC is responsible for financial institutions while SCUML focuses on regulating DNBPs.[131]

(e) SCUML compliance under MLA 2022

In June 2022, the Central Bank of Nigeria (CBN) issued a circular to the Nigerian banks, mandating the presentation of a SCUML Certificate as a requirement to operate a corporate bank

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[126] Ibid, S.5(3).

[127] Ibid, S.2(1b).

[128] Ibid, S.2(1a).

[129] Ibid, S.17.

[130] Ibid, S.17 (2).

[131] Designated non-financial institutions include dealers in jewelleries, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing companies and hotels, casinos, supermarkets, legal practitioners and other businesses designated by the appropriate regulatory authorities. See ibid, ss 6, 7 and 30

account.[132] However, since this circular was issued pursuant to MLA 2022, which vested regulatory powers on AML/CFT matters on the SCUML, domiciled within the EFCC, there have been catalogues of controversies as to whether the legal practitioners and law firms fall within the categories of businesses that require a SCUML Certificate to operate corporate bank accounts in Nigeria.[133] In a remarkable judgement delivered on the 19th day of July, 2024, the Federal High Court held that SCUML cannot mandate the registration of legal practitioners or regulate their practice.[134] The Court decided that sections 6, 7, 8, 9, 11 and 30 of the MLA 2022 are unconstitutional, null and void in so far as they purport to apply to legal practitioners and notaries. Essentially, the re-inclusion of legal practitioners and notaries as DNFBPs under section 30 of the Act remains inapplicable given that it weakens the duty of confidentiality owed to the clients by legal practitioners.[135]

The major implication of this judgement is that legal practitioners and notaries have now been excluded from the category of businesses and professions mandated to register with SCUML. Thus, lawyers in Nigeria have no reporting obligation whatsoever to SCUML. There is merit in the judgement because the Nigerian Bar Association (NBA) has its guidelines and rules on AML/CFT for legal practitioners and same is subsumed in the Rules of Professional Conduct, 2023 particularly as contained in

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[132] See MLA 2022, s 30; see the CBN Circular: Reference No. FPR/DIR/CIR /001/052/20/06/2022.

[133] The previous Court of Appeal judgement excluded legal practitioners from this requirement under the repealed MLA 2011.See *CBN v Registered Trustees of the Nigerian Bar Association and the Attorney General of the Federation* (2021) 5 NWLR (Pt 1769) 268.

[134] See the Judgement of FHC/ ABJ/CS/25/ 2023: *Abu Arome v CBN & 3 Ors* (unreported)

[135] The defendants were restrained from implementing the circular FPR/DIR/ CIR/001/052/06/2022 and the EFCC (AML, CFT and CP Financing of Weapons of Mass Destruction of DNFBPS and Other Related Matter) Regulation, 2022 against legal Practitioners, among other reliefs.

Rules 55 to 77.[136] Thus, there is no need for any external form of regulation on lawyers given that there is an existing self-regulatory framework on AML/CFT.[137]Similarly, now that the said provisions have been overruled by the Court, it is argued that any bank which persists in demanding the inclusions of the registration with SCUML as a pre-condition against lawyers would be vividly acting outside the remit of the law and would be opening itself to liabilities in damages.

Moreover, a further issue with MLA 2022 is that it imposes a duty to report any international transfer of funds and securities exceeding US $10,000.00 or its equivalent to the CBN, the Securities and Exchange Commission or the EFCC within one day from the date of the affected transaction.[138] However, the problem with this provision remains that the Act does not expressly indicate the person who is statutorily obliged to report such transactions. On account of that, it is not entirely clear whether the duty to report excessive transactions is imposed on the sender, the receiver and/or the relevant financial institution. This gap in the law may be exploited by anyone that wants to avoid the mandatory disclosure requirements while hiding under the cover that he/she had expected the other parties to make the report.

However, sections 3(3) and (4) of the Money Laundering Act 2022 specifically provide that the Nigerian Customs Service must report the transportation of cash or negotiable instruments

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[136] Legal practitioners would not breach the provisions in the Rules of Professional Conduct (RPC) and the Legal Practitioners Act (LPA) 1975 by flagrantly disregarding the duty of confidentiality imposed between a lawyer and a client.

[137] Sections 3, 5 and 24 of the Money Laundering (Prohibition) Act 2011 (as amended) and section 24 of the EFCC Act 2004 were previously declared to be at variance with the provisions of section 37 of the Constitution and the provisions of the LPA and section 192 of the Evidence Act, 2011. See *NBA v FGN & CBN* (Unreported Suit no: FHC/ABJ/CS/173/2013).

[138] Money Laundering (Prohibition) Act 2022, sections 3(1) and (2).

worth more than US$10,000.000 or its equivalent by individuals in or out of the country to the CBN and the EFCC.[139] Similarly, the Act provides that financial institutions, designated non-financial institutions and related professions shall identify and assess the money laundering including terrorism financing risks that may arise in relation to the adoption and use of new products and new business practices.[140] This duty should be shared between the stated persons and regulatory authorities to effectively combat money laundering and terrorist financing activities.

A further challenge is that the Money Laundering Act 2022 makes no provision for the protection of whistle-blowers who disclose information which could lead to the detection and prosecution of money laundering and terrorism offenders. Section 12(4)(b)(ii) of the Money Laundering Act 2022 provides that upon conviction, the penalty for a corporate body shall be winding up and prohibition of its constitution and incorporation under any form in Nigeria. This provision is reasonable and it could be a good deterrent if properly enforced to curb and discourage money laundering and terrorist financing-related crimes

8. Evaluating transnational collaboration against ML and TF

Nigeria is involved in the Trans-Sahara Counterterrorism Programme which is a regional program designed to combat terrorism. Similarly, Nigeria has partnered with the US and other international institutions to eliminate the ongoing acts of terrorism in Nigeria.[141] For example, Nigeria is a member of

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[139] See *FRN v Bashir Abdu* (Unreported Suit No. FHC/KN/CR/210/2012); *FRN v Umar Musa Kibiya* (unreported FHC/KN/CR/193/2012) and *FRN v Idris Hamza* (Unreported Suit No. FHC/KN/CR/196/2012).

[140] Money Laundering Act 2022, s 13(1).

[141] K. Ani and J.Chukwu 'Counterterrorism Operations In Nigeria' (2014) 18(1) *Journal of International Issues* 124-145

Intergovernmental Action Group against Money Laundering in West Africa (GIABA), a regional body in ECOWAS designed to combat money laundering, and a partner of Financial Action Task Force (FATF).[142] In time past, GIABA had released a report to evaluate Nigeria's counterterrorist financing performance.[143] The report revealed that Nigeria has been ineffective in its role in preventing Boko Haram (BH) and ISIS West Africa (ISIS WA) from using the financial system to move funds within and outside the country.[144]The research discovered that Nigeria basically depends on intelligence, military, and law enforcement agencies to address terrorism offences instead of focusing on blocking terrorist financing through collaborative efforts among others.

Similarly, Nigeria is working towards applying FATF membership and meeting its criteria including tackling GIABA's findings. The Financial Intelligence Unit (NFIU) of Nigeria, which was reintegrated as a sole body to enhance its effectiveness, was re-admitted to the Egmot Group in 2018.[145] Nigeria continues to be actively involved in regional and counterterrorism conferences.[146]The country has participated in various counterterrorism training sessions organised by the United Nations. The country has been participating in the UN Commission on Crime Prevention and Criminal Justice with the aim of looking at the possible ways of tackling terrorism financing and other terror-related crimes in Nigeria.[147] Indeed, Nigeria is a member of the Global Counterterrorism Forum (GCTF) and co-chairs its Criminal Justice and Rule of Law

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[142] Ibid.

[143] O Faluyi, Sultan Khan and Akinola, 'Nigeria's Counter-Terrorism Strategies: Advances in African Economic, Social and Political Development', in *Boko Haram's Terrorism and the Nigerian State*(Springer 2019) 83-118.

[144] Ibid.

[145] Ibid.

[146] Ibid .

[147] OO Akanji, 'Sub-regional Security Challenge: ECOWAS and the War on Terrorism in West Africa'(2019) 11(1) *Sage Journal* 101.

Working Group with Switzerland. Additionally, Nigeria is also member of the International Institute for Justice and the Rule of Law Board member. The aim of these cross-border collaborations is to reduce the scourge of money laundering and terrorism financing among other crimes, although, the success rate has been very low.

9. Effect of Money Laundering and Terrorist Financing in Financial System

A distinction should always be made between terrorist funding and money laundering.[148] While terrorist financing occurs through the money used for terrorism that could be derived from either legitimate or illegal sources, money laundering is majorly committed through a practice or crime which generates proceeds that are disguised in order to conceal the illicit source.[149]In Nigeria, however, the fact is that terrorists are still involved in both money laundering schemes and terrorist activities.[150]The terrorist financing has similar features with money laundering and should be dealt with decisively given the impact it has in Nigerian financial system and beyond.[151]

Generally, money laundering undermines the public trust and the integrity placed in the financial institution thereby creating an inherent threat to the financial and economic stability of a country.[152]Money laundering aids in the facilitation of similar crimes such as terrorism, drug trafficking, bribery and other

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[148] Ibid.

[149] A Omolaye-Ajileye, 'Legal Framework for the Prevention of Terrorism in Nigeria' (2015) 11 *National Judicial Institute Law Journal* 19-43.

[150] See *FRN v Mustapha Fawaz & Ors* (n.9); *State v Okah* (2018) (4) BCLR 456 (CC.

[151] B Unger and J den Hertog, 'Water Always finds its Way: Identifying New Forms of Money Laundering' (2012) 57 *Crime, Law and Social Change* 287-304.

[152] A Aluko and M Bagheri, 'The Impact of Money Laundering on Economic and Financial Stability on Political development in developing countries: The Case of Nigeria' (2012) 15(4) *Journal of Money Laundering Control* 442-457.

allied crimes due to the lack of transparency and high level of corruption in the system.[153] The critical role that organisations like banks and non-financial organisations play in a country's economic growth has been shown in numerous economic studies.[154] These financial institutions employ both local and foreign funds to facilitate economic expansion.[155] However, money laundering impedes these financial organisations' ability to expand. Apart from eroding the investor's confidence, money laundering harms the reputation of financial institutions, which causes the investors to lose faith in the industry.

A key challenge to trusting Nigeria's financial institutions is the perception of fraud among depositors, investors, the general public that transact businesses daily with these institutions. In other words, money laundering and terrorist financing may compromise the reputations of these financial institutions and undermine investors' trust and confidence in many jurisdictions leading to weaken financial system in a global financial ecosystem.[156] Trust and confidence underpin the existence and development of financial markets.[157] The effective functioning of financial markets relies heavily on the expectation that high professional, legal, and ethical standards will be observed and enforced by the financial market operators and the regulators.[158] A reputation for integrity - soundness, honesty, adherence to standards and codes-is one of the most valuable assets by market

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[153] B Buchanan, 'Money Laundering-a Global Obstacle' (2004) 18 *Research in International Business and Finance* 115-127.

[154] Ibid.

[155] Samuel Antwi, Anthony Buawolor Tetteh, Patience Armah and Eric Opoku Dankwah, 'Anti-money laundering measures and Financial Sector Development: Empirical Evidence from Africa' (2023) *Cogent Economics & Finance* 11:1.

[156] Ibid.

[157] A Beebeejaun, 'Compliance With Anti-Money Llaundering Procedures by Banks the Ccase of Mauritius' (2022) *Journal of Bank Regulation*

[158] G Bruce, 'Definition of Terrorism Social and Political Effects' (2013) (21(2) *Journal of Military & Veterans' Health* 26-30.

participants, investors, and financial institutions among others.[159]Therefore, in order for an emerging economy such as Nigeria's financial institutions to have a stable financial sector capable of developing the economy, the investor's trust and confidence is very crucial to the institution's survival and the economy as a whole.[160] This is why effective and enforceable anti-money laundering laws and combating terrorism financing regimes should be reformed in Nigeria to protect the integrity of the interconnectedness of the financial systems.

10. AML/CFT Regimes: Cost implications

The cost of compliance with AML/CFT regimes can be a bit high and sometimes exceed the amounts recovered from the financial crimes.[161]On the one hand, this could imply that AML/CFT laws have limited capacity to prevent profit-motivated crimes such as money laundering and terrorism funding.[162] On the other hand, the amount realised from criminals, including financiers of terrorism, is **sometimes negligible**.[163] Thus, notwithstanding the cost implication of AML/CFT regimes, these laws are crucially important for the combating of money laundering and terrorist financial crimes in Nigeria and several other countries.

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[159] N Ahiauzu and T Inko-Tariah, 'Applicability of Anti-Money Laundering Laws to Legal Practitioners in Nigeria NBA v. FGN and CBN" (2016) (19(4) Journal of Money Laundering Control pp. 329-336.

[160] RF Pol, 'Anti-Money Laundering: the World's Least Effective Policy Experiment? Together, we can fix it' (2020) 3(1) *Policy Design and Practice* 73-94.

[161] RF Pol, 'Anti-Money Laundering: the World's Least Effective Policy Experiment? Together, we can fix it' (2020) 3(1) *Policy Design and Practice* 73-94.

[162] M Mugarura, 'Anti-Money Laundering Law and Policy as a Double Edged Sword' (2020) 23 (4) *Journal of Money Laundering Control* 899-912.

[163] H Chitimira and S Munedzi, 'Selected Challenges Associated with the Reliance on Customer due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions' (2021) 8(1) *Journal of Comparative Law in Africa* 42-66.

11. Reforms and Recommendations

The paper recommends that the penalty under section 21(4) (b) (ii) of the Money Laundering Act 2022, which provides for the winding up of corporate bodies and prohibition of such companies to reconstitute and incorporate under any form in Nigeria, should be carefully implemented to increase deterrence and curb money laundering and terrorist financing-related crimes in the Nigerian financial markets and financial institutions.

Banking and financial institutions in Nigeria should prioritise the concept of know your customer (KYC) to protect the integrity of financial systems. This includes but not limited to identifying the customers involved and the various activities including the potential risks they are connected with. Customer due diligence is essential to curb money laundering and terrorist financing activities in the global financial markets and financial institutions.

In addition, the Nigerian policymakers should consider amending the Money Laundering Act 2022 to enact adequate provisions for bounty rewards and whistle-blowers' immunity to effectively protect them against victimisation and encourage all persons to report money laundering and terrorist financing activities to the relevant authorities. This approach could discourage reprisals and unfair labour practices by employers against their employees who are whistle-blowers. There is no adequate protection in the Act.

The Money Laundering Act 2022 should further be amended to remove the sections that relate to the requirements of legal practitioners and notaries public to register for SCUML Certificate before operating any corporate account. This is because lawyers in Nigeria have no reporting obligation whatsoever to SCUML in view of the Federal High Court judgement. Similarly, further amendment is required in the MLA 2022 to clearly provide for persons who are obliged to report

suspicious transactions to the CBN, enforcement authorities and/or regulatory bodies in Nigeria.

In Nigeria, one of the primary inadequacies in the legal framework is the broad and sometimes vague definition of 'terrorism' in the Terrorism (Prevention) Act, 2022. The Act, while being comprehensive in many respects, has been criticised for lacking specificity in some of its provisions, which can lead to challenges in its application. For example, the broad definitions may inadvertently lead to the criminalisation of legitimate dissent or civil liberties, which can undermine human rights. Additionally, the Act does not sufficiently address the root causes of terrorism, such as poverty, political marginalisation, and social injustice, which are critical in preventing the emergence of terrorist activities.

Moreover, despite the existence of multiple laws aimed at combating terrorism financing, there are significant challenges in enforcement. The EFCC and other relevant bodies often face difficulties in tracking and prosecuting terrorism financiers due to the sophisticated and transnational nature of terrorism financing networks. Transnational collaboration is very critical to nip in the bud the cross-border related crimes.

Furthermore, Nigeria's judicial process is often slow and burdened by inefficiencies, leading to prolonged trials and sometimes resulting in the failure to secure convictions in terrorism-related cases. Reforming the judicial process to reduce inefficiencies and ensure timely prosecution of money laundering and terrorism-related cases in Nigeria should be the way forward. This could involve establishing specialised courts or judicial panels for handling money-laundering and terrorism financing cases.

Institutionally, while Nigeria has several agencies involved in counter-terrorism, there are issues with inter-agency co-

ordination and co-operation. The overlap in mandates among agencies like the EFCC, DSS, and the NPF, among others can lead to jurisdictional conflicts and inefficiencies in the execution of counter-terrorism operations and arresting the terrorists' funders. Additionally, the lack of a centralised and integrated counter-terrorism database hampers the sharing of intelligence and information among these agencies, reducing the overall effectiveness of counter-terrorism efforts. There is also the issue of inadequate funding and resources, particularly for the EFCC and the NPF and other law enforcement agencies, which limits their capacity to carry out effective operations. Reforms should be made in these areas to enhance their performance.

While the country has laws that facilitate extradition and mutual legal assistance, the effectiveness of these mechanisms is often compromised by political considerations, lack of trust, and weak legal infrastructure. In Nigeria, despite the existence of legal frameworks supporting international co-operation, collaboration with other countries in prosecuting terrorism-related offences and other allied crimes is often slow and fraught with bureaucratic challenges. Mutual legal assistance remains the key in this collaborative effort given the cross-border nature of these crimes. This could involve signing more bilateral and multilateral agreements and improving diplomatic relations to facilitate better collaboration with other countries and international organisations to stop money laundering and funding of the terrorists.

12. Conclusions

The financial sector is the major focus of money laundering and terrorism financing because they are the major channels for converting illicit money to clean money.[164] The financial institutions and the whole financial system thrive on the trust of

[164] R Azevedo Araujo, 'Assessing the efficiency of the anti-money laundering regulation: An incentive based approach (2008)11(1) *Journal of Money Laundering Control* 67–75

customers and a significant reduction in the level of customer confidence in the financial sector can have adverse impacts on the stability of the financial system.[165]This is because funds can be moved among corporate entities and financial institutions in many countries in a blink of an eye through wire fund transfers, making the controlling more and more difficult at every stage.[166] It is difficult to quantify the amount of illegitimate money that is infused in the global financial system annually.[167] The United Nations estimated that about 5% of the global Gross Domestic Product (GDP) is laundered annually.[168] The amount is projected to be between $800 billion and $2 trillion US dollars.[169] The stealthy nature of money laundering has made it a cumbersome work to accurately predict the total amount of money that goes through money laundering.[170] The EFCC estimated that African countries alone lose about $50 billion dollars to money laundering and terrorism financing annually which should even be regarded as a conservative estimate.[171]In Nigeria, while there are anti-money laundering regimes and anti-terrorism financing laws, issues such as vague legislation, weak enforcement, inadequate inter-agency co-ordination, and limited international co-operation undermine the country's anti money laundering and counter-terrorism financing efforts. Addressing these inadequacies is crucial to enhance the capacity of the institution to respond to the evolving threat of terrorism-financing and money laundering challenges. The judicial process should be

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[165] Ibid

[166] Ibid

[167] Basel Institute on Governance, 'Basel AML Index: 9th Public Edition Ranking money laundering and terrorist financing risks around the world' (2020) 42 at <https://www.baselgovernance.org/sites/default/files/2020> accessed 4th October 2023.

[168] Ibid

[169] I Ofoeda, EK Agbloyor, JY Abor & KA Osei, 'Anti-money laundering regulations and financial sector development' (2020) *International Journal of Finance and Economics* 1–20.

[170] Ibid

[171] Ibid

reformed to reduce inefficiencies and ensure timely prosecution of money laundering and terrorism-related cases in Nigeria. The paper further finds that there is need to enhance mechanisms for international co-operation, including mutual legal assistance and extradition in Nigeria. This could involve signing more bilateral and multilateral agreements and improving diplomatic relations to facilitate better collaboration with other countries and international organisations.