

MONEY LAUNDERING: THE PARADOX OF DETERRENCE MECHANISM¹

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ABSTRACT

The menace of money laundering is globally acknowledged and the spate of its increase remains unabated. However, a potent tool to deal effectively with this problem lies in the procedure and efficacy of prosecution. Though a lot has been achieved in term of legal and regulatory framework, it is imperative to note that in an environment where corrupt practises remained unpunished due to lack of enforcement, all efforts are likely to be lost. Law enforcement and other supporting agencies will unlikely have any real impact. Unfortunately, this is the scenario in most developing countries of the world including Nigeria. Potent strategies are therefore required for effective implementation of the legislations. This paper seeks to examine money-laundering activities in Nigeria while focusing on implementation challenges and obstacles. Suggestions and recommendations are also included on how to achieve enforcement and the subsequent effective implementation of AML/CFT. It is therefore the contention of this paper that achieving deterrent is hinges on a strengthen AML/CFT framework and to this effect, having a strong political commitment and well-functioning coordination structures is essential. Proper resources to achieve the policy objectives, in addition to coordination arrangements that will effectively support the implementation of activities are also fundamental to reach the deterrent effect.

Key Words: Money Laundering; Enforcement; Prosecution; Deterrence; Nigeria

Introduction

Nigeria has emerged as Africa's biggest economy with an estimated GDP of \$1.1trillion in 2015. The main source of revenue has been oil that was discovered in the 70s. The economy of Nigeria is supported by the consistent growth of its agriculture, telecommunications and services sector. However, despite the abundant resources and consistent growth, over 62% of the population is still considered to be in abject poverty. This is mainly due to corruption and money laundering activities.

Although the devastating effect of money laundering activities on the economic development of developing countries is obvious, it is very difficult to determine the actual figure or size of such illegal activities. This is due to the secretive nature of the illegal activities in which the illicit money originated from and the situation in Nigeria is of no exception.

Various legal and regulatory frameworks to combat the menace have been developed at national and global level. Many countries have been certified by Financial Action Task Force (FATF) to have an acceptable legal and regulatory framework. Yet, in just less than a decade it is estimated that a whopping sum of US\$7.8 trillion was lost in the developing economies within 2004 and 2013, due to money laundering activities². The Global Financial Integrity Report 2015 reported that there is an unprecedented increase in the illicit outflows that has grown to twice the annual GDP. The average rate of annual GDP increase is around 6.5% yearly.³

The effect of money laundering on Nigeria economy is even worse. It is feared that it has become a cankerworm that has eaten deep into the fabric of the entire economic and financial system.⁴ The problem of Money Laundering in country is endemic such that within 1994 and 2002, it lost over \$400 billion.⁵ This large amount worth's over 26 years of public expenditure. This was reported to be squandered and laundered by Politically Exposed Persons (PEPs) in the form of political leaders within the shortest period. It was estimated that around US\$507 billion have been misappropriated from the country.⁶ Thus, Nigeria was concluded to be among the most corrupt nation in the world.⁷

¹ This paper is funded by the Fundamental Research Grant Scheme (FRGS) entitled "Formulating the Legal and Institutional Framework for Elimination of Terrorism Financing in Malaysia."

² Global Financial Integrity Report, "Illicit Financial Flows from developing country: 2004-2013" www.gfinegrity.org accessed on 13th November 2016.

³ Ibid

⁴ Philips O Okolo, "Corruption and Post 2015 Development Agenda in Nigeria," *Global Journal of Human-Social Science Research* 16, no. 2 (2016)citing Ndubuisi A "Nigeria, What Hope?" Enugu Fourth Dimension Publishers(2009).

⁵ Zekeri Momoh, "Globalisation and Corruption in Africa," *Fountain University Journal of Management and Social Sciences* 4, no. 2 (2015).

⁶ Otiye Igbuzor, "Strategies for Winning the Anti-Corruption War in Nigeria," Abuja: Action Aid, 2008.

⁷ GIABA, "Mutual Evaluation Reports Anti-Money Laundering and Combating the Financing of Terrorism,2007" www.giaba.org/reports/mutual-evaluation/Nigeria.htm accessed on 14th November, 2016.

Recently, 176 countries were ranked based on the perception level of money laundering and other financial crimes related offences. Nigeria ranked 136 having scored just 26 point in the Transparent International Perception Index of 2015.⁸ This is despite her commitment and legal framework⁹ to combat money laundering being considered one of the best in West Africa region by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA).

GIABA, a FATF recognised agency in the West Africa region, affirms in its report that within the region, Nigeria has demonstrated a reasonable commitment on the issues of money laundering and combating financing terrorism and its legal framework on money laundering, corruption, economic and other financial crimes was adjudged the most elaborate¹⁰. This appears to be a sharp contrast to the reality on ground.

Unfortunately, the comprehensive legislation and regulatory framework to combat money laundering and financing terrorism has not translates into a substantial reduction of money laundering and other financial crimes.¹¹ The crimes persist. The magnitude appears to be higher in Nigeria partly because the problem has pervaded every aspect of citizen life.¹² The current working environment and economic condition are accommodative to bribery and corruption.

In an environment where corrupt practises are unpunished, law enforcement agencies and other supporting agencies are likely to be useless. This is in most cases the result of lack of political will to implement the enabling laws. It is not enough to have proper policies, holistic laws and regulations. Instead, effective enforcement is necessary to have the preventive effect. It is not enough that justice is done; justice must be seen to be done to install confidence in the public and investors.

When prosecution of money laundering and combating, financial terrorism are not given the seriousness that it deserves and the offenders can either frustrate those reforms or measures introduced by the legislations and regulations, money laundering activities will increase. The negative impression from failure to prosecute will most likely reflect badly to the rest of the society since the conclusion which might be derived is that crime pays. This sort of psyche could be counterproductive. Deterrence which is one of the major motives of criminal justice will elude the society with almost certainty. This is likely to results into efforts without appropriate result.

Nigeria Vice President recently noted with dismay that the Economic and Financial Crimes Commission; a body that is charged with the responsibilities of investigating and prosecuting money laundering and other financial crimes that was established since 2002, has achieved a very low conviction rate in high profile money laundering cases since its establishment. This is despite the high rate of corruption in the society.¹³ He further observed that the agency only managed to prosecute 8 high profile cases in 13 years.¹⁴ He lamented that the Supreme Court had even overturned one case out of the 8 decided cases which is a great testimony that a lot is wrong with the current system from the prosecutorial team to the implementation of anti-money laundering legislations.

In combating money laundering related offences, enforcement of the AML/CFT legislations and regulations requires effective prosecution. The implication of this is that the efficiency and capability of those leading the prosecution team must not be compromised. This is a very big issue that must be resolved since the manpower is the real determinant factor for success.

What is Money Laundering?

Money laundering is a concept that is linked with virtually all financially oriented and motivated crimes. It has become an indispensable companion of terrorism activities and these two crimes¹⁵ have become interwoven, interrelated and overlapped so much that they are sometimes used as a synonymous concept despite their many differences.

Money Laundering is defined in the Dictionary of Finance and Banking (2008)¹⁶ as follow:

⁸ Transparency International Corruption Perception Index, <https://www.transparency.org/cpi2015/> accessed on 14th November 2016.

⁹ Nigeria started putting in place money laundering legislations since 1995 and now the country has several legislations and regulations that aimed at combating money laundering money laundering, economics and financial crimes, these include Money Laundering (Prohibition) Act (MLPA) 2011, Economic and Financial Crimes (Establishment) Commission (EFCC) 2004, Nigeria Drug and Law Enforcement Agency Act (NDLEA) 2000, Independent Corrupt Practices Commission Act (ICPC) 2002, Central Bank of Nigeria (CBN) AML/CFT Regulations 2013 and others.

¹⁰ GIABA is 'Inter-Governmental Action Group against Money Laundering in West Africa' established by heads of states of Economic Commission of West Africa States (ECOWAS). GIABA conducts Mutual Evaluations of Member States in accordance with FATF standards and also in compliance with its enabling Statutes and its evaluations are based on the FATF Forty Recommendations (2003) and the Nine Special Recommendations on Terrorist Financing (2001), using the AML/CFT Methodology 2004.

¹¹ Philips O Okolo, "Corruption and Post 2015 Development Agenda in Nigeria," *Global Journal of Human-Social Science Research* 16, no. 2 (2016) citing Ndubuisi A "Nigeria, What Hope?" Enugu Fourth Dimension Publishers(2009)."

¹² Ibid.

¹³ See the Nation Newspapers, "Osinbajo decries low conviction in corruption cases", www.thenationonline.net accessed on 14th November, 2016.

¹⁴ Ibid.

¹⁵ Money laundering and combating financing terrorism are closely related that distinction is a mere semantics based on the principles of law that no person should be allowed to benefit from the profits of his crime see Aishat Abdul-Qadir Zubair, Umar Aimhanosi Oseni, and Norhashimah Mohd Yasin, "Anti-Terrorism Financing Laws in Malaysia: Current Trends and Developments," *IJUM Law Journal* 23, no. 1 (2015).

‘The process of acquiring money illegally through unlawful acts like theft, drug dealing and by a means of cleansing makes it appear to have a legitimate origin.’

Thus, conciliation of the illegal origin of proceeds of crime to acquire a legitimate status is the thrust of money laundering. By an act of successive transfers and several deals involving money obtained through illegal means the nomenclature might change to give ‘dirty money’ a legitimate appearance and this is done through the fusion of placement, layering and integration. Money laundering is therefore a summation of activities that transform unusable illicit asset to the one conferred with legally usable values for re-investable item¹⁷.

According to B.A.K Rider, money laundering is “Rendering the proceeds of crime unrecognisable as such”.¹⁸ While money laundering is described by Janet Bazley as “the process by which the proceeds of crime are transformed into apparently legitimate money or other assets”.¹⁹

Michael Levi and Peter Reuter defined money laundering as “techniques for hiding proceeds of crime including transporting cash out of the country, purchasing business through which funds can be channelled, buying easily transportable valuables, transfer pricing, and using underground banks”.²⁰

In Nigeria, the current Money Laundering (Prohibition) Act 2011 as amended in 2012 under section 15 of the Act to give a more broader definition of money laundering in line with FATF recommendations. This is unlike the narrow definition of Money Laundering (Prohibition) Act of 2004 that limited money laundering to the old offence of narcotic drugs. This is in line with the global approach on money laundering.

Section 15 of the Money Laundering (Prohibition) Act defines money laundering as follows;

Any person who;

*“Convert or transfers resources or properties derived directly from; Illicit traffic in narcotic drugs and psychotropic Substances or Participation in an organized criminal group and racketeering, terrorism, terrorist financing, trafficking in human beings and migrants, smuggling, tax evasion, sexual exploitation, illicit arms trafficking in stolen and bribery and corruption, counterfeiting currency counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, illegal restraints and hostage taking, robbery or theft, smuggling, extortion, forgery, piracy, insider trading and market manipulation and any other criminal act specified in this Act or any other legislation in Nigeria relating to money laundering, illegal bunkering, illegal mining, with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved to evade the illegal consequences of his action the goods.”*²¹

Similarly, the Financial Action Task Force (FATF) defined money laundering as;

*“The conversion or transfer of property knowing that such property is derived from an offence, for the purpose of concealing or disguising the illicit origin of the property, or of assisting any person who is involved in the commission of such an offence to evade the legal consequences of his actions. In other words, it is the concealment or disguising of the true nature, source, location, disposition, movement rights with respect to or ownership of property, knowing that such property is derived from an offence; (and) the acquisition, possession or use of property, knowing at that time of receipt that such property was derived from a criminal offence or from an act of participation in such an offence.”*²²

These arrays of definitions show clearly that conversion, concealment and disguising are major attributes of money laundering. It is indeed a deliberate attempt to give impression of legitimacy to the illegitimate.

i. LITERATURE REVIEW

Any research on money laundering activities in Nigeria must consider the Mutual Evaluation Report (Nigeria) 2007. There is a series of follow up on the report including the Seventh Follow up Report on Mutual Evaluation (Nigeria) (May 2015). This report is essential as it provides a neutral and comprehensive analysis on money laundering and terrorism activities in Nigeria, consistent with international standard of evaluation.

¹⁶ Jonathan Law and John Smullen, *A Dictionary of Finance and Banking* (Oxford University Press, 2008).

¹⁷ Donato Masciandaro and Brigitte Unger, *Black Finance: The Economics of Money Laundering* (Edward Elgar Publishing, 2007).

¹⁸ B Rider, B Rider, and M Ashe, “Taking the Profit out of Crime,” *Money Laundering and Control*, 1996, 1–27. As cited by Michael Ashe and Paula Reid, *Money Laundering: Risks and Liabilities* (Round Hall Press, 2000).

¹⁹ Janet Bazley and David Winch, “Money Laundering for Lawyers” *Lexis Nexis Butterworths U.K., 2004, 1*.

²⁰ Michael Levi and Peter Reuter, “Money Laundering,” *Crime and Justice* 34, no. 1 (2006): 289–375.

²¹ Section 15, “Money Laundering (Prohibition) Act, 2011,” accessed January 20, 2016, <http://nass.gov.ng/document/download/5943>.

²² Norhashimah Mohd Yasin, *Legal Aspects of Money Laundering in Malaysia from the Common Law Perspective* (Lexis Nexis, 2007).

Anti-Money Laundering and Counter-Terrorism Financing. Law and Practice in Nigeria by Ibrahim Abdul Abubakar is an important contribution to this field of study²³. This work emphasis on the relative effectiveness of Nigerian law. In addition, this work also checks the level of compliance in Nigeria by comparing it to international legal standards. This includes creating a legislative and enforcement framework for the implementation of international instruments for combating both menaces.

Muhammad Ladan (2016)'s work is also an essential contribution to this field²⁴. *Money Laundering, Terrorism, Corruption, Human Trafficking in Nigeria* is intended as an introductory book for law students and researchers in Nigeria. It focuses on recent development in money laundering regulation and combating terrorism financing in Nigeria. This book also discusses the role of investigators and prosecutors in implementing the AML/CFT laws and regulations.

While the works of Ladan (2016) and Abubakar (2015) focus on the AML/CFT situation in Nigeria, the work by Dennis Cox (2014) is more international in nature. The Handbook of Anti-Money Laundering is the definitive textbook on AML/CFT. This excellent literature sets out to be a handbook for financial crime experts. This book provides detailed information on key issues that makes it easier to appreciate the global AML/CFT framework.

Johnston R.B. & Carrington I. (2006) describes the recent regulatory framework governing money laundering and terrorism financing as very much influenced after the 9/11 tragedy in the United States of America. The authors refer to the USA Patriot Act and Banking Secrecy Act and Financial Crimes Enforcement Network (FINCEN) for the money services business. The authors pointed out due concern that not all money services business undertake sound due diligence on customers and their record-keeping practices are not consistent with international best practice.

It is interesting however that there appears to be a consensus on the fact that enforcements of regulatory and laws to combat money laundering and other financial crimes are hinges on effective prosecution whose success is belief by many to have a multiplier effects. Among positive effects that can be derived from effective prosecution is deterrence appears to be one of the major things that can be achieved from this. Effective prosecution is therefore a major hindrance to a successful implementation of AML/CFT laws and regulations.

Prosecutions and other factors that are ancillary to inhibiting the implementation of money laundering laws and regulations will now be examined and possible solutions that can likely bring the desire results will be suggested.

ii. PROSECUTION

What is Prosecution?

According to standard business dictionary, prosecution refers to legal proceedings in which person accused of a criminal offense is tried in a court by the government (state) appointed public prosecutor called district attorney or public prosecutor.²⁵

However, Keith Hawkins, looking the concept from a jurisprudential point of view defined prosecution as;

*"An important tool in an instrumental conception of law, its use intended to reduce the prevalence of undesired behaviours, events or state of affairs."*²⁶

Prosecution is therefore a systematic means of invoking criminal process to achieve deterrence from criminally minded people from committing (such) crime in future as every person in the society would be conscious of the aftermath of such, which of course would make them to be weary of the unpleasant fate²⁷ that is elicited from commission of crime or that await offender. Prosecution is therefore primarily used as a deterrence tool.

It should be noted however, that an effective prosecution is required to achieve this objective but this is not in isolation because implementation of money laundering is determined by several other factors that includes;

1. Delay in prosecution
2. Legal practitioner's challenges
3. Enabling law
4. Skilled and competent prosecutors
5. In-depth investigation
6. Proper funding
7. Political will

²³ Ibrahim Abdul Abubakar, *Anti-Money Laundering and Counter-Terrorism Financing. Law and Practice in Nigeria* (Malthouse Press 2015).

²⁴ Muhammad Ladan, *Money Laundering, Terrorism, Corruption, Human Trafficking in Nigeria* (LAP LAMBERT Academic Publishing 2016).

²⁵ Prosecution. BussinessDictionary.com. WebFinance.inc./lhttp://www.bussinessfinance.com/definition/prosecution.htm. accessed on 13th November, 2016.

²⁶ c

²⁷ Ibid.

As mentioned earlier, this paper seeks to examine money-laundering activities in Nigeria by focusing on the implementation challenges and obstacles. Therefore, this part will analyse some of the above factors.

1. Delay in prosecution

This has reportedly become an attribute of Nigerian criminal justice system and a phenomenon that has perverted the entire court system in the country. It is a grievous impediment to effective prosecution of financial crimes. It is worthy of note that on a mere interlocutory application, several years can be wasted. In some instances, that will be highlighted later, cases of money laundering lasted for several years on interlocutory applications without the commencement of the real trial. Meanwhile, all financial crimes are bail-able offences such that the accused will continue to enjoy his freedom while the trial last.

Pertinent questions that will readily come to mind when the trial eventually commences and the case must be prosecuted include the following;

- Can it still be done diligently after several years?
- Would the prosecutor still be able to find the witnesses after many years?
- Would they still be available?
- If they are available, would they still be reliable or eager?
- Would they still recollect their memories perfectly while giving testimony?
- Will the accused tempers with the investigation and witnesses by offering bribes etc.?

It is very likely that the answers to these questions will be disappointing.

In addition, it is feared that political consideration might seriously affects the trial and investigations, especially of Politically Exposed Person (PEP). There have been alignment and re-alignment within the political framework, some of them that are ready to testify then, were felt aggrieved politically and doubted that their needs have been taken care of. Would the prosecutor now be able to take the cases to logical conclusion in that circumstance and achieve the same success that he would have had if the trials have been done under different political environment?

Several cases initiated against former governors and ministers such as Joshua Dariye²⁸, Chimaroke Nnamani²⁹, Saminu Turaki,³⁰ Orji Uzor Kalu³¹, Jolly Tevoru Nyame,³² Rasheed Ladoja³³, Athairu Bafarawa³⁴, Babalola Borishade³⁵ and many others that were commenced almost ten (10) years ago, are still at the preliminary stage, the interlocutory level. A person is presumed innocent until proven guilty. However, the question of whether a suspect should be allowed to hold high post is also a legitimate question. The problem of using incessant interlocutory application as a tool to frustrate prosecution was succinctly captured by Pedro J. as follows;

It is fast becoming a constant practise in civil and criminal proceedings in our courts, for the defendant or an accused person to raise a preliminary objection to the court's jurisdiction to try a case. Almost invariably, he thereby challenges the court's competence to entertain the claim or charge against him. Preliminary objection has virtually becomes a norm in our courts proceedings. Incidentally the authorities directed that a preliminary objection, once raised, should be determined first before the court can take further step in the proceedings.

²⁸ The accused a former Executive Governor of Plateau State is standing trial on a 23-count charge of criminal misappropriation of public funds, embezzlement, and criminal breach of trust in suit no. FCT/HC/CR/82/2007. The interlocutory application of the matter has just been decided at the Supreme Court since 2007 when the case commenced. The offence was alleged to have been committed while he was Plateau State governor, now he is presently elected now a (Lawmaker) senator in the National Assembly of Nigeria.

²⁹ The money laundering pending case is suit no. FHC/L/09C/2007. The offence was alleged to have been committed while he was a former governor of Enugu States and the case was commenced since 2007 still at interlocutory stage.

³⁰ The money laundering pending case is suit no. FHC/ABJ/86/07. Saminu Turaki was reported to have absconded recently. Meanwhile the case against him commenced since 2007.

³¹ The money laundering pending case is in suit no. FHC/ABJ/CR/56/07. He was the Executive Governor of Abia State is standing trial alongside others for money laundering allegedly committed by him when he was the Governor of Abia State. The case against him started in 2007, still awaiting Supreme Court's ruling on interlocutory application. He has ever since then contested elections several times.

³² The accused is former Executive Governor of Taraba State that is standing trial on a 41-count charge of criminal misappropriation of public funds, embezzlement, and criminal breach of trust in suit no. FCT/HC/CR/82/200. He was a former governor of Taraba State case against him was commenced in 2007.

³³ The money laundering pending case is suit no. FHC/L/336C/08. He was former Oyo State governor and the case against him commenced in 2008. He also contested to be governor again recently but lost. The case remains to be decided on the interlocutory application. The real trial is yet to commence till now.

³⁴ The money laundering pending case is suit no. SS/33/2009. A former Sokoto State governor, his case was taken to court since 2009 and still remains on preliminary stage.

³⁵ He was a former minister of aviation and former minister of education, alleged of money laundering and charged to court since 2008 in the suit no. CR/09/08. The case is still on resolving interlocutory application ever since then.

What is most disturbing is that disposal of preliminary objection frequently requires time to determine. Very often, the ruling on that point is not forthcoming before six months or even a year after the commencement of the main action. A plaintiff or Defendant who is dissatisfied with the decision of the trial court on the issue..... has the constitutional right of appeal to the Court of Appeal and thereafter to the Supreme Court. The appeal process may take between five to ten years before the preliminary issue is finally resolved one way or the other.³⁶

Commendable however is the recent introduction of Administration of Criminal Justice Act (ACJA) 2015³⁷ which is intended to fast track criminal trials by prohibiting staying of proceedings on the ground of interlocutory application and the *Supreme Court (Criminal Appeals) Practice Directions* which was issued by the then Chief Justice of Nigeria (CJN), Hon. Justice Aloma Mariam Mukhtar to “create a system for fast tracking the hearing and determination of interlocutory applications and appeals from the decisions of the Court of Appeal on interlocutory applications and preliminary objections, and cases pertaining to offences of Terrorism, Rape, Kidnapping, Corruption, Money Laundering and Human Trafficking”.³⁸

The challenge persists partly because of the limitation of ‘ACJA’. ACJA is only applicable to courts in the Federal Capital Territory and Federal Courts, whereas courts that have jurisdiction on money laundering and other financial crimes are not limited to Federal High Courts.³⁹

The provision of ACJA expressly stated:

*“Without prejudice to section 86 of this Act, the provisions of this Act shall apply to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory, Abuja”.*⁴⁰

2. Legal Practitioners Challenges

It is quite unfortunate that many lawyers and criminal suspects are looking for way to cut corners. They are desperate to frustrate the law, for them the practice is steal as much as you can, pay as heavy as you could to your lawyer and sometimes bribe the judges if possible to ensure that the case last in court if possible to frustrate the prosecution. They file very funny and ridiculous applications.

Defence counsels could therefore be said to be greatly part of the main problem. When they see that the matter is going on, they employed strategy that is directed to delay and spoil the case. The plan has always been to make sure that the case is stalled at all cost. The plan is not to provide defence on the merit of the case using the acquired skill to get the accused out of the charged raised against him or her on merit but energy is directed to delay techniques and other technicalities to frustrate the process. Their energy is dissipated to ensure that the trial does not go on.

Such lawyers are fond of raising objections upon objections on pure technicalities and when it appears that things are going against them⁴¹, before you know it, frivolous application is written for the transfer of the case on ground of biasness of the court or other spurious allegation. The Olisa Metuh⁴²'s case merits attention. The defence counsel raised technical objection and challenged the jurisdiction because the accused and the judge were classmates. One might wonder whether the intention is to avoid biasness or merely to delay.

It is notable that despite the innovation of the Administration of Criminal Justice Act 2015 (ACJA) to forestall unnecessary delay, on interlocutory applications, the case against the Senate President Bukola Saraki has recently travelled to higher courts,

³⁶ Abdullahi Saliu Ishola and I. A. Abdulqadir, “Curbing Delaying Justice on the Ground of Jurisdiction in the Nigerian Courts: Lessons from the Islamic Law” in Abdulqadir I Abikan and Abdullahi S. Ishola (ed.), *Nigeria Judiciary: Contemporary Issues in Administration of Justice – Essays in Honour of Hon. Justice Ayo Salami* (Ilorin: Nigeria Bar Association, 2013) pp. 124-153 citing Pedro L., “Jurisdictions of Courts in Nigeria” CAP 7, Pg. 289-390.

³⁷ Section 396(2-4) Administration of Criminal Justice (ACJA) 2015 provides as follows;

(2) After the plea has been taken, the defendant may raise objection to the validity of the charge or information and before judgement provided that such objection shall only be considered along with the substantive issue and ruling made at the time of the delivery of the judgement.

(3) Upon arraignment, the trial of the defendant shall proceed from day-to-day until the conclusion of the trial.

(4) Where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from the day of arraignment to final judgement provided that the interval between each adjournment shall not exceed 14 working days

³⁸ See [http://lawnigeria.com/RULES-OF-COURTS/SUPREME-COURT-\(CRIMINAL-APPEALS\)-PRACTICE-DIRECTIONS-2013.html](http://lawnigeria.com/RULES-OF-COURTS/SUPREME-COURT-(CRIMINAL-APPEALS)-PRACTICE-DIRECTIONS-2013.html) (accessed on 16th November, 2016).

³⁹ See Section 19(1) Economics and Financial Crime Commission (Establishment) Act, 2004.

⁴⁰ Section 2, Administration of Criminal Justice Act, 2015 (ACJA)

⁴¹ The defence counsels.

⁴² Olisa Metuh is the publicity secretary of the former ruling party that is presently on trial on cases related to money laundering.

up to the Supreme Court severally. Similar things have allegedly happened in money laundering case against former governor 'Jolly Nyame', Joshua Dariye's and several others politically exposed people (PEP). Meanwhile, money-laundering cases against non-PEPs have equally witnessed same delay tactics.

The cases of Erastus Akingbola⁴³, Atuche and so many other cases are good examples, for one reason or the other, those cases have travelled to Supreme Court and come back on interlocutory while some other cases are just on their way to the higher courts while the real substantive matter is yet to be heard and settled.

Presently in Nigeria, many respected senior lawyers are also alleged to have bribed judges and are presently under investigation on the said alleged bribery matters.⁴⁴ However, it is important not to judge based on perception alone. Anyone accused of involvement in criminal activities including money laundering must be given adequate opportunity to defend themselves.

3. Enabling law

The wordings of legislations are expected to be drafted in such a way that it will be all embracing and unambiguous. Legal terms ought to be widely defined in such a manner that it will embrace all possible and conceivable meanings. But when the contrary is found, it becomes a problem.

In Nigeria, the money laundering charges brought against James Onanefe Ibori⁴⁵ a former governor that was not successful partly because of the restrictive definition given to money laundering by the enabling law as at that time. Money Laundering (Prohibition) Act 2004 under section 14(1) defines money laundering as follows;

"Converts or transfers resources or properties derived directly or indirectly from illicit traffic in narcotic drugs and psychotropic substances or any other crimes or illegal act with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved in the illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act to evade the legal consequences of his action, orcollaborates in concealing or disguising the genuine nature, origin, location, disposition ,movement or ownership of the resources property or right thereto derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act, commits an offence under this section...."

The court held among others as follows;

"Any other crime or illegal act" in section 14(1) of the Money Laundering Act are to be construed Ejusdem Generis with those which preceded them and are to be restricted or limited to funds even remotely connected to illicit traffic in narcotic drugs of psychotropic substances. For a charge under section 14(1) of the Money Laundering (Prohibition) Act, 2004 to be sustained, the Prosecution must first and foremost establish that, or at least link such funds to those directly or remotely made or obtained in the course of illicit traffic or narcotic drugs and psychotropic....."

I respectfully do not share the view that section 14(1) of the Money Laundering (Prohibited) Act, 2004 envisaged all funds alleged to be illegally acquired otherwise the preceding words would have been unnecessary. The only responsible thing to do in the circumstance is to apply the Ejusdem Generis rule in the interpretation of section 14(1) of the Money Laundering (Prohibited) Act to achieve its intendment and I so hold".

The resultant effect of this is that the accused⁴⁶ was found not guilty and was discharged. Ironically the same accused was charged for a similar money laundering offences emanated from Nigeria in the United Kingdom but was found guilty⁴⁷. He is currently serving a jail term of 13 years. The Money Laundering (Prohibition) Act 2004 has subsequently been repealed and another one that is all encompassing is now enacted⁴⁸

⁴³ Erastus Akingbola was the former chairman and managing director of Intercontinental Bank that is currently charged of an alleged money laundering offences since 2007.

⁴⁴ Many senior lawyers (Senior Advocates of Nigeria) are presently being probe for bribing judge. The list includes Paul Usoro, Muiz Banire, Godwin Obla and many others see www.latestnigerianews.com/saharareporters accessed on 14th November, 2016.

⁴⁵ James Onanefe Ibori was a former governor of Delta State in Nigeria who was charged for money laundering offences in Charge No. FHC/ASB/IC/09) (Unreported) delivered on Thursday 17th December, 2007 at the Federal High Court sitting in Asaba, Delta State by Justice Marcel Awokulehin as cited by Adegboyega A. Ige, "A Review of the Legislative and Institutional Framework for Combating Money Laundering in Nigeria," *NIALS Journal on Criminal Law and Justice Vol. 1 2011*, 2011, <http://www.nials-nigeria.org/journals/Adegboyega A. Ige.pdf>.

⁴⁶ Ibid

⁴⁷ "R v James Ibori and Others | 6KBW," accessed January 29, 2016, <http://www.6kbw.com/notable-cases/r-v-james-ibori-and-others>.

⁴⁸ "Money Laundering (Prohibition) Act, 2011."

There are other circumstances where the existing law inhibit the effective prosecution. More specifically, if one considered the express provisions of the constitution, it would be discovered that there are still some constitutional impediments. The rights of accused person under Nigeria constitution is enormous such that one can reasonably conclude that over protective tendency of the constitution appears to be impeding effective prosecution.

For instance, the Nigeria constitution does not allow keeping an accused beyond 24 hours.⁴⁹ That is the constitutional provisions. Where there is court within 40km radius around, he must be taken to court within 24 hours at most 48 hours⁵⁰. The rights of the accused must be observed. In addition to this, there is law against self-incrimination under the constitution; other provisions include the right to remain silence or avoid answering any question⁵¹, rights not to be compelled to give evidence⁵² during trials and so many other protective clauses in the constitution.

It seems that there is over protection of accused person against the investigators. This is quite contrary to the legal framework of anti-money laundering legislations of other countries that allocate a lot of power to the investigator and prosecutor on anti-money laundering cases. For example, in most commonwealth jurisdictions, the obligations imposed by anti-money laundering legislation will usually override other legislations. Balancing the rights of the accused and the need to prosecute offender can be challenging. However, the idea is justice through law. Fairness and due process must be respected.

4. Skilled and Competent Prosecutor

Prosecutorial skilled is a necessary ingredient for effective prosecution. The issues of prosecutor's capability are germane, whether the prosecutor really knows what he is doing. It is an art that required expertise and experience at every stage of the prosecution, from preparation of the case till the level of presentation. Some charges are framed in very unusual manner that make proving the case beyond reasonable doubt which is the expected standard of proof in a criminal trial, a mirage and some charges has no bearing with the proof of evidence while some are dis-jointed such that it requires no time before it is thrown out of the court.

It is necessary to equip prosecutors with necessary skill to handle such sensitive matters that every fabric of the society is affected by its effect. Consequently, the government is required to have a clear-cut policy that is geared toward improving the capabilities of prosecutors. Code of conduct for Prosecutors is desirable and guideline with an evaluation mechanism to access the performance of each member of prosecutorial team is essential. More importantly, there must be proper incentive and salary to attract the best minds to join the prosecutorial team. Autonomy is also essential.

5. In-depth Investigation

Money laundering cases required a thorough and painstaking investigation. Each information and facts require to be given a careful consideration while all aspects of the subject matter are important. The vital question is how competent are the investigators? Whether most of them are skilled enough to understand the intricacies that involved in the crimes and to know the line of investigation they need to carry out in the case assigned to them to do a diligent work. This is fundamental to the result.

There are other factors including the workload. If an investigator is saddled with many cases simultaneously and suffer overload of cases, these will cause delay in preparing and gathering of evidences. At the end of the day the whole things will be muddled up.

Moreover, some investigators are also alleged to lacks integrity. Money laundering cases usually involves a large sum of money and the culprit might be ready to throw about some amounts. If the investigator is not upright, he can be easily compromised.

The reports from Ibadan Zonal office of EFCC reveal that investigation is one of the major problems confronting the enforcement agency in Nigeria. The statistics as recorded at the end of September, 2016, as disclosed by Mr. Akanninyene Ezinma, the Zonal head of Economic and Financial Crimes Commission (EFCC), Ibadan Zonal Office is as presented in table 1 below;

⁴⁹ Section 35(5) (a& b) of the Constitution of Federal Republic of Nigeria, (CFRN) 1999.

⁵⁰Ibid.

⁵¹ Section 35(2) Constitution of Federal Republic of Nigeria,(CFRN) 1999.

⁵² Section 36(11) Constitution of Federal Republic of Nigeria,(CFRN) 1999.

Table1. EFCC Ibadan Zonal Office Nigeria: Reported Cases Status⁵³

Period	No of Complaints	No Under Investigation	Suspect Arrested	Case charged to Court
February –September 2016	200	123	80	8

The implication of this is that out of 123 matters that are being investigated less than 8% are brought to court while only 10% of the suspect arrested are presently charged. This is appalling and not encouraging. Unfortunately, that appears to be the situation in most developing countries. However, some countries are notably better off.

For instance, the situation in Malaysia though not encouraging, is still comparatively better than the situation in Nigeria. In Malaysia about 50% of cases reported are presently charged in court. This equally reveals the challenges faced by Bank Negara⁵⁴ to conclude investigation and prosecute, perhaps because of its inability to get the necessary evidence to charge the offenders.

Table II. Bank Negara Malaysia (BNM): Statistics on status of cases⁵⁵

Seized of relevant assets and documents	3
Charged in court	12
Discharged not amounting to acquittal	1
Pleaded guilty	1
Case closed – compound 1 Suspects missing	1
Cases handed over to PDRM	2
On-going court case for third party claim	1
No status update after investigation started	4
Total	26

The problem encountered at the level of investigation required to be addressed.

6. Environmental Factors

In most developing countries, facilities and manpower for proper investigation are lacking; and the expectation of the law is that before a person is arrested, the investigation should have been done and completed, so that as soon as he is arrested, he should be taken to court. The question is whether that is possible in a developing country like Nigeria, with all the financial and security restrain? Tipping off is a crime. However, bankers are reported to notify their customers immediately after supervisory bodies requested information. Witnesses are also being threatened. To prevent money-laundering activities, the public must be educated.

A change of attitude on the part of populace is a necessity in this circumstance; consequently, apart from improving the require facilities that are needed for a thorough investigation, a lot of awareness and re-orientation packages are equally needed from the government. The ministry of information must design a means of educating the public on the danger of money laundering, corruption and other economic and financial crimes so that the public will be aware of the magnitude of its consequential effect and the needs to cooperate with law enforcement agencies to stem the menace. More importantly, there must be political and economic stability so that citizen can opt for a legitimate career in the first place. Without political and economic stability, criminal activities and money laundering will prosper.

7. Funding

Proper funding is vital to effective prosecution and a successful trial. Investigation and prosecution of financial crime is capital intensive, very capital intensive. It therefore requires a considerable amount of time and resources. Money laundering cases required a lot of material evidence and witness that are not easy to come by and lack of fund to execute this prerequisite can indeed impede the trial.

If for instance, investigator needs to go to say South Africa to conduct investigation, would they have resources to do that? To go there, stay and remain there for some days until they finish their investigation or surveillance is being conducted on somebody, will the investigators have money or resources to go and stay as much as they want? When engaging in an undercover job, it requires a lot of resources to play around, so to say. This include salary, accommodation etc. However, these are essential.

⁵³ See Nigerian Tribune Newspaper www.tribuneonline.com/efcc accessed on 20th November,2016.

⁵⁴ Bank Negara is the Central Bank In Malaysia that is vested with supervisory responsibilities in Malaysia'

⁵⁵ Zakiah Muhammadiyah Mohamed and Khalijah Ahmad, "Investigation and Prosecution of Money Laundering Cases in Malaysia," *Journal of Money Laundering Control* 15, no. 4 (2012): 421–29.

If the multiplier effects of achieving success in the fight against corrupt practices, economic and financial crimes is weigh with the require cost implication of funding its investigation and prosecution, the comparative cost advantage will still be on the side of the benefits. The government should therefore prioritise its needs and ready to be more committed in the funding of investigation and prosecution of financial crimes.

8. Political Will

Another major problem of effective prosecution is lack of political will to prosecute. Most leaders in the developing countries seem to lack the political will to fight corruption. How is 'political will' demonstrated? It can be done by giving proper funding and devoting a considerable amount of resources to investigation and prosecution of financial crimes.

Moreover, the body saddled with the responsibilities of investigation and prosecution of financial crimes must be free from political interference. The existence of autonomous anti-corruption agency like ICAC in Hong Kong will be a very useful reference to be emulated.

iii. CONCLUSION

This paper has examined various impediments to enforcement of AML/CFT legislations, particularly especially the effective prosecution of money laundering and financing terrorism cases which make deterrence of this dastard act elusive and by so doing making the cases of financial crime to continue to rise unabated.

Consequently, it is the contention of this paper that, having an effective legislation and regulatory framework to combat money laundering and terrorism financing (AML/CFT) is not enough in this circumstance, frank efforts must be made for the successful implementation and enforcement of those laws which effective prosecution symbolises. Implementation is the key.

This paper has highlighted some of the key challenges to enforcement of AML/CFT legislations which includes in-effective prosecution, unnecessary delay in the administration of justice etc. In addition, there are also the legal practitioner's challenges particularly those relating to technicality.

There are also room for improvement in relation to the enabling law. The wordings of legislations are expected to be drafted in such a way that it will be all embracing and unambiguous. Unfortunately, this is not always the case. Moreover, it is difficult the balance between the need to protect the basic rights of the accused and the need to gather evidence to prosecute.

The next big challenge is to find or groom skilled and competent prosecutors. It is necessary to equip prosecutors with the necessary skill to handle such sensitive matters. There must be proper incentive and salary to attract the best minds to join the prosecutorial team. Autonomy is also essential. Most important of all, the integrity of the prosecutors must never be compromised. There must be a meticulous screening process to double-check the record and background of the prosecutors and regular audit should be made on the prosecutors' account. To ensure effective and in-depth investigation, there must be sufficient manpower. Strong political will, reflected in proper funding is also essential.

In addition, to improve the position in Nigeria, Nigeria can also learn from Malaysia experience. According to the Mutual Evaluation Report 2015, 'Malaysia's robust policy framework for AML/CFT reflects strong political commitment and well-functioning coordination structures for AML/CFT and combating proliferation financing.' The report also noted that significant resources have been allocated by the Malaysian government to achieve the policy objectives, in addition to coordination arrangements that effectively support the implementation of activities to meet these policy objectives.⁵⁶

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⁵⁶ FATF and APG (2015), Anti-money laundering and counter-terrorist financing measures - Malaysia, Fourth Round Mutual Evaluation Report, FATF, Paris and APG, Sydney www.fatf-gafi.org/publications/mutualevaluations/documents/mer-malaysia-2015.html

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