

An Appraisal of Legal and Administrative Framework for Combating Terrorist Financing and Money Laundering in Nigeria

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Abstract

Global financial stability hinges on collective action at the international level, but also an effective national system. Robust anti-money laundering and combating the financing of terrorism regimes are important pillars of the international regulatory and supervising systems and are part and parcel of the current efforts to strengthen the global financial system. It is clear that Nigerian government has demonstrated commitment by putting in place legislative and enforcement framework for the implementation of international instruments for combating terrorist financing and money laundering. The commitment culminated in vesting enforcement powers to the law enforcement and regulatory bodies. These bodies complemented the provisions of the laws by providing comprehensive regulatory and supervisory frameworks for combating terrorist financing and money laundering. In spite of the efforts of the enforcement and regulatory agencies, much is still left to be desired. This is because the perpetrators are professionals and highly placed persons in the society. For these reasons, terrorist financing and money laundering continue to evolve assuming new scope and applying new tactics. The promulgation of laws and the establishment of new regulatory or law enforcement institutions alone are not sufficient to combat money laundering and terrorist financing. 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 to give credibility to such laws. In this regard, international cooperation and mutual assistance in investigations, prosecutions and law enforcement are critically necessary in view of the transnational features of money laundering and the financing of terrorism.

Keywords: Legal, Administrative, Framework, Terrorist Financing, Money Laundering

1. Introduction

In recent times, more countries are becoming vulnerable to the risks of money laundering and its contagious effects. According to the International Monetary Fund (IMF), the scale of money laundering globally could be between 2% and 5% of the World Gross Domestic Product (GDP). This translates into a range of between 590 billion USD to 1.5 trillion of the money laundered per year.¹

Also, the key issue that has attracted the urgent attention of regulatory authorities worldwide in the aftermath of the September 11 attacks is the criminal use of the banking system and informal networks to channel funds to finance terrorist activities.²

One major challenge transnational organized crimes poses to the society is the ability of criminals to surpass law enforcement. Whereas criminals transcend national borders to perpetrate their activities, law enforcement in chasing criminals are obliged to respect international and national laws, thus constraining their ability to follow criminals speedily and interdict them.³ Part of the solution to the constraint is the promulgating of appropriate laws at the national, regional and global levels to facilitate effective interdiction of crime. Every transnational crime is a national crime in the first instance, therefore, the best approach is to ensure that domestic legislation are comprehensive and enforced to complement international legal mechanisms.⁴

Secondly, the Financial Action Task Force (FATF) recommends that countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations and prosecutions.⁵

The United Nations is the first international organization to initiate and coordinate global action against money laundering arising from the growing concern and increased drug trafficking, which resulted in vast sums of dirty

¹Ladan, M.T. "International Legal and Administrative Regimes for Combating Money laundering and Terrorist Financing," (2012) 6 *NJIL Journal*, p.168.

²For a good discussion of the sources and techniques of financing terrorism, see Adams, J. *The Financing of Terror* (1986).

³Shehu, A.Y. *Economic and Financial Crimes in Nigeria: Policy, Issues and Options*, Express Image, Lagos, (2006), p.293.

⁴*Ibid.*

⁵FATF Recommendation 6.

money into the banking system. This culminated in the adoption of the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance of 1988* (Vienna Convention).¹ This was followed by the *United Nations Convention against Transnational Organized Crimes* which was adopted at Palermo, Italy in August 2000², the *International Convention for the Suppression of the Financing of Terrorism* to supplement related international instruments³ and at the regional level the *OAU Convention on the Prevention and Combating of Terrorism*.⁴

At the national level the specific legislation that criminalizes terrorist financing and money laundering are: the Money Laundering (Prohibition) Act, 2011; the Economic and Financial Crimes (Establishment) Act, 2004 and the Terrorism (Prevention) (Amendment) Act, 2013.

The international administrative framework is accomplished by the formation of the FATF-style regional bodies such as the 13 Asian Pacific Group on Money Laundering (APG)⁵, the Caribbean Financial Action Task Force (CFATF),⁶ The Financial Action Task Force for South America (GAFISUD),⁷ the Eastern and Southern African Anti Money Laundering Group (ESAAMLG)⁸ and the Inter-Governmental Action Group against Money Laundering (GIABA).⁹

The above legal and administrative frameworks are not without problems. The following are some of the key problems associated with both the international and domestic legislation for combating terrorist financing and money laundering:

1. The Vienna Convention restricted the definition of money laundering to proceeds of drug trafficking alone to the exclusion of other criminal activities.¹⁰
2. The UN Convention for the Suppression of the Financing of Terrorism only defined the offence of terrorist financing, but did not provide a definition for terrorism.¹¹
3. The *Money Laundering (Prohibition) Act, 2011* requires financial institutions to report suspicious transactions to the Financial Intelligence Unit (NFIU). One of the problems that arise is that “Suspicious Transactions” are defined in the context of scope. What is suspicious is not defined and financial institutions could raise the defense that they did not perceive the transactions as suspicious.
4. The *Money Laundering (Prohibition) Act 2011* requires report of a single lodgment exceeding N5, 000,000 or its equivalent, for an individual and N10, 000,000 or its equivalent for corporate body.¹² This creates a problem because in the context of structuring,¹³ the question that will arise is whether multiple cash transactions in a single day, totaling N5, 000,000 and 10,000,000 qualify for the mandatory reporting.
5. The EFCC Act vested the Commission with special powers of investigating the properties of any person if it appears that a person’s life style is not justified by his source of income.¹⁴ By reference to “any person” it means bringing Nigerians and aliens within municipal jurisdiction. Second, that how a life style could be determined as unjustifiable by a source of income has no scientific basis because it is difficult to gauge a person’s income.
6. Section 22 (2) of the EFCC Act requires the Commission to ensure that all forfeited assets are transferred and vested with the Federal Government. It is however not clear whether forfeited assets will be for the benefit of all federating units.
7. The *Terrorism (Prevention) (Amendment) Act, 2013* did not provide for measures to prevent the misuse of non-profit organizations¹⁵ and dealing with the financing of proliferation of weapons of mass destruction as required by the FATF Forty Recommendations.¹⁶

It is against this background that this paper seeks to realize the following objectives:

1. To clarify some key terms which include; terrorist financing and money laundering;

¹This is the first International Instrument to legislate on drug trafficking and money laundering.

²Adopted by U.N. General Assembly Resolution DOC.A/RES/55/25 on 15 November, 2000.

³Opened for signature on the 10th of January, 2000; entered into force on the 10th of April, 2002.

⁴Also known as the Algerian Convention.

⁵The APG Consist of 22 countries.

⁶The CFATF consists of 25 member jurisdictions.

⁷GAFISUD Website at www.gafisud.org.

⁸See ESAAMLG website at www.esaamlg.org

⁹ See www.giaba.org

¹⁰Article 3 (b) (i-ii).

¹¹Article 8 and 9.

¹²Section 10

¹³This means “smurfing” which means depositing funds in bits to avoid exceeding the threshold

¹⁴Section 7 (1).

¹⁵FATF Recommendations 7 and 8.

¹⁶Ibid.

2. To appraise the legal and administrative frameworks for combating terrorist financing and money laundering
3. To conclude with some findings and recommendations.

2. Conceptual Clarifications

The United Nations (UN) has made numerous efforts, largely in the form of international treaties, to fight terrorism and the mechanisms used to finance it. The *United Nations Convention for the Suppression of the Financing of Terrorism of 1999* has been put in place by the UN even before the September 11 attacks on the USA. The definition of terrorist financing under the Conventions applies to –

“Any person who:

..... By any means, directly or indirectly, unlawfully, and willfully, 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:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed as annexed.¹
- (b) 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 organization to do or to abstain from doing any act.²

The above section is violated the moment funds are collected or provided, knowing or intending that they are to be used for terrorist plot whether by an individual or a group. The offence is complete whether or not the funds are ultimately so used or an intending terrorist act is accomplished or attempted and without regard to whether the funds are of illegal origin.³

Thus, the above definition is the one most countries have adopted for purposes of defining terrorist financing.

Under the Nigerian *Terrorism (Prevention) (Amendment) Act, 2013*,⁴ a person is *inter alia* deemed to commit the offence of financing of terrorism if he

- (a) solicits, acquires, provides, collects, receives, possess or makes available funds, property or other services by any means to (i) terrorists,⁵ or (ii) terrorist groups,⁶ 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.
- (b) Possesses funds intending that it be used or knowing that it will be used, directly or indirectly in whole in part, for the purpose of committing or facilitating the commission of a terrorist act by terrorist or terrorist groups.⁷

Subsection (2) extended the definition to cover “any person who knowingly enters into, or becomes involved in an arrangement –

- (a) Which facilitates the acquisition, retention or control by or on behalf of another person of terrorist fund by concealment, removal out of jurisdiction, transfer to a nominee or in any other way, or
- (b) As a result of which funds or other property are to be made available for the purposes of terrorism or for the benefit of a specified entity or proscribed organization.

Many other sources and authorities reinforce the conclusion that the financing of terrorism usually consist of such routine financial transfers that it simply could not be recognized as suspicious and prevented without advance information from an intelligence source.⁸

The difficult issue for some countries is defining terrorism. Not all of the countries agree specifically on what actions constitute terrorism. The meaning of terrorism is not conversely adopted due to significant political, religious and natural implications that differ from country to country.⁹ The ever changing nature of terrorism has made it difficult for scholars to arrive at a single definition that will be acceptable to all.

¹Article 2(1)(a)

²Article 2(a)(b)

³Article 2(2).

⁴Section 13(1)(a)

⁵Section 13(1)(a)(i)

⁶Section 13(1)(a)(ii)

⁷Section 13(1) (b).

⁸United Nations Office on Drug and Crime (UNODC) Digest of Terrorist Cases, 2010. See also *United States v. Arnault, Enaam*, UNODC Digest of Terrorist Cases, 2010.

⁹Schott, P.A. *Reference Guide to Anti-Money Laundering and the Financing of Terrorism*, the World Bank, 2006, pp1-4. This is the definition of the Financial Action Task Force (FATF). See FATF Website at <http://www.oecd.org/fatf>.

Money laundering is the processing of the proceeds of crime so as to disguise their origin.¹ Money laundering is the various procedures and methods by which criminal proceeds are disguised as legitimate funds by concealing their true origin and ownership to give the picture that they emanate from legitimate source.²

The *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* defines Money Laundering as the:

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, locating, 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.³

The Convention defined the offence strictly predicated upon the production, manufacture, extraction, preparation, offerings and distribution of narcotic drugs and psychotropic substances⁴ only, excluding other financial crimes. Hence, the *UN Convention against Transnational Organized Crime* strengthened this definition by providing for dual criminality in the definition of money laundering.⁵ It defined money laundering as

- (i) The Convention 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...
- (ii) 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.

3. International Framework for Combating Terrorist Financing and Money Laundering

A number of international Conventions provided the framework for the domestication of Anti-Laundering/Combating the financing of terrorism in Nigeria. These international Conventions include:

(a) The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances also referred to as the “Vienna Convention.”

The Convention recognized that “illicit drug traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business and society at all level and became the first international instrument to make the fight against the proceeds of crime an angle of attack in the fight against organized crime and drug trafficking.⁶ The Convention was opened for signature on December 19, 1988 to December 20th 1989.

(b) The United Nations Convention for the Suppression of Financing of Terrorism of 1999

The Convention requires signatory states to criminalize the financing of terrorism and to allow for the detection, freezing and confiscation of such funds. Signatory 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.⁷

(c) The United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000

The Palermo Convention⁸ is the instrument designed to combat the phenomenon of transnational organized crime. It is a multipurpose instrument supplemented by three additional protocols bearing respectively on the treatment of individuals, trafficking of migrant over land, air and sea and the illegal manufacture and trafficking of firearms.⁹

Under the Convention, four offences considered to compromise the structural characteristics of organized crime are required to be addressed by the states in their domestic law: criminal association, money laundering, corruption and obstruction of justice.

¹This is the definition of the Financial Action Task Force (FATF). See FATF website at <http://www.oecd.org/fatf>.

²Amazu, H.O. “Design of Anti-Money Laundering Compliance System: Reporting Formats and Examination of Reporting Institutions,” being a paper presented at the fifth regional workshop on money laundering and other financial crimes. Organized by WAIFEM in collaboration with the US Treasury Department (2002).

³Article 3(b) (I – ii).

⁴Article 3(a) (i – iv).

⁵Article 6, section 1(a) (i-ii).

⁶Op. cit., n.1.

⁷Shuaibu, M.L. “Anti-Money Laundering/Combat of Financing of Terrorism in Nigerian,” (2012) 6 *NJI Law Journal*, p.49.

⁸Signed 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).

⁹Op. cit., n.31.

(d) The Council of Europe’s Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (The Strasbourg Convention)

The Strasbourg Convention¹ was opened for signature on November 8, 1990. The Convention adopts the definition of Money Laundering established by Vienna Convention, as well as the provisions on international cooperation in the area of seizure, confiscation and mutual judicial assistance in investigations. It extends the field of its intervention to all the proceeds of crime, defining them more broadly as “any economic advantage from criminal offences.” It also adopts the FATF² Recommendations with respect to the rules for preventing money laundering in the banking and financial system.

(e) The OAU Convention on the Prevention and Combating of Terrorist Financing, 1999 (The Algerian Convention)

The Convention defines “terrorist act” as:

- (a) any act which may endanger the life, physical integrity or freedom of, or causes serious injury or death to, any person, any number or group of persons or may cause damage to public or private property, natural resources, environmental and cultural heritage and is calculate or intended to:
 - (i) Intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint or to act according to certain principles; or
 - (ii) Disrupt any public service, the delivery of any essential emergency; or
 - (iii) Create general insurrection in a state.³
- (b) Any promotion, sponsoring, contribution to, commend, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii).

4. Domestic Frameworks

The legislation that criminalize and prohibit money laundering and terrorist financing are as follows:

(i) Money Laundering (Prohibition) Act, 2011

This law makes comprehensive provisions prohibiting the laundering of the proceeds of crime or illegal act. It provides appropriate penalties and expounds the interpretation of financial institutions and scope of supervision of authorities on money laundering activities among the other things. The Act regulated the procedure for making and accepting cash payments of a sum exceeding N5, 000,000 or its equivalent, in the case of an individual⁴ and N10, 000,000 or its equivalent in the case of a body corporate.⁵ It is submitted that the above threshold reporting will create problem because it is not clear whether multiple transactions in a single day totalling N5, 000,000 for individuals and N10, 000,000 for corporate body qualify for the mandatory reporting. It imposes duty on any person or body corporate to report international transfer of funds and securities in excess of US\$10,000N or its equivalent to the Central Bank (CBN) and the Securities and Exchange Commission (SEC) or the Economic and Financial Crimes Commission (EFCC).⁶

The Act makes it mandatory for financial and designated non-financial institutions to verify the identity and update all relevant information on the customer⁷ before opening an account or issuing a passbook to, entering into financial transaction with, renting a safe deposit box to or establishing any other business relation with the customer,⁸ and during the course of relationship with the customer.⁹ What is not clear from this provision is the use of the term “its customers” as that raises the question at what stage will a person be considered as a customer? In the South African case of *Kwamashu Bakery Ltd v. Standard Bank of South Africa*¹⁰ the court held that banks are required in terms of common law to verify prospective customers who want to open bank account. The Act also made provision for reporting suspicious transactions involving a frequency which is unjustifiable or unreasonable; is surrounded by conditions of unusual or unjustified complexity; it appears to have no economic justification or lawful purpose(s) to the Nigerian Financial Intelligence Unit (NFIU);¹¹ or where in the opinion of the financial or designated non-financial institution involves terrorist financing or is inconsistent with the known

¹Council of Europe, BTS 141,

²See Organization for Economic Cooperation and Development (OECD) DAFFE/IME/BR997/20.

³Article

⁴Section 1(a).

⁵Section 1(b).

⁶Section 2(1).

⁷Section 3(1)(a).

⁸Section 3(1)(a)(i).

⁹Section 3(1)(a)(ii).

¹⁰(1995) 1 SA 377.

¹¹Section 6(1) (a-d).

transaction pattern of its account or business relationship that transaction shall be deemed to be suspicious and the financial institution shall seek information from the customer as to the origin and destination of the funds, the aim of the transaction and the identity of the beneficiary.¹ The problem here is that suspicious transactions are defined in the context of scope. What is suspicious is not defined and financial institutions can raise the defence that they did not perceive the transaction as suspicious.

A financial institution or designated non-financial institution shall keep at the disposal of the authorities the record of customer's identification for a period of at least five years after the closure of the account or the severance of relations with the customer.²

The Act also mandated financial and designated non-financial institutions to report to the NFIU within 7 days any single transaction, lodgement or transfer of funds in excess of N5, 000,000 or its equivalent in the case of an individual and in the case of corporate body N10, 000,000. The disclosures are generally referred to as "Currency Transaction Report (CTRs).³ The problem here is, it is not clear whether an individual or corporate body who split their transactions into bits totalling N5, 000,000 or 10,000,000 will report such transactions.

The administrative regime is accomplished by the creation of the following regulatory/law enforcement agencies: the EFCC; the NDLEA; the CBN; the Nigerian Customs Services and the SEC.

(2) **Economic and Financial Crimes Commission (Establishment) Act, 2004.**

The Act provides for the establishment of the Commission charged with the responsibility of all economic and financial crimes laws among others. Specifically, the Act mandates the Commission to collaborate with government bodies within and outside Nigeria concerning the following:

- (a) The identification, determination of the whereabouts and activities of persons suspected of being involved in economic and financial crimes.
- (b) The movement of proceeds or property derived from the Commission of economic and financial and other related crimes.
- (c) The exchange of personnel or other experts.
- (d) The establishment and maintenance of a system for monitoring international economic and financial crime in order to identify suspicious transactions and person involved.
- (e) Undertaking research and similar works with a view to determining the manifestation, extent, magnitude, and effects of economic and financial crimes, advising government on appropriate intervention measures for combating same.

The power of the Commission to investigate all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, future market of negotiable instruments, computer credit card fraud, contract scam etc has been subjected to judicial contest and some pronouncements. The end result is that the trials of Politically Exposed Persons (PEPS) are unnecessarily delayed and thus no appreciable progress has been achieved over the years.⁴ In most of these cases, the trial hardly go beyond the initial stage of arraignment before being stalled owing to multiple preliminary objections ranging from challenges of territorial jurisdiction of the trial courts, the propriety of the indictments/charges and to a larger extent, the authority of the prosecuting authorities to try the accused persons, often citing the federal system envisaged in the Nigerian Constitution as an excuse.⁵ In *Federal Republic of Nigeria v. Peter Mba and Others*,⁶ the accused *inter alia* challenged the propriety of their indictment and the authority to prosecute them on offences against laws made or deemed to have been made by the State House of Assembly alluding to the Federal system of government of Nigeria, with autonomous tiers. The accused persons contended that the National Assembly was in error in the establishment of the *EFCC (Establishment) Act, 2004* in so far as it invested upon it the power to try corruption and money laundering cases in respect of funds belonging to the state government. The appeal succeeds in the Court of Appeal. However, this matter was laid to rest at the Supreme Court in *Attorney General of Ondo State v. Attorney General of the Federation*.⁷ The court held that the National Assembly have the power to enact the EFCC (Establishment) Act, 2004, the Money laundering Act etc.

The EFCC Act, 2004 criminalizes participation of financing of terrorism by any means whatsoever and provides punishment for life imprisonment. Section 15 provides:

- (1) A person who wilfully provides or collects by any means, directly or indirectly, any money from any person with intent that the money shall be used for any act of terrorism, commits an offence and is liable on conviction to life imprisonment for life.

¹Ibid.

²Section 7(1).

³Section 10.

⁴Shuaibu, M.L. "Anti-Money Laundering/Combat of Financing of Terrorism in Nigeria" *NJI Law Journal*, (2012), p.55.

⁵Ibid.

⁶FHC/L/9/2003.

⁷(2012) 9 NWLR (Prt 722) 222

- (2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of terrorist act, commits an offence under the Act and is liable on conviction to life imprisonment;
- (3) Any person who, makes funds, financial assets or economic resources or financial or other assets or relates services available for use of any other person to commit or attempt to commit, facilitate or participate in the Commission of a terrorist act is liable on conviction to imprisonment for life.

The EFCC Act provides for the legal capacity to prosecute and apply criminal sanctions to persons that finance terrorism in establishing the offence in “intention” or “knowledge” must be proved by the prosecution. Considering the nature of the punishment, the offences therefore qualify as money laundering predicate offences.¹ This gives a closer connection between international terrorism and money laundering which is the objective of Recommendation 5 of the FATF.

In the fight against terrorist financing and other financial crimes, the Act enables the Commission to seize and confiscate any property that is the proceed of, or used in, or intended acts or terrorist organizations and other financial crimes and forfeiture thereof upon conviction. This is a clear domestication in line with FATF which requires each country to implement targeted financial sanctions regime to comply with the UN Security Council Resolutions relating to the prevention and suppression of terrorism and terrorist financing.²

In ensuring that such assets are confiscated, the EFCC Act empowers the Commission to put in place interim measure, to seize assets pending obtaining court order³ to that effect.⁴ It is submitted that the objective of the seizure is necessary to deprive terrorists and terrorist networks of the means to conduct future terrorist activity and maintain their infrastructure and operations.

The Act requires the Commission to ensure that all forfeited assets are transferred to the Federal Government.⁵ It is however, not clear whether the forfeited assets will be for the benefit of all federating units.

The Act also vested the Commission special powers to investigate the properties of any person if it appears to the Commission that a person’s life style is not justified by his source of income.⁶ It is submitted that how a life style could be determined by a source of income has no scientific basis because it is difficult to gauge a person’s income.

(3) Terrorism (Prevention) (Amendment) Act, 2013

On the 2nd of May, 2013, the President assented to the *Terrorism (Prevention) (Amendment) Act, 2013*. This Act amended the Terrorism (Prevention) Act, 2011, makes provision of extra territorial application of the Act and strengthen terrorist financing offences.

Under the Act, terrorism and terrorist financing occurs when any person directly or indirectly, provides or collects funds with the intention or knowledge that they will be used, in full or in part, in order to⁷

- (a) Commit an offence in breach of an enactment specified in the schedule of the Act,⁸ or
- (b) Do any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation of armed conflict, when the purpose of such act by its nature or content is to intimidate a group of people or to compel a government or an international organization to do or abstain from doing any act,⁹

This section is a replica of Article 2 of the Vienna Convention. For an act to constitute an offence it shall not be necessary that funds were actually used to carry out an offence.¹⁰ It is also an offence if a person attempts, commits, participates as an accomplice, organizes or directs others to commit an offence.¹¹ It is also an offence when a group of persons acting with a common purpose contribute to the commission of an offence,¹² if the offence is committed –

- (i) With the aim of the furthering the criminal activity or criminal purpose of a group.¹³

¹Section 15(1)(a)(ii).

²FATF Recommendation 6.

³Court means High Court of State or Federal Capital Territory.

⁴Section 26 and 29, ECC Act, 2004.

⁵Section 22

⁶Section 7 (10

⁷Section 10(1).

⁸Section 10(1)(a).

⁹Section 10(i)(b).

¹⁰Article 2(3).

¹¹Article 2(5)(a).

¹²Article 2(5)(c)

¹³Article 2 (5)(c)(i).

- (ii) In the knowledge of the intention of the group to commit an offence.¹ This section generally prohibits a range of violent acts and as strongly state centred. It overtly aimed at protecting the Nigerian government against non-state actors.

We submit that this definition will not provide the nation with the foundation for legally determinate anti-terrorism regime, or one which remains workable through changing political landscape. This is because it is neither legally nor politically tenable to confer monopoly over violence on the state.

Another pertinent section is section 13(1) which provided for funds or property used for terrorist financing. a person or body corporate, who in or outside Nigeria soliciting, acquires, provides, collects, receives, possesses or make available funds, property² or other services by any means, whether legitimate or otherwise, to³ terrorist organizations, or individual terrorist, directly or indirectly, willing, with unlawful intention or knowledge or having reasonable grounds that believe that such funds or property will be used in full or in part in order to commit or facilitate an offence. Under this Act or in breach of the provisions of the Act⁴ solicits, acquires, provides, collects, receives, or possesses monetary or other property, or enters into or becomes involved, participates as an accomplice, organizes or direct others in an arrangement which facilitates the acquisition, retention or control by or on behalf of another person of the terrorist fund by concealment, removal out of jurisdiction, transfer to a nominee or in any other way as a result of which money or other property is made available, or is to be made available, for the purpose of terrorism or for a terrorist individual, terrorist organization, or proscribed organization, commits an offence and shall on conviction to life imprisonment.⁵

The definition of terrorist funding is not limited to financial instruments. It includes, providing chemical or biological weapons for terrorist purposes. Thus, one who violates section 13 of this Act, by soliciting, receiving, providing money for terrorist purpose or possessing chemical weapons or like devices can be charged for terrorist funding. This is a powerful tool for prosecutors who wish to maximise the power of the Act.

Other key provisions under this Act are:

- (1) Dealing in terrorist property
- (2) Seizure of terrorist cash
- (3) Providing devices to a terrorist
- (4) Incitement etc

The prosecuting agencies are the Nigeria Police Force; the EFCC; and the Department of State Services.⁶

4. The National Drug Law Enforcement Agency Act

The Act was enacted in tune with the *Vienna Convention of 1988*. The Convention has been giving local adaptation and is aimed at balancing approach in formulating drug control legislation. The NDLEA Act specifically charged the NDLEA with responsibility for:

Reinforcing and supplementing the measures provided in the *Convention on Narcotic Drugs of 1961*, as amended by the *1972 Protocol*, the *1971 Convention on Psychotropic Substances* and the *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* as adopted by the Nigerian domestic law, in order to counter the magnitude and extent of illicit traffic in narcotic drugs and psychotropic substances and its grave consequences and strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international activities of illicit traffic in narcotic drugs and psychotropic substances.⁷

The Act in section 3 confers on the Agency powers aimed at enforcing laws against the cultivation, processing, sale, trafficking and use of hard drugs. The Agency shall also adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from drug related offences or property whose value corresponds to such proceeds. They are to collaborate with government bodies both within and outside Nigeria concerning –

- (i) The identities, whereabouts, and activities of persons suspected of being involved in offences created under the Act;
- (ii) The movement of proceeds of property derived from the commission of such offences;
- (iii) The movement of narcotic drugs and psychotropic substances and instrumentalities used or intended for use in the commission of such offences;

¹Article 2(5)(c)(ii).

²Section 13(1)

³Ibid.

⁴Ibid.

⁵Section 13(2)(b).

⁶Section 42 (3)

⁷Section 3(1)(o).

- (iv) Exchange of personnel and other experts and the establishment and maintenance of a system for monitoring international dealings in narcotic drugs and psychotropic substances in order to identify suspicious transactions and persons engaged in them.
- (v) Monitoring international dealings in narcotic drugs and psychotropic substances in order to identify suspicious transactions and persons engaged in them.

The central agency responsible for coordinating and enforcing this Act is the NDLEA.¹

5. Administrative Frameworks for Combating Terrorist Financing and Money Laundering

5.1. The Financial Action Task Force (FATF)

The FATF is an inter-governmental body established by the G7 at its summit of July, 1995. The mandate of FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.²

In 1990 FATF issued Forty Recommendations as an initiative to combat the misuse of the financial systems by persons laundering drug money. In 1996, the Recommendations were revised to broaden the scope beyond money laundering.³ In October, 2001, FATF expanded its mandate to include terrorist financing, which later became the additional 9 Recommendations. The 9 Recommendations are now integrated and merged into 40 Recommendations as the current international standard on money laundering, the financing of terrorist and proliferation of firearms.

5.1.1 African Response

The ECOWAS Authority of Heads of State in the year 2000 established the Inter-Governmental Action Group against Money Laundering (GIABA).⁴ This is one of the major responses of the ECOWAS to the fight against money laundering. GIABA is a specialized institution of ECOWAS responsible for the prevention and control of money laundering and terrorist financing in the region.

The establishment of GIABA as a FATF style regional body (FSRB) is a demonstration of the strong political commitment of member states to combat money laundering and terrorist financing and to cooperate with concerned nations and international organizations to achieve this goal.

GIABA conducts Mutual Evaluation of member countries in accordance with FATF standards and also in conformity with the enabling statutes. The evaluations are based on FATF 40 Recommendations.

The GIABA 2011 evaluation report on Nigeria inter alia indicates that some of the regulatory agencies and the judiciary are yet to develop enough capacity to combat money laundering effectively; appropriate ICT infrastructure is also lacking; the Non-Conviction Based Asset Forfeiture Bill is still pending in the National Assembly, reflecting a serious gap in the country's AML/CFT regime. It also observed that the *Money Laundering (Prohibition) Act 2011* did not include fraud among the list of predicate offences to money laundering.⁵

Specific actions and strategies that have been considered by member states include the formation of sub-regional anti-Money Laundering blocks. One of such initiatives is the establishment of the Dar-es-Salam based Eastern and Southern African Anti-Money Laundering Group (ESAAMLG).⁶ The objective of the ESAAMLG as outlined in the Memorandum of Understanding (MOU) centres around combating money laundering and terrorist financing. The strategic plan of ESAAMLG focuses on realising its vision of developing a strong dynamic institution that is committed to the eradication of money laundering and terrorist financing in the Eastern and Southern African sub Region.

To date ESAAMLG has made notable progress in the establishment of Anti-Money laundering regimes in the sub region.

5.1.2 The Nigerian Response

The administrative framework in Nigeria is accomplished through the creation and the enactment of EFCC (Establishment) Act 2004 which established the Economic and Financial Crimes Commission; the NDLEA Act Cap No.30 LFN, 2004 which established the National Drug Law Enforcement Agency; the Banking and Other Financial Institutions Act, 1991 which gave the Central Bank of Nigeria (CBN) the power of enforcing the Act. Other institutions responsible for combating money laundering and terrorist financing are the Department of State Security (DSS), the Office of the National Security Adviser (NSA) and the Nigeria Police Force.

¹Section 3

²The G7 consists of Canada, France, Germany, Italy, Japan, United Kingdom and United States. It currently has 33 members, 31 countries and governments and two international organizations and more than 20 observers.

³2012 OECD/FATF

⁴www.giaba.org. Accessed on the 20th June 2013.

⁵See GIABA, Senegal, Mutual Evaluation, 2011.

⁶ESAAMLG is the FATF-style regional group for East and South Africa.

It has been observed that there is duplication of functions by various institutions charged with the responsibility of enforcing them, in the sense that law enforcement agencies do not confine themselves to enforcing only the laws establishing them. For instance, the EFCC enforce the Money Laundering Act, the Advance Fee Fraud and Other Offences Act, the Failed Banks and Other Financial Practices in Banks Act¹ etc

It is also clear that Nigeria has put in place legal and administrative framework to combat money laundering and terrorist financing. However, combating money laundering and terrorist financing cannot succeed where law enforcement agencies operate in isolation from one another. There is need for the agencies to operate in a coordinated fashion and communicate regularly with one another.

6. Conclusion

The international legal framework to combat money laundering and terrorist financing is now fairly established. A large number of states have taken steps to implement the provisions of the relevant international conventions and FATF's Forty Recommendations into their domestic laws. The passage of time and the persistent efforts of the United Nations, the UNODC, FATF and the FATF-style regional bodies, it is fair to say that the majority of the States including Nigeria have been sensitised to the importance of the war against money laundering and terrorist financing.²

In addition to the established framework put in place by Nigeria, strong political will is a major precondition for the success of the war against terrorist financing and money laundering. As a result of the strong commitment of the political leadership, it is anticipated that the leadership will drive the process of creating the necessary environment and structures, including the promulgation of comprehensive laws with dissuasive and proportionate sanctions.

The promulgation of laws and the establishment of new regulatory or law enforcement institutions are not sufficient to combat the menace of money laundering and terrorist financing. They must be supported by strong political will on the part of government and real and meaningful implementations of laws through investigations, prosecution, and convictions to give credibility to such laws.³

It is recommended that all law enforcement agencies at the federal and state levels, must, in the spirit of cooperation and coordination, deprive terrorists and money laundering of their finances and implement Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) laws.⁴

Secondly, detection of money laundering and terrorist financing options necessarily involves collaboration and information exchange between the financial sector and authorities responsible for legal procedures. Without this collaboration there is little chance that money laundering activities could ever become known as they are by nature hidden.⁵

Thirdly, overlapping of functions by law enforcement agencies could be corrected if these agencies confined themselves to the laws establishing them. This is possible when the laws are amended.

Finally, there is the urgent need to identify the gaps in Nigeria's AML/CFT legislation with a view to amending them.

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²The FATF mentions the progress of its members in combating terrorist financing and money laundering through self assessment and mutual evaluation.

³Hebert and Morais "The War against Money laundering, Terrorism and the Financing of Terrorism", 2002, Law Asia Journal, p.29.

⁴See Newman, R. Dirty Laundry: Banks say they are Vigilant in Tracking Dirty Money in New Jersey, Bergen Record, 2001 (describing New Jersey as a Money Laundering Hot Spot).

⁵Ladan, M.T., op. cit. n.1.

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