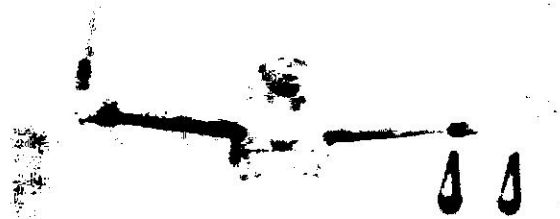


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THE ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) AND MONEY LAUNDERING – THE CAT GOT THE MOUSE?*

Abstract

This paper aspires to analyse the character of money laundering including its modern definition and further highlighting the role of Economic and Financial Crimes Commission (EFCC) in the management of the crime. It also analyzes current legislations and regulations on this area of crime particularly in the context of Nigeria with the view of understanding the practical problems they come across and with a view to overcoming these problems. While this paper focuses on applying the Act as a means of combating the financial crime of money laundering, it is anticipated that future management will focus more on cybercrime, identity theft, credit and fraud, dud cheques, counterfeiting access devices (cheques, financial credit and debit cards, skimming and re-encoding), counterfeit audio cassette tapes, video tapes, CDs and DVDs, counterfeit clothing and trademarks, which evolve fast as a result of technological advancement.

To achieve any worthwhile development on policy sustainability and economic growth in both public and private sectors in Nigeria and Africa as a whole, emphasis must be placed on addressing the twin malaise of financial crimes and economic fraud. Economic crimes of which the financial crime of money laundering is one, forms a part of the major transnational organized crime which has plagued numerous countries. And to effectively combat it, a serious domestic, regional and international law enforcement regime is required.

Much has happened since the establishment of the EFCC Act 2004¹ and yet much is expected to be done. There is a greater awareness of the problem, as indicated by the number of conferences held on EFCC, the amount of press release on the topic and increase in the number of judicial decisions. However, the country continues to struggle with the ramifications of the use of the EFCC Act² and its potential implications against fraud.

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¹ Economic and Financial Crimes Commission (Establishment) Act 2004 Cap E1 LFN 2004 Vol. 5

² Cap E1 Laws of the federation of Nigeria 2004

Introduction

The nature of fraud is becoming more technologically complex and costly in a post-industrial, knowledge-based, global environment. Estimates of losses as a result of economic crimes exceed \$200 billion per year³, twenty times the losses attributed to conventional crimes⁴ such as armed robbery, rape, assault etc. all industries, including banking, manufacturing, insurance etc have been adversely impacted by the increased growth of economic crime.

Money laundering is one of those problems that are very difficult to get a grip on⁵. The term money laundering is a method used for making dirty money clean. It has been defined as the process by which large amount of illegally obtained money⁶ is given the appearance of having originated from legitimate sources. Where the conversion of the ill-gotten funds is successfully carried out, the criminals are allowed to maintain control covers their proceeds and ultimately to provide a legitimate cover for their source of income so as to place it beyond the reach of any asset forfeiture law⁷.

Article 1 of the Draft European Communities (EC) Directive⁸ defined it as:

“the conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.”

The International Monetary Fund (IMF) says that money laundering is any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources.⁹

³ Utica Collège Economic Crime Management available at www.EconomicCrimeDegrees.com assessed 02/05/2009

⁴ Ibid.

⁵ M. Ycandle, M. Mainelli, a. Berendt and B. Healy, Anti-Money Laundering Requirements, Costs and Benefits and Perceptions (London 2006), p.11

⁶ An example of this includes monies realized from the crimes of drug trafficking, terrorist activities, prostitution racketeering, tax evasions, smuggling, child labour, illegal oil bunkering, corruption and embezzlement of public funds etc

⁷ Billy Steel, Money Laundering – What Is money Laundering?, http://www.laundryman.u-net.com/page2_wisml.html, accessed on 20th May, 2009.

⁸ Council Directive 91/308/eec of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering [Official Journal L 166 of 28.06.1999]

⁹ International Monetary fund, The IMF and the Fight against Money Laundering and the Financing of Terrorism, A Fact sheet, September 2004. (<http://www.imf.org/external/np/exr/facts/aml.htm>), the IMF worked together with the World Bank on this, the World Bank adopted the same definition.

It has also been described as 'process whereby criminals attempt to hide and disguise the true origin and ownership of the proceeds of their criminal activities'.¹⁰ Nevertheless, the forms and dimensions of this type of crime have evolved in recent years especially since the seventies through the escalation of drug trafficking.¹¹

Before now, the term 'Money Laundering' had little or no meaning to the common man on the street in Nigeria and this lack of awareness has been a major obstacle of the EFCC in its efforts to combat the crime. The reason for the position is not far-fetched as crime of money laundering has no victim unlike the usual crimes of armed robbery, drug selling or rape which is conventional types of crimes¹².

Nowadays, when we talk of money laundering, the first thing that comes to mind is Swiss Bank Accounts¹³. The reason for this is not improbable, it has become a well known medium to facilitate this crime through banks and Swiss Banks are particularly known for their renowned banking transaction in regard to secrecy of the depositor. It will be erroneous however to limit the medium of committing money laundering to the bank as factious companies, casinos, restaurants, car dealers, art agents, as well as import-export operations have added a big boost to this crime¹⁴.

It should be known that the escalation of the drug market and globalization of organized crime has led to a collective raised awareness with regard to the various problems associated with money laundering¹⁵. During the era when pirates preyed the seas, as the case in the recent piracy of the Somalia waters, they had to seek places where they could freely spend

¹⁰ 10 Joint Money Laundering Steering Group, Prevention of Money Laundering/Combating the Financing of Terrorism: Guidance for the UK Financial Service Sector Part 1 (London 2006), pp.7-8.

¹¹ ¹¹ www.economicexpert.com/a/Money_laundering.html assessed on 20th May, 2009

¹² It is easier for citizens to make reports on the commission of conventional crimes such as armed robbery etc than that of money laundering. Most times, people feel that they are not directly affected by the commission of the crime but this is not always the case as where funds which are meant for the development of an economy are embezzled and laundered, the requisite development which would be for the benefit of all citizens is cornered by a few people.

¹³ Swiss Bank secrecy has protected funds deposited in Swiss Banks for over 300 years. The Federal Laws on banking passes in 1934 clearly stated that bank secrecy fell within the criminal domain. A banker who infringed bank secrecy was henceforth punishable by imprisonment, thus reinforcing the depositor's protection of the private sphere.

¹⁴ It is easier for citizens to make reports on the commission of conventional crimes such as armed robbery etc than that of money laundering. Most times, people feel that they are not directly affected by the commission of the crime but this is not always the case as where funds which are meant for the development of an economy are embezzled and laundered, the requisite development which would be for the benefit of all citizens is cornered by a few people. For the latest methods used by criminals to facilitate money laundering, see G. Baldwin, 'The Face of Money Laundering' (2003), 4 Journal of Investment Compliance pp. 38-42; History of Swiss accounts, <http://swissbankaccounts.com/e/banking/secrec/money.laundering.definition.html> accessed on 20th May, 2009.

¹⁵ History of Swiss accounts, <http://swiss-bank-accounts.com/e/banking/secrecy/money.laundering.definition.html> accessed on 20th May, 2009

the money gotten from their booty. In modern day terms; they sought financial havens where they could be welcomed to spend their money or where to retire. Some Mediterranean City States used to compete to attract pirates to adopt residence as the pirates money boosted their commerce and trade and provided additional income to their fiefdom treasury¹⁶.

It should be noted that money launderers have no taboos but wear ties. The image that money laundering has with the police and the public, has to do with drug dealers, women traffickers or Mafia killers. This is, however, not the case as money laundering mostly involves 'white collar' crime. Nicely dressed bankers, lawyers, notary publics, financial advisors, real estate agents, businessmen and construction magnates are the actors engaged in the huge transactions needed to turn criminal money into 'white' money. The image of money laundering as a serious offence needs to be emphasized in the body politic, ill sectors of civil society from the citizenry to law enforcement agencies such as the police. It is necessary to concentrate on white-collar crime, on people who wear ties rather than tattoos¹⁷.

Background

Money Laundering has existed since the days of prohibition in the USA which somehow coincide with the ascent of Alphonse Gabriel "Al Capone"¹⁸ Levi et al. believes that the term was first used in the 1920s by Al Capone 'when street gangs sought a seemingly legitimate explanation for the origins of the money their rackets were generating'¹⁹. During this period, legitimate businesses such as Laundromats were acquired since it required the use of cash in payment for services rendered²⁰.

The first reference to the term "money laundering" itself was during the Watergate scandal. When United States President Richard Nixon's "Committee to Re-elect the President" moved dirty campaign contributions to Mexico, then brought the money back into the country through a company in Miami²¹. Furthermore, the expression first appeared in a judicial or legal context in 1982 in America in the case US v \$4,255,625.39.²² And the term "money laundering" then was applied only to financial transactions related to organized crime.

¹⁶ 16 George Farrugia Money Laundering – Why Bother? At www.fiumalta.org/pdfs/ml_why.pdf accessed on 15th April, 2009

¹⁷ 17 The Amount and the Effects of Money Laundering, Report for the Ministry of Finance, Australian February 16, 2006

¹⁸ It is easier for citizens to make reports on the commission of conventional crimes such as armed robbery etc than that of money laundering. Most times, people feel that they are not directly affected by the commission of the crime but this is not always the case as where funds which are meant for the development of an economy are embezzled and laundered, the requisite development which would be for the benefit of all citizens is cornered by a few people. For the latest methods used by criminals to facilitate money laundering, see G. Baldwin, 'The Face of Money Laundering' (2003), 4 Journal of Investment Compliance pp.38-41. History of Swiss accounts, <http://swiss-bank-accounts.com/e/banking/secrecy/money.laundering.definition.html> accessed on 20th May, 2009.

¹⁹ M. Levi, R. Naylor and P. Williams. Financial Havens, Banking Secrecy and Money Laundering (New York 1998), p.12

²⁰ Billy Steel, Money Laundering – History of Money Laundering?, http://www.laundrman.u-net.com/page2_wjsml.html, accessed on 20th May, 2009.

²¹ http://en.wikipedia.org/?title=Money_laundering#History accessed on 20th May, 2009

²² (1982) 551 F Supp.314 See also (1982 US DIST LEXIS 15918)

Johanna Granville described money laundering as the "Achilles' heel of organized crime", as it compels mobsters to seek out and co-opt established professionals on means of accessing legal institutions such as banks so as to launder their plunder.²³ It should be known that nowadays, the meaning of money laundering has been expanded to include 'any financial transaction which generates an asset or a value as the result of an illegal act. It includes actions such as tax evasion or false accounting'²⁴.

Money laundering is the world's most buoyant industry as the amount of money laundered is huge and not easy to calculate. According to Gallant²⁵ 'any attempt to measure money laundering is, of course, fraught with methodological difficulty'. As a result of these and coupled with the fact that the banks are the major machinery for money laundering in Nigeria, a number of device used by organized criminals to launder money includes: cash couriers, cash conversion, domestic bank accounts, credit cards, wire transfers, alternative remittance system, etc.²⁶

Money Laundering Process

There are three well identified processes in money laundering: placement, layering and integration²⁷. The first stage which is the placement stage involves the physical movement of currency or other fund derived from illegal activities to a place or into a form that is less suspicious for law enforcement agencies and which is convenient to the criminal. The process involves the introduction of the illicit funds into the traditional financial institutions or into the retail economy. When placing the funds, the launderer must convert the form of funds in order to disguise the illegitimate origin of the money. This is usually done by converting smaller bills to larger denomination, cashier's cheques, money orders or other negotiable instruments and by using cash-intensive business such as restaurants, bar casino and car wash.

The second stage known as the layering stage involves the separation of the proceeds from their illegal source by using multiple complex financial transactions such as wire transfers and monetary instruments to obscure the audit trail and hide the proceeds. The final and third stage in the process is the integration stage where the illegal proceeds are converted into

²³ Johanna Granville "Dot.Con: The Dangers of Cyber Crime and Call for Proactive Solutions", Australian Journal of Politics and History, vol. 49, no. 1. (Winter 2003), 102-109 accessed on 20th May, 2009.

²⁴ US Office of the Comptroller of the Currency, www.occ.treas.gov accessed on 20th May, 2009

²⁵ M. M. Galant, Money Laundering and The Proceeds of Crime (Cheltenham 2005), pp. 11-12

²⁶ See A. Kennedy, 'Dead Fish Across the Tati: Illustrations of Money Laundering Methods' (2005), 8 Journal of Money Laundering Control 305-319, at 306-15, see also HM Treasury, anti Money Laundering Strategy (London 2004), p.12.

²⁷ See J. Robinson, The Laundering Law (Oxford 2003), pp.2-3

apparently legitimate business earnings through normal financial or commercial operations²⁸. These stages, while they can be separate and distinct, more often occur simultaneously or overlap²⁹. Another popular method of laundering money is through remission of funds through money broker, they create a licensed money transmission business allowing individuals in a country to wire money to businesses, friends and relatives in their home countries.

The Legal Nature of the Problem

Globalization and economic development has opened doors for illegitimate exploitation. Traditionally, nations concentrate on crime perpetrators and not in the proceeds of their crime. As a result of this, the existing laws in Nigeria are not broad enough to capture this area of crime generally known as financial crimes. The aim of any anti-money laundering law is to confiscate the proceeds of crime.³⁰

Legal provisions for confiscation of the proceeds generated from all types of serious crimes are the main tool to fight against money laundering³¹. The modus operandi of most economic crimes usually show that there is connivance amongst members of legitimate organizations; sometimes including bank officials and government officials who assist the criminals once monetary reward is offered for illegal services rendered³².

It should be known that when the proceeds of financial and economic crimes are successfully laundered; apart from causing substantial losses to the financial sector by frightening away honest investors, the larger sections of the society will also be affected and this will in turn affect the economy; so it is imperative for governments to institute comprehensive domestic regulatory and supervisory regime that would be followed by banks and other non-bank financial institutions. Nigerian banks should be enjoined to strictly comply with these rules. The government is also to do everything possible to prevent and detect economic crime within its system.

In the Economic and Financial Crimes Commission Act 2004³³, economic and financial crime is broadly defined as 'the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its

²⁸ Reports by the Board of Governors of the Federal Reserve System USA, www.federalreserve.gov/sitemap.htm accessed on 21st May, 2009

²⁹ Doug Hopton, Money Laundering A Concise Gower Publishing Ltd. Page 53.

³⁰ See Section 18 (2) Money Laundering Act 2004.

³¹ Article 1 (f) of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (Vienna Convention), and Article 2 (g) of the UN Convention Against Transnational Organized Crime define confiscation as the permanent deprivation of property by order of a court or other competent authority. See also, www.unafeci.or.jp/english/pdf/PDF_rms/no58/58-35.pdf

³² http://www.unafeci.or.jp/english/pdf/PDF_rms/no67/22_Group3_p254_p260.pdf accessed on the 11th May, 2009.

³³ Cap. E 1 Laws of the Federation of Nigeria 2004

administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc³⁴. The Economic Crime Management combines the areas of management, technology, analytical skills and a knowledge and understanding of economic crime from a global perspective³⁵.

Money Laundering Prohibition Act, 2004³⁶

Financial crimes generally is one that affects us all; be it fraud, laundering the proceeds of crime, people trafficking, drug trafficking or the financing of terrorism. It is, therefore crucial that we make it as difficult as possible for criminals and terrorists to use the financial system to move or store their frauds. As a result of the above, all financial institutions (and even some non-financial businesses) are required by law to obtain and keep evidence of the identity of their customers³⁷.

This Act³⁸ which repealed the Money Laundering (Prohibition) Act 2003³⁹ contains comprehensive provisions to prohibit the laundering of the proceeds of a crime or any illegal act and also provides appropriate penalties which are to be meted out to offenders⁴⁰. The Act also expands the interpretation of financial institution and scope of supervision of regulatory authorities on money laundering activities among other things.

To monitor the movement of huge cash so as to prevent situations whereby funds gotten from illegal activities are siphoned into the country and since banks and other financial institutions are usually the major target in laundering operations because they provide a variety of services and instruments that can be used to conceal or disguise the source of money. The Act limits the making and accepting cash payments and imposes a duty to report international transfer and fund securities⁴¹.

³⁴ Sec 46, Economic and Financial Crimes Commission (Establishment) Act 2004 Cap B1 LFN 2004 Vol.5

³⁵ Utica College Economic Crime Management available at www.WeconomicCrimeDegrees.com accessed 02/05/2009

³⁶ Cap M18 LFN 2004 Vol. 2

³⁷ Section 3 of the Money Laundering Act 2004 Cap M18 LFN 2004 Vol. 2

³⁸ Money Laundering Act 2004 Cap M18 LFN 2004 Vol. 2

³⁹ See the Commencement Clause of the Money Laundering Act 2004 Cap M18 LFN 2004 Vol. 2

⁴⁰ See Generally Section 14-18 of the Money Laundering Prohibition Act

⁴¹ Sections 1 & 2 Money Laundering (Prohibition) Act.

No person or body corporate shall make or accept cash payment of a sum exceeding N500,000 or its equivalent, in the case of an individual, or N2,000,000.00 (Two Million Naira) or its equivalent, in the case of a body corporate except in a transaction through a financial institution⁴² and in the instance of a transfer to or from a foreign country of funds or securities of a sum exceeding \$10,000 or its equivalent shall be reported to the Central Bank of Nigeria⁴³ stating the nature and amount of the transfer and the names and addresses of the sender and receiver of the funds and securities.⁴⁴

Furthermore, the Act⁴⁵ makes provisions for the offence of money laundering by stating that any person or corporate body who retains or assists in retaining the proceeds of crime is guilty of an offence and liable on conviction to imprisonment or to a fine equivalent to five times the value of the proceeds of the criminal conduct or to both⁴⁶.

Also, Section 14 of the Money Laundering Act 2004⁴⁷ provides that "any person who converts or transfers resources or properties derived directly or indirectly from illicit traffic in narcotic drugs and psychotropic substances or any other crime or illegal act, with the aim of either concealing or disguising the illicit trafficking of narcotic drugs and psychotropic substances or any other crime or illegal act to evade the illegal consequences of his action or collaborates in concealing it commits an offence and is liable on conviction to a term of not less than 2 years or more than 3 years⁴⁸.

It can be said that the rationale behind the various provisions contained in the Money Laundering (Prohibition) Act 2004 is based on the fact that cash remains the mainstay of serious and organized criminal transactions including money laundering. The reason for this is not farfetched as cash has the obvious advantage that it leaves no audit trail. To make it easy to trace the origin or source of any money when the need arises, movement of excessive cash must be discouraged⁴⁹.

Arguments for Money Laundering

⁴² Section 1 (a) (b) Money Laundering Act 2004

⁴³ Sec 2(1) Money Laundering Act Vol. 2 Cap M18 LFN 2004

⁴⁴ Sec 2(1) Money Laundering Act Vol. 2 Cap M18 LFN 2004

⁴⁵ Money Laundering Act Vol. 2 Cap M18 LFN 2004

⁴⁶ See Section 16 and 17 of the Act Vol. 2 Cap M18 LFN 2004

⁴⁷ Cap M18 LFN 2004 Vol. 2

⁴⁸ Section 14 (a) and (b)

⁴⁹ Abimbola Adeseyoju, Money Laundering: Alamieyeseigha as a Metaphor Elendu Reports Thursday, 13 October 2005

The advocates against the combating of money laundering are not few. They postulate around five main issues⁵⁰. Money has no smell. This argument revolves around the thinking that if a crime is committed in some other country, it does not affect us money is still money whatever its source. Anti-money laundering measures threaten development. Developing economies are more attractive to money launderers as developed countries have more strict legislations. Weak regulations lead to the danger of corrupting and undermining the confidence in financial institutions and organized crime may force financial institutions into active or passive complicity due to the large amounts of money they have. Countries (particularly developing) cannot afford to be choosy about sources of capital. The longer regulations take to be put in place the harder it becomes to curb and stop its activities. Action against money laundering goes against deregulation and liberalization⁵¹.

Whilst it is true that money laundering requires laws and regulations and involving all concerned parties, these same laws are necessary to open up and liberalise markets. Anti-money laundering measures do not affect legitimate financial transactions. Furthermore, whilst free market opening and liberalizations provide opportunities for both criminals and legitimate investors, these laws and regulations are the necessary tools to defy the increased opportunities open to the criminals. Michel Camdessus, Managing Director of the IMF describes this argument as being "based on some fundamental misconceptions regarding the interaction of liberalizations of markets, the rule of law and the integrity of financial transactions."⁵²

Taking measures give countries a competitive disadvantage against established financial centres. For countries to argue this way is like athletes who take anabolic steroids to boost their performance without considering the long term effects on their health. Actually, the international efforts undertaken are aimed to bring about the same basic standards applied everywhere. Financial Institutions that have taken the necessary steps have to protect themselves not to be penetrated indirectly. Thus, taking the necessary measures would bring into force an international standardization, thus, facilitating business rather than imposing disadvantages.

Establishment of EFCC

Nigeria has taken a bold step in the establishment of a strong executive authority in the prevention and possible eradication of corruption and financial crimes. These crimes range from the advanced fee fraud popularly referred to as '419' and money laundering. The gravity of this crime and the total precision at which it is being practiced led to the establishment of the Economic and Financial Crimes Commission (EFCC). The legal instrument backing the Commission is the attached Economic and Financial Crimes

⁵⁰ Verwoerd, L., (President of the Financial Action Task Force), Money Laundering and Economic and Financial Development, Five Popular Economic Fallacies, AUSTRAC - Money Laundering Financial Industry Regulators. (undated)

⁵¹ Ibid

⁵² Ibid

Commission (Establishment) Act 2002, later repealed by the Economic and Financial Crimes Commission (Establishment) Act 2004.⁵³ The Economic and Financial Crimes Commission (EFCC) is the Nigerian law enforcement agency that investigates financial crimes such as advance fee fraud and money laundering.

The EFCC was established in 2003, partially in response to pressures from the Financial Action Task Force on Money Laundering (FATF)⁵⁴, which named Nigeria as one of 23 countries non-cooperative in the international community's efforts to fight money laundering.⁵⁵

EFCC as the designated Financial Intelligence Unit (FIU)⁵⁶ in Nigeria, is charged with the responsibility of co-coordinating all the various institutions involved in the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria. FIU is defined as: "a central, national agency responsible for receiving (and as permitted, requesting), analyzing and disseminating to the competent authorities disclosures of financial information; concerning suspected proceeds of crime and potential financing of terrorism; or required by national legislation or regulation, in order to combat money laundering and terrorism financing".⁵⁷

Based on the above, the Commission is empowered to prevent, investigate, prosecute and penalize economic and financial crimes and is charged with the responsibility of enforcing the provisions of other laws and regulations relating to economic and financial crimes.⁵⁸ The operations unit of the EFCC is its investigative arm and it is in charge of investigations on charges relating to advance fee fraud (419), economic governance, bank fraud and general investigations.

As can be seen from this provision⁵⁹, top on the list is money laundering. The EFCC is the prosecuting authority in respect of money laundering offences. This power applies even

⁵³ Cap. E 1 LFN 2004

⁵⁴ FATF is an intergovernmental body established by the G-7 Summit in Paris in July 1989 to take the lead and develop co-ordinated international response to preclude the use of financial system for money laundering. Its secretariat is housed at the OECD and it presently has 33 member countries.

⁵⁵ http://en.wikipedia.org/wiki/economic_and_financial_crime_commission accessed 01/04/2009

⁵⁶ This unit has recently been established as an autonomous unit within EFCC. It is an arm of the global Financial Intelligence Unit. Its establishment was demanded by the Financial Action Task Force (FATF) as a pre-condition for delisting Nigeria from the ranks of non-cooperative countries and territories. See also section 1 (2) (c) Economic and Financial Crimes Commission Establishment Act (2004) Cap. E 1 LFN 2004

⁵⁷ Muller, W. H., Kalin, C.H. & Goldsworth, J.G. Anti-Money Laundering: International Law and Practice, (1st ed., 2000 John Wiley & Sons Publishing) at page 87. Organizations are Offshore Group of Banking Supervisors (OGBS). The Egmont Group of Financial Intelligence Units

⁵⁸ Economic and Financial Crimes Commission Establishment Act (2004) Cap. E 1 LFN 2004, The Money Laundering Act 1995; The Money Laundering (Prohibition) Act 2004, The Advance Fee Fraud and Other Fraud Related Offences Act 1995; The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, The Banks and other Financial Institutions Act 1991; and Miscellaneous Offences Act

⁵⁹ Section 7(2) (a) Economic and Financial Crimes Commission Establishment Act (2004) Cap. E 1 LFN 2004

where the entity to be prosecuted is regulated by the Money Laundering Act. The EFCC also has the power to impose financial sanctions for contravention of the Money Laundering Act.

Sections 18⁶⁰ provide for the offences in relation to economic and financial crimes and petitions and states categorically that a person who, without lawful authority engages in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence under this Act; or engages in the management, organization or financing of any of the offences under this Act; or engages in the conversion or transfer of property knowing that such property derived from any offence under this Act; or engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights, with respect to or ownership of property knowing such property is derived from any offence referred under this Act commits an offence under this Act and is liable on conviction to imprisonment for a term not less than two years and not exceeding three years.

The Money Laundering Act⁶¹ imposes a duty on Banks and other Financial Institutions to report any suspicious transactions to the Economic and Financial Crimes Commission (EFCC) within 7 days.⁶² The power to try offenders under the Act is vested exclusively in the Federal High Court⁶³.

Achievements of EFCC In The Area of Money Laundering

The achievements of the EFCC in the area of money laundering is not only laudable but also commendable. Apart from the fact that the Commission has been successful in recovering a lot of funds that were looted by various past political leaders⁶⁴, the Commission has been

⁶⁰ Economic and Financial Crimes Commission Establishment Act (2004) Cap. E 1 LFN 2004

⁶¹ Money Laundering Act 2004 Cap M18 LFN 2004 Vol. 2

⁶² See Section 5(6) of the Act

⁶³ See Section 19 (1) of the Act. The subject matter actually is within the exclusive legislative competence of the Federal Government.

⁶⁴ According to the EFCC, it has recovered over \$750 million of the \$2.5 billion stolen by the late Head of State, Gen. Sani Abacha. In all, a little over \$1.3 billion has been recovered so far from the late head of state. It was stated that the late head of state had looted \$3 billion while serving as Nigeria's ruler under the military regime from 1993 till 1998. He reportedly siphoned these monies through security votes, the Central Bank of Nigeria, the Ajaokuta Steel Plant debt, oil industry and bribes. Also with the help of British authorities, \$1.9 million illicitly acquired by former governor of Bayelsa State, Diepreye Alamieyeseigha was recovered. <http://www.punching.com/Article.aspx?theartic=Art200711101425046> accessed on 18th May, 2009.

Commission has been able to record numerous convictions on corruption, money laundering and related offences⁶⁵ while some new cases have been recently filed in courts.⁶⁶

Also, the Commission has helped in the sanitization of the banking industry as the 'Know Your Customer'⁶⁷ (KYC) principle is now substantially applied by the banks. Currently, various bank staff and officials are standing trial for charges relating to money laundering and fraud.⁶⁸

The fight against money laundering, terrorism and terrorist financing has heightened with the establishment of the Nigerian Financial Intelligence Unit (NFIU) by the EFCC⁶⁹ and this has assisted seriously in the detection of suspicious transactions in financial institutions. In combating cyber crimes, the Commission recently signed a Memorandum of Understanding with the Microsoft Corporation against Internet Scam and Identity Theft.⁷⁰

Currently, the Commission has investigated and filed several fresh high profile cases which include cases against former Governors and Ministers. Some of this high profile case have been those of Michael Botnang, Boni Haruna, Rashed Ladoja, Bode George, Femi Fani-Kayode, Babalola Borisade, Kenny Martins, Prince Ibrahim Demuje, Roland Iyayi, Nyeson Wike (Chief of Staff Rivers State), Elder George (Aviation Fund), 4 Senior Managers of Zenith Bank, Patrick Fernandez, the 13 Philipinos Case and the 6 Ghanaians case⁷¹. The

State, Diepreye Alamieyeseigha was recovered. <http://www.punching.com/Article.aspx?theartic=Art200711101425046> accessed on 18th May, 2009.

⁶⁵ See Nuhu Ribadu, Nigeria's struggle with corruption, ipanigeria.org/efcc.pdf accessed on 13th April 2009. Also according to the current leadership of EFCC, the commission has recorded 50 convictions in the past nine months. www.efccnigeria.org/index.php?option=com_content&task=view&id=598&Itemid=34 accessed on 14th May, 2009

⁶⁶ The Economic and Financial Crimes Commission (EFCC) yesterday filed a 26-count-charge against three officials of the Universal Basic Education Commission (UBEC) and an American over an alleged N6.3 million contract scam, N6.3 million fraud: EFCC charges UBEC officials, American to court http://www.dailytrust.com/index.php?option=com_content&task=view&id=9927&Itemid=87 accessed on 21st May, 2009

⁶⁷ Section 3 and 4 Money Laundering Act 2004 Cap M18 LFN 2004 Vol. 2

⁶⁸ Mike Adenuga's ETB in Forex Scam: 2 bank officials to be charged by EFCC, http://www.saharareporters.com/index.php?option=com_content&view=article&id=2732&Itemid=18 accessed on 21st May, 2009. See also Nigeria: N17 Billion Fraud - EFCC Arraigns Six Ex-Bank Officials, <http://africafocus.com/stories/200901300068.html> accessed on 21st May, 2009.

⁶⁹ The NFIU is the Nigerian arm of the global NFIU and the unit which is domiciled within the EFCC is an autonomous unit. The setting up of the NFIU is part of the efforts of the federal government in combating money laundering, and the financing of terrorist activities in Nigeria and is a precondition for the removal of Nigeria from the Financial Action Task Force (FATF) list of Non-cooperation countries and terrorists (NCCTs).

⁷⁰ Lilian Agih, Internet Crime: EFCC Signs MoU With Microsoft Nigeria, http://leadershipnigeria.com/index.php?option=com_content&view=article&id=741&Itemid=75 accessed on 25th April, 2009.

⁷¹ www.efccnigeria.org/index.php?option=com_content&task=view&id=598&Itemid=34 accessed on 14th May, 2009

Perhaps, it is necessary to state here that apart from seeking for the punishment of offenders under the laws, the Commission has also endeavoured to be involved in issues of prevention. The Commission is a crusader of preventive measures in its attempt to curb money laundering in Nigeria. It has ten measures in place which are essentially preventive in nature. This is in line with all law enforcement agencies in the world whose first major task is the prevention of crime.

To this effect the EFCC imposes disclosure and reporting obligations on banks and a corresponding criminal sanction for not doing so. The EFCC Act⁷³ requires prevention and education. Indeed the section requires that the EFCC should ensure "*The adoption of measures which include coordinated, preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes*" It should however be noted that the focusing on prevention does not necessarily mean abandoning the traditional investigation and prosecution of economic crimes which has served the Commission well.

Impact of EFCC

The impact which the EFCC has achieved in its fight against the commission of financial and economic crimes in Nigeria has been phenomenal as the Commission had succeeded in conveying the message that no one is above the law. The Commission has enjoyed good cooperation and mutual legal assistance from various international agencies and countries like INTERPOL and EUROPOL, the European Union, United States of America, South Africa etc.⁷⁴ The cooperation gotten from these bodies and countries assisted in the recovery of the various sums that have been returned to the country.⁷⁵

It should also be noted that the diligence with which the EFCC as exercised its duty as a financial watchdog has led to an increase in the revenue profile of the nation by about 20% due to its activities in the Federal Inland Revenue Service and the nations seaports. The Commission has also recovered billions for the government in respect of failed government contracts⁷⁶.

⁷³ Section 6

⁷⁴ Over £3 million was helped to be recovered by the British Government

⁷⁵ E. IMOHE, NIGERIA'S PROGRESS IN CURBING ECONOMIC CORRUPTION A PRESENTATION by Minister and Head of the Economic and Commercial Desk, Embassy of Nigeria. At a Forum Organized by the Society Of Government Economists. Washington, DC 27th September, 2005

⁷⁶ Ibid. Imohe

Money Laundering Case Studies

Several case have been concluded or freshly filed in Nigeria by the Economic and Financial Crimes Commission to bring offenders to book in their bid to sanitize the Nigerian climate. Such cases mostly, high profile include that filed against Chief Bode George, a prominent chieftain of the ruling People's Democratic Party (PDP) in the South Western part of the country⁷⁷. Also, the former inspector General of Police, Mr. Tafa Balogun, was convicted by Justice Binta Murtala-Nyako in November, 2005 based on charges brought against him by the Commission.⁷⁸ There is also the case of Mr. Emmanuel Nwude,⁷⁹ a lawyer, who was prosecuted by the Commission and jailed for twenty five years. In April 2008, the EFCC began the investigation of the very influential daughter of the former Nigerian President, Senator Iyabo Obasanjo-Bello for receiving N10 million (\$100,000), stolen from the Ministry of Health. She was charged to court along with the former Health Minister and her deputy are currently on trial for receiving over N30,000,000 (\$300,000) from the ministry's unspent moneys from last year⁸⁰.

Apart from the above, in December, 2008, the EFCC arraigned Mr. Femi Fani-Kayode, the former Minister of Aviation along with his predecessor, Professor Babalola Borishade and some other over an allegation of mismanagement of N19 billion Aviation Fund.⁸¹ The former Minister of Aviation was arraigned before Justice Ahmed Ramat Mohammed of the Federal High Court in Lagos over alleged money laundering and corrupt enrichment worth over N230 million.⁸² Former Governor James Ibori, was also recently arraigned by the Commission recently in Asaba.⁸³ On December 18, 2008, former Edo State Governor, Lucky

⁷⁷ EFCC: What manner of castration <http://chris4gold.lefora.com/2008/09/10/efcc-what-manner-of-castration/page1/> accessed on 21st May, 2009.

⁷⁸ Nigerians were however very quick to react negatively and condemn the light sentence given him by the court which was pursuant to the plea deal made between Bolugun and the EFCC. He was convicted and sentenced to just six months imprisonment, Jonathan Elendu, EFCC Feels The Sting of Nigerians, http://www.elendureports.com/index.php?Itemid=1&id=120&option=com_content&task=view accessed on 15th May, 2009.

⁷⁹ A prominent legal practitioner, who scammed a Brazilian bank to the over 230 million dollars. He was found guilty and jailed for over 25 years. See EFCC AND RIBADU, <http://nigeriaworld.com/articles/2008/nov/231.html> accessed on 5th April, 2009.

⁸⁰ Kamarudeen Ogundele, Iyabo Obasanjo on the run, EFCC tells court, <http://www.thenationonlineng.com/dynamicpage.asp?id=48539> accessed on 15th April, 2009.

⁸¹ A 40-count charge of money laundering was brought against Fani-Kayode by the Commission. Sec N230m bribe: EFCC arraigns Fani-Kayode today, www.efccnigeria.org/index2.php?option=com_content&do_pdf=1&id=514 accessed on 15th April, 2009

⁸² The EFCC alleged that Fani-Kayode deposited the money into his account at the Apapa branch of a new generation bank. The money, according to be prosecution, was a proceeds of corruption.

⁸³ EFCC arraigns Ibori for money laundering in Asaba http://www.businessdayonline.com/index.php?option=com_content&view=article&id=2551:efcc-arraigns-ibori-for-money-laundering-in-asaba&catid=1:latest-news&Itemid accessed on 02/05/09

Igbinedion, was convicted on a one-count charge of corruption by the Federal High Court, Enugu.⁸⁴

Other cases instituted by the EFCC includes that against two officials of the Equatorial Trust Bank,⁸⁵ some staff of the Universal Basic Education,⁸⁶ action against former Oyo State Governor, Rasheed Ladoja, before a Federal High Court in Lagos over alleged mismanagement and misapplication of funds totaling N4.5 billion, former Governor of Ekiti State, action against Ayodele Fayose, on allegations over alleged money laundering and corrupt enrichment to the tune of N1.5 billion, a Nigerian based Indian businessman, Patrick Fernandez for allegedly attempting to defraud some Nigerian banks to the tune of N32 billion⁸⁷. Recently, Senate Committee Chairman on Power, Senator Nicholas Yahaya Ugbane, his House of Representatives counterpart, Hon. Ndudi Elumelu and eight others were charged to court on allegation of fraud relating to about N6.2bn⁸⁸.

Effects of Money Laundering on the Nigerian Economy

The perpetration of economic and financial crimes in Nigeria has had lot of negative effects on the economy. Apart from the obvious effect of being responsible for the under development of the Nigerian economy, the commission of financial frauds has led to the collapse of many banks and in cases where the banks still operate, there is an absolute loss of confidence especially by the international business community⁸⁹. Also, the commission of fraud has made it unnecessarily difficult for majority of innocent Nigerians to transact business both locally and internationally.

Due to the participation of some unscrupulous Nigerians in economic crimes, the country's image has been battered and damaged as a result of which international investors shun Nigeria as un conducive to foreign investments. Moreover, there are several cases where reputable Nigerians have been treated with great humiliation, mainly because of our records

in the global comity of nations⁹⁰. Also, in some cases, retaliatory measures are taken against Nigerians by victims and their countries⁹¹. The effect of money laundered through imports has great negative impacts, which undermine the genuine efforts of local manufacturers who share, compete and operate in same business environment with the launderers⁹².

Other effects include a reduction in tax revenue and consequent public expenditure due to misreporting and under reporting of income, misallocation of resources due to distortions in relative asset commodity price arising from money laundering activities, contamination effects on legal transactions due to the perceived potential of criminal association; and, loss of confidence in markets caused by insider trading, fraud and embezzlement; changes in money demand unrelated to measured or observable changes in economic fundamentals. Volatility in exchange rates and interest rates due to unanticipated transfers of funds, other distributional effects or asset price bubbles due to the disposition of laundered funds⁹³.

Also, when money launders prevail, it means that they have successfully distanced themselves from the criminal activity generating the profits and enabling them to enjoy the benefits of their crimes without attracting attention. They can also "reinvest" their profits to finance further crimes. Thus, increasing and aggravating criminality is one of the main effects of money laundering which concerns everyone. The efforts of governments' legislating, and enforcing laws to combat money laundering may be considered as an effort to make crime not worth committing.⁹⁴ The International Monetary Fund (IMF) also professes other macroeconomic consequences to include the compromising of bank soundness with potentially large fiscal liabilities and the distortion of the allocation of resources and the distribution of wealth.⁹⁵

Shortcomings

There is no doubt that the war against money laundering and financial crimes in Nigeria was raised to a higher pedestal with the establishment of EFCC. At the inception of the

⁸⁴ Igbinedion, did not, however, go to jail as he was merely fined N3.6 million. The light sentence was the result of a plea-bargain arrangement the former entered into the Economic and Financial Crimes Commission.

⁸⁵ Mike Adenuga's ETB in Forex scam: 2 bank officials to be charged by EFCC. http://www.saharareporter.com/index.php?option=com_content&view=article&id=2732:mike-adenuga-etb-in-forex-scam-2-bank-officials-to-be-charged-by-efcc&catid=1:latest-news&Itemid=18 accessed on 21st May, 2009.

⁸⁶ EFCC charges UBEC officials, American to court http://www.dailytrust.com/index.php?option=com_content&task=view&id=9927&Itemid=87 accessed on 21st May, 2009

⁸⁷ http://www.efccnigeria.org/index.php?option=com_content&task=view&id=600&Itemid=34acc accessed on 21st May, 2009.

⁸⁸ N6.2bn Scam: Ugbane, Elumelu, 8 others Arraigned. http://www.efccnigeria.org/index.php?option=com_content&task=view&id=626&Itemid=34acc accessed on 21st May, 2009.

⁸⁹ In fact, most times, letters of credit emanating from the country are held in suspect and in many cases even outrightly disregarded.

⁹⁰ It is noteworthy to mention that discriminatory treatment based on gross suspicion is meted to Nigerians by various agencies abroad such as the Interpol, the Metropolitan Police London, the Special Fraud Office (SFO) which have a special desk for Nigerian fraudsters.

⁹¹ Some of the unfortunate practical consequences include where an enraged 419 victim killed a Nigerian diplomat in Czechoslovakia Republic; also some Nigerian were killed in Sierra Leone, Eritrea and South Africa.

⁹² Nulu Ribadu Esq, Implication of Economic and Financial Crimes on the Nation's Economy http://www.weltropolitik.net/attachment/implications_of_EconFinCrimes.pdf accessed on 23rd April, 2009.

⁹³ Peter Quirk, International Monetary Fund. Macroeconomic Implications of Money Laundering. Working Paper prepared, April 1996

⁹⁴ George Farrugia, Money Laundering-Why Bother?, www.fiumalta.org/pdfs/ml_why.pdf accessed on 20th May, 2009

⁹⁵ IMF, Financial System Abuse, Financial Crime and Money Laundering-Background Paper prepared by the Monetary and Exchange Affairs & Policy Development and Review Departments, February 2001.

Commission, it was eager to make all and sundry aware of the fact that it was ready to launch a full scale war against perpetrators of financial crimes no matter the ramifications⁹⁶.

However, from observation on various issues has taken place over the years, it seems that the Commission has allowed itself to be used as an instrument of vendetta. This is based on the fact that there have been several instances whereby complaints has been made that the Commission has been selective in its prosecution of money launders⁹⁷. Money launders stare us in the face everywhere yet it is only politically motivated arrest and prosecutions that the Commission expends time on⁹⁸.

Also, it seems that the Commission itself is not free from corrupt and financial crimes as various allegations have been levied against the dubious activities of some of its officials. It has been alleged that many of those who joined EFCC became super-rich overnight, buying very expensive cars and erecting very exotic edifices in choice places in exclusive locations across the country.⁹⁹ The Commission has also been criticized as not being open in its operations and dealings. From inception, the Commission has faced several criticisms which include that the Commission has only focused on enforcement measures and not based on the rule of law,¹⁰⁰ that the EFCC's actions is usually not based on the rule of law,¹⁰¹ that the commission has allowed itself to be used as a tool of vendetta by the government based on its supposed selective investigations and prosecutions.

Apart from all the above, another issue on which the Commission has been criticized upon is that relating to the issue of plea bargaining which can be said to have been used to let a lot of offenders loose with as little as a slap on the hands. In fact, it has been stated that the exercise

⁹⁶ The agency said then that, there would be no sacred cows or "untouchables". In fact, commission made a lot of noise about being ready to deal with any person no matter how highly placed in the society.

⁹⁷ See Ibn-Mohammed Zakari, EFCC: Purging the Anti Graft Agency of Corruption, <http://www.ngcx.com/news/public/article.php?ArticleID=367> accessed on 15th April, 2009.

⁹⁸ Examples of such cases are abound, various calls have been made that the President Olusegun Obasanjo should be made to give an account of his role in the power sector contract allocation, his role in the privatization exercise, where he was said to have cornered juicy public corporations etc; also, it took a long time before Chief Bode George, who was the Chairman of the Board of Directors of NPA, could be charged before the courts on allegations of several billions of naira that was misappropriated.

⁹⁹ See Ibn-Mohammed Zakari, EFCC: Purging the Anti Graft Agency of Corruption, <http://www.ngcx.com/news/public/article.php?ArticleID=367> accessed on 15th April, 2009. see also "Mercedes Jeep" Bribe: EFCC Chair Plans Arrest of Supplier, as EFCC's International Image Plummet, http://www.sahareports.com/index.php?option=com_content&view=article&id=436%3Aqumerecedes-jeepq-bribe-efcc-chair-plans-arrest-of-supplier-as-efcc-international-image-plummet&catid=76%3Ahot-topic&Itemid=205&limitstart=1 accessed on 15th April, 2009

¹⁰⁰ A speech to mark the 6th Anniversary celebration of the establishment of EFCC <http://www.efccnigeria.org> accessed on 12th May, 2009.

¹⁰¹ Sometimes, alleged suspects are treated to degrading measures. Also, sometimes in its eagerness to work, the EFCC jumps the legal process by arbitrarily detaining suspects without the order of court. See Nigeria: Arbitrary detention of human rights defender Ibrahim Magu and harassment of Mallam Nuhu Ribadu, <http://www.frontlinedefenders.org/node/1551> accessed on 23rd April, 2009.

of the plea bargaining option is counter-productive in the fight against financial crimes and corruption as it would encourage other people to steal public money¹⁰². Prominent cases relating to this is the recent case against former Governor of Edo State, Lucky Igbinedion, who was convicted on a one-count charge of corruption by the Federal High Court, Enugu. Igbinedion, did not go to jail as he was merely fined N3.6 million as a result of a plea bargain arrangement. The former Governor entered into with the Economic and Financial Crimes Commission¹⁰³.

Others who had been let of the hook with light charges as a result of plea bargaining include former Inspector General of Police, Mr. Tafa Balogun, former Governor of Bayelsa State, Diepreye Alamesiegha etc.

International Response to Money Laundering

A major goal of the global anti-money laundering regime is the protection of the integrity of the core financial system principally banks.¹⁰⁴

The global regime to combat money laundering involves three dimensions: national and international building blocks, a firm legal enforcement foundation, and close interactions between private and public sector in order to lower compliance cost and raise the probability of achieving its objectives.¹⁰⁵ Charity, it is said, begins at home so it is pertinent that we first highlight some of the efforts that has been made by African countries in curbing the plague of money laundering. First of these is the GLABA¹⁰⁶ which was established in 2000 by the Economic Community of West Africa States (ECOWAS) Authority of Heads of State and Government. Its mandate include the development of strategies to protect the economies of member states from abuse and the laundering of the proceeds of crime; improvement of efforts to combat the laundering of proceeds from fraud and other criminal activities in West Africa; and strengthening cooperation amongst members.

On the international level, the first initiative to combat money laundering is the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, better known as the "Vienna Convention".¹⁰⁷ The signatories to this Convention include the European Union

¹⁰² Plea bargain is corruption- Bola Ajibola, ex-Justice Minister, <http://www.punching.com/Article.aspx?theartic=Art200708052363678> accessed 5th May, 2009

¹⁰³ Igbinedion was initially charged on 191 counts on allegations of corruption, money laundering and embezzlement but surprisingly, as a result of plea bargain agreement, the charges was reduced to just one count. In fact, Igbinedion who had earlier pleaded not guilty to the 191 count charge, admitted being liable to the one-count charge.

¹⁰⁴ <http://www.petersoninstitute.org/publications/newsreleases/newsrelease.cfm?id=106>

¹⁰⁵ Peter Reuter, Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering*, The Institute for International Economics November 2004. 248pp

¹⁰⁶ Inter-governmental Action Group Against Money Laundering, Terrorist Financing and Drug Trafficking in West Africa, an initiative of the Economic Community of West African States (ECOWAS).

¹⁰⁷ The Convention was signed in 1988 and it came into force on 11 Nov. 1990

Countries and the G7, whose mandate is to criminalize money laundering¹⁰⁸, enhanced international cooperation¹⁰⁹, and the commitment of signatories to procure that the laws of their jurisdiction should be amended to bring this about.

Next is the Basle Statement of Principles issued by the Basle Committee on Banking Supervision whereby the Basle Committee recommended four principles to be adopted by the banking sector to prevent the use of the financial systems by money launderers. In 1989 the G-7¹¹⁰ summit in Paris established the Financial Action Task Force¹¹¹ (FATF), an intergovernmental body to take the lead and develop a coordinated international response to preclude the use of financial system for money laundering¹¹².

To achieve this, the FATF is not only to monitor the implementation of the principles of the Vienna Convention but to extend them into preventive measures by establishing standards for global implementation. In 1990 the FATF issued its 40-Recommendations which extended the crime of money laundering to include proceeds of other serious offences.

The 40-Recommendations were reviewed in June 1996. Following the 11 September 2001 attacks¹¹³ eight new special recommendations for the combating of the financing of terrorism were issued by the FATF. The 40-Recommendations as further revised in June 2003 together with the 8-Special Recommendations and the criteria for non-cooperative countries and territories now forms the internationally accepted FATF regime on anti-money laundering and the combating the financing of terrorism (AML/CFT).¹¹⁴

On the part of the European Union, in 1991, the EU introduced measures for the prevention of the use of financial systems for the purpose of money laundering through Directive

¹⁰⁸ Article 3 Illicit Traffic in Narcotics Drug and Psychotropic Substance

¹⁰⁹ Article 6 and 7 Illicit Traffic in Narcotics Drug and Psychotropic Substance

¹¹⁰ The G7 refers to the group of seven leading industrialized countries: the United States, the United Kingdom, France, Italy, Canada, Germany and Japan. Russia has recently joined this grouping and it is now referred to as the G8.

¹¹¹ The FATF's secretariat is at the OECD. FATF Sub-Organizations around the world include, Asia/Pacific Group on Money Laundering (APG), Caribbean Financial Action Task Force (CFATF), Financial Action Task Force on Money Laundering in South America (GAFISUD), The Middle East & North Africa Financial Action Task Force (MENAFATF), Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). Observer Bodies include, Eurasian Group (EAG), Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), International Anti-Money Laundering Group in Africa (GIABA), Other International Organizations are Offshore Group of Banking Supervisors (OGBS), The Egmont Group of Financial Intelligence Units

¹¹² E.P. Ellinger, E. Lonicka and R.J. Hooley, Ellinger's Modern Law of Banking 4th edition Oxford 2006 pg 96

¹¹³ 9/11 attack on the world Trade Centers

¹¹⁴ George Farrugia MONEY LAUNDERING – WHY BOTHER? At www.fiumalta.org/pdfs/ml_why.pdf

91/308/EEC.¹¹⁵ This Directive targeted mainly proceeds derived from drug related crimes. The EU and the 10 accession countries are currently in the process of adapting measures which do not only assist the financial services industry from being used by launderers but includes other industries. Directive 2001/97/EC broadens the inclusion of anti-money laundering obligations to a range of professionals and high value dealers and extends money laundering from a drug related crimes regime to include any kind of criminal involvement in the commission of a serious crime.

In addition, in 1994, Malta fully adopted the 91/308 Directive in its anti-money laundering legislation and, as an accession country, has just amended its Prevention of Money Laundering Regulations to conform to this new Directive. The main changes in the newly adopted regulations are that the reporting obligations of money laundering have been extended to non-financial institutions and professionals. The newly included professions are: auditors. External accountants and tax advisors; real estate agents; notaries and other independent legal professionals in relation to assisting in the planning or execution of financial transactions for their clients; nominee companies and licensed nominees acting as nominee shareholders or trustees, authorized under the Malta Financial Services Authority Act; dealers in precious stones or metals, or works of art or similar goods and auctioneers whenever payment is made in cash in an amount equal to Lm5,000 (five thousand Maltese liri) or more; and any activity which is associated with of the activities falling within the above professions.¹¹⁶

It is known that individual countries cannot fight against corruption alone as corruption and money laundering cases are often increasingly transnational. This is particularly true for many developing countries which includes Nigeria, that lack the expertise, resources, capacity and legal framework to effectively tackle money laundering offences. Mutual Legal Assistance Treaties (MLATs) could potentially address some of these challenges provided the legal, practical and political obstacles that generally hamper the effective provision of legal assistance can be overcome.¹¹⁷

The "Model Treaty on Mutual Assistance in Criminal Matters" (MTMA)¹¹⁸ is a model treaty that has been developed under the auspices of the United Nations and was adopted in 1991. A growing number of Conventions combating specific forms of criminal activity also require State parties to grant each other mutual assistance at an international level such as the Article 9 of the OECD¹¹⁹

¹¹⁵ This Directive represents the first stage in combating money laundering at Community level. At international level, the relevant texts are the 40 recommendations of the Financial Action Task Force (FATF), which were last updated in June 2003.

¹¹⁶ George Farrugia, *Money Laundering – Why Bother*, www.fiumalta.org/pdfs/ml_why.pdf accessed on 20th May, 2009.

¹¹⁷ Marie Chene U4 Helpdesk Transparency International mchene@transparency.org reviewed by Giljan Dell Transparency International gdell@transparency.org 29 July 2008.

¹¹⁸ Adopted in 1991.

¹¹⁹ Organization for Economic Co-operation and Development, established in 1958.

Convention on Combating Bribery of Foreign Officials in International Business Transactions. Further examples of such approaches include the UN Conventions against terrorism, transnational organized crime and drug trafficking.

In investigating and prosecuting corruption cases, international legal assistance is often the key to success. Such legal assistance covers both the taking and handing over of evidence and the confiscation and repatriation of the illicit assets.¹²⁰ However, a defective legal framework, numerous material conditions, and often lengthy procedures render these operations difficult. Therefore, a clear view of the legal framework, provisions, conditions, and formal procedures is crucial to the success of request for international legal assistance, the collection of evidence abroad and the repatriation of the proceeds of corruption. Informal contacts may also help in hurdling the difficulties that formal procedures entail.¹²¹

In 1997, the Nigerian government requested legal assistance from the Swiss Government in various cases related to corrupt practices committed by Abacha, the funds were sent directly to the Bank for International Settlements, which considered them a partial payment for outstanding loans from the Nigerian Government. As for extraction, permits to arrest and extradite suspects from other countries are usually very difficult to obtain, especially if these persons are nationals of the requested country¹²².

Some conditions must, however, be satisfied before legal assistance can be granted. First, a general pre-requisite for mutual legal assistance is the criminalization of the act by both the requesting and the requested country (dual criminality rule). A second pre-requisite for the provision of mutual legal assistance is the guarantee of a fair trial and respect for the fundamental rights laid down in the International Covenant on Civil and Political Rights in the legal system of the requesting country. Switzerland, refused to assist in fiscal proceedings.¹²³ The request for assistance may also be rejected if the proceedings concern political or military misdemeanours or if the granting of assistance constitutes a problem for public order or the higher interests of the requested country. This type of difficulty often arises when the case concerns bribery in relation to the sale of weapons. Diplomatic immunity is also more visible. By implementing the recommendations above, the authorities would further strengthen the fight against the money laundering and show them that there is no place to hide.

¹²⁰ See article 9 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

See also Convention against Torture (New York 1984), Convention against the Taking of Hostages (New York 1979), Conventions on Drugs (New York 1961 and Vienna 1988), Unidroit Convention on Stolen and Illegally Exported Cultural Objects (Rome 1995), and Convention for the Suppression of the Financing of Terrorism (New York 1999).

¹²¹ Bernard Bertossa Former Prosecutor General Geneva, Switzerland.

¹²² Ibid

¹²³ Civil in rem confiscation proceedings are brought against the property and do not depend upon the conviction of the wrongdoer. The government must prove the basis of the confiscation action by a preponderance of the evidence, after which the burden shifts to the defend his or her interest in the property.

However, there will have to be political impetus to crystallize strong co-ordinated overall international action and to define the best way to associate other countries, including drug-producing countries, to the fight against money laundering.

Conclusion

To combat money laundering, participating countries should have strong substantive and procedural laws against it. Effective asset confiscation is a critical tool of modern law enforcement. Through asset forfeiture, governments can take both the profit out of crime and disrupt criminal activity by forfeiting the property that makes the crimes possible. In this way, law enforcement is not limited to arresting and prosecuting criminal offenders, but can also attack the economic underpinnings of crime and make restitution to victims¹²⁴. Section 6 of the EFCC Act requires prevention and education. Indeed the section states that the EFCC should ensure "The adoption of measures which include coordinated, preventive and regulatory actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial related crimes".¹²⁵

Also, there is an urgent need to pass into law the Asset Forfeiture Bill which is being advocated for the EFCC, once promulgated the law will allow for the operation of a procedure that allow for confiscation of stolen assets without the need for a criminal conviction, but with build-in safe guards to protect basic procedural human rights. If passed, the law will go a long way in assisting the Commission and other law enforcement agencies to recover assets without waiting for convictions.¹²⁶

Those who thought that money laundering was victimless might now be convinced otherwise. From the above brief description of what is involved in money laundering, how it affects or can affect the social and financial well being of every individual, it is clear that if it goes unchecked, money laundering is a detriment to economic development policy because it damages the financial institutions, impairs productivity and can even distort a country's international capital flows.

Therefore, one can conclude that money laundering is a threat to the good functioning of a country and its financial system and nation building. Very often, it is through financial transaction records that connection can be made between criminals, hidden assets, and the identity of the criminals. Money laundering investigation is often the only way to locate the stolen funds and restore them to the victims. Consequently, combating money laundering and depriving the criminals of all their ill-gotten gains means that criminals are hit hard where it

¹²⁴ www.unafca.or.jp/eng/1st/1st/pdf/PDF_rms/no58/58-35.pdf

¹²⁵ A Speech to Mark the 6th Anniversary Celebration of the Establishment of the EFCC by Chief (Mrs.) Farida Waziri, Executive Chairman EFCC, Thursday, 16 April 2009

¹²⁶ Boco Edet, Nigeria: \$450 Million Abacha Loot Still Missing. Daily Trust Newspaper of 21st May, 2009. Countries where the procedure is currently used include Canada, Colombia, Kuwait, South Africa, Switzerland, Thailand, the United States of America and the United Kingdom.

hurts most, that is their profits which are the objective of their activity. If there is no profit in crime, criminals will lose their incentive. However, it will not be possible to stop money laundering without the full cooperation between authorities, on a micro level and international on a macro level.¹²⁷ All hands must be on deck to fight against money laundering. The fight is not for EFCC alone but you and I, for only a mad man would go to sleep with his roof on fire.

¹²⁷ Graycar, Adam and Peter Grabosky, Money Laundering, Australian Institute of Criminology Research and Public Policy Series, Money Laundering in the 21st Century: Risks and Countermeasures, Seminar held on 7th February 1996 Canberra, Australia.