

**Regulating trade-based illicit financial activities in Nigeria**

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**Plagiarism Declaration**

I, **Bukola Oyaleke**, Student Number: **19385570** declare that the work presented in this mini dissertation is original. It has never been presented to any other university or institution. Where other works have been used, references have been provided. It is in this regard that I declare this work as originally mine.

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### **Abstract**

Money laundering is one of the three main trajectories of illicit financial flows globally, ravaging the financial institutions and global economic systems. Trade-based laundering of illicit funds has become a global threat. This is predicated on the rapid evolvement in business transactions. The research examined regulating trade-based illicit financial activities in Nigeria. It examined the extent to which laws and regulations in Nigeria have helped in curbing its effects. Furthermore, the research examined effects that laundering of illicit funds has in Nigeria in general terms, and if any, the effects trade-based laundering specifically on the Nigerian economy. The measures that need to be put in place within the African Continental Free Trade Area (AfCFTA) regional framework to curbing trade-based laundering of illicit funds that may arise therefrom were also examined. The transactions that form basis of trade-based laundering of illicit funds in Nigeria and the extent to which Nigerian Money Laundering (Prohibition) Act, 2011, the Palermo Convention, and the (FATF)'s (40) Recommendations have helped in curbing same. It is recommended that in order to curb TBML in Nigeria, all agencies of government that involve in trans-border transactions must work together as a team. Also to curb the prevalence of the predicate offences, the flow of money (through laundering business) must be curbed as money is the life blood of all criminal activities. It is further recommended that the Nigerian Money Laundering (Prohibition) Act, 2011 should be amended to incorporate transactions-based related offences. It is also recommended that there should be a strong and coherent law or regulation within the African Continental Free Trade Area (AfCFTA) that will address trade-related laundering of illicit funds that may ensue upon its implementation. Also a technical committee that will ensure it compliance coupled with political will is to be established.

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### **Dedication**

All the glory, honour and adoration to the giver of life for the awesome privilege given to me to start and end this program. To Him alone be praised.



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I came, I saw and I conquered... Soli deo Gloria!

### **Table of Cases**

1. McFoy v. UAC (1932) 1 WLR Pt. 1404 at 1409
2. HKSAR v. Wong Ping Shui & another (2001) 4 HKCFAR 29
3. Oei Hengky Wiryp v. HKSAR (No 2) (2007) 10 HKCFAR 98

### **Table of Statutes**

1. United Nations Convention against Transnational Organised Crime (Palermo Convention) 2000
2. Money Laundering (Prohibition) Act, 2011
3. Economic and Financial Crimes Commission Act, 2004
4. National Drug Enforcement Agency Degree number 48 of 1989 (now Act of Parliament)
5. United Nations Convention against illicit Traffic in Narcotics drugs and Psychotropic Substances, 1988
6. Foreign Exchange (Monitoring and Miscellaneous) Act, 1999
7. Independent Corrupt Practices Commission Act, 2000
8. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000
9. Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000

### **List of Abbreviations**

1. TBML Trade-based money laundering
2. AfCFTA African Continental Free Trade Area
3. FATF Financial Action Task Force
4. UNODC United Nations Office on Drugs and Crime
5. UN United Nations
6. SEZ Special Economic Zones
7. FTZ Free Trade Zones
8. STR Suspicious Transaction Reports
9. DNFBP Designated Non-Financial Businesses and Professions
10. USA United States of America
11. CMIR Currency and Monetary Instrument Report
12. IMF International Monetary Fund
13. OECD Organisation for Economic Cooperation and Development
14. CBN Central Bank of Nigeria
15. SEC Securities and Exchange Commission
16. EFCC Economic and Financial Crimes Commission
17. INCSR International Narcotics Control Strategy Report
18. NCS Nigeria Custom Service
19. FEA Foreign Exchange (Monitoring and Miscellaneous) Act
20. NFIU Nigerian Financial Intelligence Unit
21. NYC Know Your Customer
22. AML Anti-Money Laundering
23. CFT Combating Financing of Terrorism
24. SCUML Special Control Unit against Money Laundering
24. NDLEA National Drug Law Enforcement Agency
25. SCUML Special Control Unit for Money Laundering

26. ICPC Independent Corrupt Practices Commission
27. FSAP Financial Sector Assessment Programs
28. FSRB FATF Style Regional Bodies
29. RIA Regional Integration Arrangements
30. GATT General Agreement on Trade & Tariff

### **Chapter Synopsis**

Chapter 1 will provide an introduction to money laundering as one of the main trajectories of the illicit financial flows with the intention of stating the background of what money laundering is in general terms and specifically, it will also examine the literatures that have been written on the meaning of trade-based laundering of illicit funds.

Chapter 2 will examine the historical background of money laundering; the forms of money laundering and if any, the reasons why launderers engage in laundering activities. It would also examine the effects of money laundering on the world economies generally.

Chapter 3 will examine laundering of illicit funds through trade, the legal status of trade-based money laundering with the intention of establishing the legality or otherwise of same; methods of trade-based money laundering and the international legal and regulatory framework governing trade-based money laundering. This chapter will also examine legal and regulatory framework that deals with money laundering in Nigeria and the regulatory agencies. The effects of trade-based money laundering on the Nigerian economy will also be examined and the nexus, if any, between money laundering and the prevalent issues of poverty, underdevelopment and unemployment.

Chapter 4 will deal with the trade-based money laundering within the scope of the African Continental Free Trade Area (AfCFTA) with a view to examining whether there is a need for anti-money laundering regulations that would curb incidences of laundering that may ensue from the increase that will emerge from the regional arrangement. This chapter will also examine, if any, the roles that African states within the free trade area need to play in curbing trade-based money laundering.

While Chapter 5 will deal with general conclusions and recommendations.

## Chapter 1

### General Introduction

#### **1. Introduction**

Illicit financial flows have become global phenomena, ravaging the financial institutions and global economic systems.<sup>1</sup> In Africa, the roots of illicit financial flows are ancient and could be traced back to the era of decolonisation.<sup>2</sup> It was a deliberate effort by the colonial states to carry out capital flight from Africa using corporations. This narrative continues till date. This is possible due to deficiencies in the existing legal and regulatory frameworks that deal with issue such as implementation of anti-money laundering regulations and anti-corruptions measures. Illicit financial flows have money laundering, corruption and commercial activities as the major avenues through which illicit funds are moved globally.<sup>3</sup> The scope of this research work will be restricted to money laundering generally and in particular, trade-based money laundering or trade-based illicit financial activities in Nigeria.

Money laundering is an illegal activity, threatening global economic systems or has the likelihood of threatening global economic systems. The effects of money laundering are evident nationally and internationally, both at the micro and macro levels. The need to develop workable and sustainable measures and solutions in combating its menace has been

This research will examine trade-based illicit financial activities in Nigeria with the intention of examining trade-based illicit financial flows in Nigeria which could also be called trade-based money laundering (TBML) by way of looking at the laws governing money laundering in Nigeria; the forms and methods adopted by entities that involve in money laundering in Nigeria and the world generally, and in particular to examine critically how business transactions are used as conduits for laundering illicit funds. The research will also identify and examine activities that form the basis of trade-based laundering of illicit funds in Nigeria and the roles of the Nigerian Money Laundering (Prohibition) Act, 2011 in combating TBML; whether or not it is effective in tackling trade related laundering of illicit assets/funds

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<sup>1</sup><https://www.imf.org/en/About/Factsheets/Sheets/2018/10/07/imf-and-the-fight-against-illicit-financial-flows> (accessed 11 September, 2019)

<sup>2</sup><http://aidc.org.za/what-are-illicit-financial-flows-and-base-erosion-and-profit-shifting/> (accessed 11 September, 2019)

<sup>3</sup><https://gfintegrity.org/issue/illicit-financial-flows/> (accessed 11 September, 2019)

taking into consideration that the United Nations Convention against Transnational Organised Crime (Palermo Convention) and the Financial Action Task Force (FATF)'s Forty (40) Recommendations on anti- money laundering compliance regulations had formed parts of the laws in the country.

The research will also investigate the historical antecedence of global money laundering activity generally, and the international legal and regulatory frameworks that criminalises and or regulates trade-based laundering of illicit funds with the intention of developing workable solutions and recommendations to trade-based money laundering at the global hemisphere generally, and specifically in Nigeria. The research will also analyses the effects of trade related laundering economically in order to establish, if any, the nexus between money laundering and the prevalent issues of poverty, under-development, lack of economic growth and corruption in the country. The research will also examine if any, the roles African countries; Nigeria inclusive need to play as it borders on the development of anti-money laundering compliance regulations within the African Continental Free Trade Area (AfCFTA)

### **1.1.0: Background of the Study**

Laundering of the proceeds of crimes is a criminal activity and a cancer that had crept its way to the economies both nationally and internationally. The history of money laundering is as ancient as the world itself. However, the modern concept of money laundering could be traced to Meyer Lansky whose criminal activities could be said to lay the foundation for what is called modern money laundering methods<sup>4</sup>. He developed a mechanism by which illicit funds are moved across-border and further loaned back illicit funds to entities owned and or controlled by the various criminal organisations.<sup>5</sup> Criminals had over the years devised a smart means of concealing their illegal proceeds to look like legally obtained money.<sup>6</sup> Therefore, it is not a subject of debate that laundering of illicit funds has come to stay as a monster destroying the financial markets of the countries notwithstanding the infinitesimal advantages it poses to the economy.

The oldest international means for laundering is alternative remittance system.<sup>7</sup> These mechanisms do not operate within the recognized and established regulatory systems in

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<sup>4</sup> Jason-Lloyd, *'The Law on Money-Laundering: Statutes and Commentary'* (1997) 1

<sup>5</sup> JE Turner *'Money Laundering Prevention: Deterring, Detecting, and Resolving Financial Fraud'* (2011) p.2-3

<sup>6</sup> CD Schaap *'Fighting Money Laundering: With comments on the Legislations of the Netherlands Antilles and Aruba'* (1998) 9

<sup>7</sup> Aldridge (n 4) 2-3

transferring funds across borders without necessarily carrying cash.<sup>8</sup> It must be noted, however, that over the years, the smartest trends used thus far in the criminal world of laundering is to deviate from conventional ways of using services of financial institutions such as foreign exchange transactions, cashier's cheques, wire transfers, travelers' cheques, bearer instruments and derivative transactions toward adopting modern and non-financial business enterprises for money laundering.

The question begging for an answer is how far the countries of the world have gone in combating money laundering and ameliorating its effects on the socio-economic and political systems of the world as one of the major trajectories of illicit financial flows.<sup>9</sup>

### **1.2.0: Research Problem**

The Financial Action Task Force (FATF) typology studies indicate that criminals exploit the weakness in anti-money laundering measures and mechanisms, both nationally and internationally, to commit havoc and thereby undermining the financial sectors of the world in particular and the entire economies of the world in general.

Internationally and domestically, well-known laundering cases have been investigated that involve predicate offences such as drug trafficking, illegal trafficking as it relates to bribery and corruption, prostitution, fraud, counterfeiting, piracy of goods and smuggling. Trade-based laundering of illicit funds is also being used as a new frontier in the movement of illicit funds globally. It serves as a new means resorted to by launderers carrying out illicit financial flows globally. This involves the intentional misrepresentation and manipulation of the international trading system by ways of over and under invoicing of goods and services, falsification of the descriptions of goods and services, invoicing of goods and services in multiple manners and over and under shipment of goods and services.<sup>10</sup> There has been a gap in literature on this new frontier mechanism used presently by launderers for laundering illicit funds. This research attempts to fill this gap. This research will examine trade-based illicit financial activities in Nigeria, which could also be referred to as trade-based money laundering (TBML) with the target of examining the laws governing money laundering in Nigeria; the forms and methods adopted by criminals in moving money outside the economy

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<sup>8</sup>Aldridge (n 4) 3; see also: *Financial Action Task Force, Report on Money Laundering Typologies* (Paris, OECD, 2000) 4

<sup>9</sup> According to the United Nations estimates about 2-5% of global GDP is laundered annually equating between \$800 billion - \$ 2 trillion in current US dollars. (UNODC, 2012)

<sup>10</sup> JA Cassara, 'Trade based money laundering :New Frontier in International money laundering enforcement (2015) 3



of the country and the world generally, and in particular to examine critically how business transactions are used as conduits for laundering illicit funds.

### **1.3.0: Objectives of the Study**

This thesis, inter-alia will attempt the following objectives:

1. To examine the concept, nature, forms and recognised methods of trade-based money laundering
2. To examine the legal and regulatory framework that regulates trade-based money laundering internationally, and in Nigeria specifically.
3. To establish if any, the nexus between money laundering and the prevalent issues of poverty, under-development, lack of economic growth and corruption in the country and
4. To examine regional measures, if any, that have been or ought to be put in place for curbing trade based money laundering within the African Continental Free Trade Area (AfCFTA)

### **1.4.0: Research Questions**

1. Are there legal and regulatory frameworks that criminalise and or regulate trade related laundering in Nigeria and to what extent have these laws effectively addresses trade-based money laundering in Nigeria?
2. How does trade-based money laundering impact the socio-economic and political development of Nigeria?
3. Are there measures put in place within the African Continental Free Trade Area (AfCFTA) regional framework to curbing trade based money laundering that may arise therefrom?

### **1.5.0: Significance of the Study**

This research will be significant and contribute to existing literature on anti-money laundering compliance because it undertakes to examine trade-based illicit financial activities in Nigeria with a view to examining the law governing money laundering in Nigeria; the forms and methods adopted by the money launderers in moving money outside the economy of the country and the world generally, and in particular to examine critically how business

transactions are used as conduits for laundering illicit funds. The research also will identify and examine activities that form the basis of trade-based illicit financial flows/TBML in Nigeria and the roles played by the Nigerian Money Laundering (Prohibition) Act, 2011 in combating TBML; whether it is effective or not in tackling trade related laundering of illicit assets/funds in view of the fact that the United Nations Convention against Transnational Organised Crime (Palermo Convention) and the Financial Action Task Force (FATF)'s Forty (40) Recommendations on money laundering compliance requirements had formed part of the country's legal system.

The research will also be significant in the sense that it will examine the historical background of global money laundering activity generally. The international legal and regulatory frameworks that criminalise and or regulate trade-based money laundering will also be identified in order to proffer for workable solutions and recommendations in Nigeria as a giant of Africa and the world at large. The negative effects of laundering activities will also be analysed within the context of Nigerian economy and the world. The research will also examine if any, the roles African countries; Nigeria especially need to play as it revolves round the development of anti-money laundering compliance requirements within the African Continental Free Trade Area (AfCFTA)

Furthermore, this work will be significant and very timely considering the coming into force of the African Continental Free Trade Area (AfCFTA) on the 30<sup>th</sup> May, 2019. The free trade area will definitely lead to an increase in international commercial transactions and capital movement within the region of Africa. This upsurge in trade activities and capital movement will lead or has the likelihood of creating a good platform for criminals to launder their illicit funds. The question begging for an answer is: how ready are the African countries to the agreement establishing the free trade area in curbing money laundering activities that may emerge through this regional arrangement? Are there anti-money laundering measures or regulations put in place to curb trade-based laundering of illicit funds and other ancillary matters?

#### **1.6.0: Methodology**

In the course of this thesis, the methods that will be adopted in this work will be doctrinal. Primary and secondary sources of law shall be used as materials for the thesis. The primary sources are: Nigerian money laundering (Prohibition) Act, 2011, the United Nations Convention against Transnational Organised Crimes (Palermo Convention) and the Financial

Action Task Force (FATF)'s Forty (40) Recommendations on anti-money laundering compliance requirements. The secondary sources include books, journals, reports, notes, internet materials and newspapers.

### 1.7.0: Literature Review

Money laundering is a new frontier in global criminal activity. Its history is as far back as the 1930s to notable and prominent gangsters and or criminals such as Meyer Lansky whose criminal activities laid the foundation for what is called modern money laundering methods<sup>11</sup>. He developed a mechanism by which illicit funds are moved across-border and further loaned back the illicit funds to entities owned and or controlled by the various criminal organisations.<sup>12</sup> Criminals had over the years devised a smart means of concealing their illegal proceeds to look like legally obtained money.<sup>13</sup>

It must be noted, however, that notwithstanding literature that are abundant on laundering activities globally, and definitions of the term 'money laundering' by scholars and or writers, a review of literature that specifically defined '*trade-based money laundering*' shall be examined.<sup>14</sup> This research work will further criticize and identify gaps in the definitions given

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<sup>11</sup> Jason-Lloyd (n 1) 1

<sup>12</sup> JE Turner '*Money Laundering Prevention: Deterring, Detecting, and Resolving Financial Fraud*' (2011) p.2-3

<sup>13</sup> CD Schaap '*Fighting Money Laundering: With comments on the Legislations of the Netherlands Antilles and Aruba*' (1998) 9

<sup>14</sup> See generally on the definition of money laundering: I. Bantekas, 'The Internal Law of Terrorist Financing' (2003) 97 *American Journal of International Law* at 315-333; W. Hetzer 'Money Laundering and Financial Markets' (2003) 11 *European Journal of Crime, Criminal Law and Justice* at 264-277; M.E, Beare '*Critical Reflections on Transnational Organised Crime, Money Laundering and Corruption*' (2003); G. Fabre '*Criminal Prosperity: Drug Trafficking, Money Laundering and Financial Crises After the Cold War*' (2003); K.D Magliveras 'Revision to the European Community's anti-money laundering Instrument: Critical Analysis' (2002) 18 *International Enforcement Law Reporter* at 181-185; W. Witherell, 'International Approaches to Combating Financial Abuse and Promoting Stable Financial Markets' (2002) 5 *Journal of Money Laundering Control* at 257-262; B Blunden, '*The Money Launderers: How they do it, and how to catch them at*' (2001); S. Salva 'Money Laundering and Financial Intermediaries' (2001) *Kluwer Law International*; KD Magliveras 'Banks, Money Laundering and the European Community' in J. Norton(ed), '*Banks, Fraud and Crime*' (2000) at 173-200; J. Madinger & S.A. Zalopany, '*Money Laundering: A Guide for Criminal Investigators*' (1999); C Nakajima & B.A. Rider '*Anti-Money Laundering Guide*' (1999); P. Temple, '*Essential Elements of the Prevention of Money Laundering*' (1998); M. Zeldin, 'Money Laundering' (1998) 1 *Journal of Money Laundering Control*; J. Fisher, 'Money Laundering Law and Forfeiture, Proportionality and Instrumentality: USA v. Bajakajian, The US Supreme Court Tries Again' (1998) 1 *Journal of Money Laundering Control*; DC Jayasuriya, 'Money Laundering: The Role of Legislation in Developing Economies' (1998) 1 *Journal of Money Laundering Control*; A. Itzikowitz, 'South-Africa: Prevention and Control of Money Laundering' (1998) 2 *Journal of Money Laundering Control*; CU Uche, 'The Adoption of a Money Laundering Law in Nigeria' (1998) 1 *Journal of Money Laundering Control*; L.J. Candler 'Commingled Funds: How to seize Proceeds of Electronic Crime' (1998) 1 *Journal of Money Laundering Control*; M. Pheiffer '*Financial Investigations and Criminal Money*' (1998) 2 *Journal of Money Laundering Control*; D. Masciandaro 'Money Laundering Regulation: The Micro Economics' (1998) 2 *Journal of Money Laundering Control*; RK Interseer 'An Economic Analysis of Money Laundering' (1997) 1 *Journal of Money Laundering Control*; A. Haynes, 'Securitisation, Money Laundering and Fraud' (1997) 1 *Journal of Money Laundering Control*; E. Savona(ed), '*Responding to Money Laundering: International Perspectives*' (1997); JF Thony 'Processing Financial Information on Money Laundering Matters: The Financial Intelligence Units' (1996) 3

by some scholars on the definition of trade-based money laundering and attempts to fill these gaps.

It is also worthy of emphasis to state that, there is a dearth of literatures that borders on trade-related laundering of illicit funds globally. Specialization in that field of study is yet to be developed due to the fact that it is a new method used in laundering illicit proceeds of crime.

The term '*trade-based money laundering*' is a pluralistic term which does not have a definite and precise definition. Its definition depends on the jurisdiction the definition is coming from, the individual perspective, depth of knowledge and or understanding of the person giving the definition. This invariably means that there is no universally acceptable definition of trade-based money laundering.

Duggan et al<sup>15</sup> argued inter-alia that trade related laundering is the medium by which illicit funds are infused into legitimate business transactions of a sole trader or proprietorship or a company. They further submitted that the purpose of laundering money is to disguise the proceeds of illicit funds.<sup>16</sup> They further submitted that the misuse of the trading system by criminals through trade based laundering is one of the major methods and or means used by criminal groups and terrorist financiers in moving money in order to disguise its origins and gives same appearance of legitimacy. They argued further that the main forms of trade based laundering of illicit funds are over and under invoicing of goods and services, over and under shipments of goods and services, multiple invoicing of goods and services and the act of falsifying description of goods.<sup>17</sup> They argued inter-alia that, for there to be an effective laundering of illicit funds through trade, especially through over and under invoicing, there must be a *consensus ad idem* (collusion) between two or more parties which maybe between an exporter and importer, both controlled by one money laundering network to carry out the illegal transaction.<sup>18</sup>

According to them, trade-based money laundering is mostly used because of the following advantages:

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*European Journal of Crime, Criminal Law and Criminal Justice* at 257-282; *United Nations, Control of the Proceeds of Crime: Report of the Secretary-General*(UN Document E/CN.15/1996/3, 3 April, 1996); V. Tanzi '*Money Laundering and the International Financial System*' (May,1996) and R. Parlour, '*International Guide to Money Laundering: Law and Practice*' (1995); P. Birks '*Laundering and Tracing*' (1995)

<sup>15</sup>H Duggan & P Drewery 'UK Part 1:UK Money Laundering-Typological Consideration' in A. Srivastava and others (eds) '*International Guide to Money Laundering Law and Practice*' (2013) 34

<sup>16</sup> Duggan (n 43) 34

<sup>17</sup> Duggan (n 10) 34

<sup>18</sup> Duggan (n 10) 34

- (a) It provides greater opportunity for criminal organisations to explore due to the enormous volume of business transactions which could also be obscured from possible suspicion, investigation and trial.
- (b) Most customs agencies in most countries have limited resources in checking and detecting illegal trade transactions.
- (c) Most countries of the world have limited resources as it relates to the verification procedures or exchange of customs data.
- (d) There is high level of complexity in determining what constitutes ‘legitimate money’ in a business transaction in a situation when illicit funds had been mingled with legitimate funds.
- (e) There is complexity that is associated with foreign exchange transactions.<sup>19</sup>

They further submitted that any form of goods could be used to launder illicit funds. They noted, however, that, in most cases, individuals that engage in laundering activities using TBML prefer trading in products that the customs agencies would find impossible or difficult to value, such as medicine, chemicals, electronic components or jewelry made from gold or diamonds.<sup>20</sup> They further argued that TBML may also be in the form of the Black-Market Peso Exchange widely employed by the Colombian drug cartels that circumvent currency and trade control regulations that is in force between the United States and Columbia.<sup>21</sup>

Special Economic Zones (SEZs) or Free Trade Zones (FTZs) have been argued to be unique mediums that illicit funds could be laundered and terrorists groups can be financed. This is predicated on the fact that there are usually inadequate safeguards or mechanisms in curbing laundering and financing of terrorists, weak procedures for the inspection of goods and other registered personalities in law; coupled with lack of organised coordination and collaboration between customs agencies and other ancillary government agencies and relaxed legal/regulatory frameworks within the zones.<sup>22</sup>

In as much that I agree with the authors that the main objective of laundering money is in disguising its criminal sources in order to avoid detection of the original crime wherefrom the illicit funds is obtained to prevent being noticed and caught by the appropriate law enforcement agencies, to my considered view, individuals that engage in money laundering

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<sup>19</sup> Duggan (n 10) 35

<sup>20</sup> Duggan (n 10) 35

<sup>21</sup> Duggan (n 10) 37

<sup>22</sup> Duggan (n 10) 39

activities do so to concealing the proceeds of their illegally obtained money, and creating a consistent channel of available funds to support their illegal activities from which they get the illegal money, and further use the laundered money to engage in businesses that are legitimate or illegitimate to make further profits. Money laundering is cyclical in nature and it is an organised business activity.

Lilley<sup>23</sup> on his part defines trade-based money laundering as the medium by which drug dealers launder their illegal profits. He further submitted that this is usually done through the complex process of black-market peso exchange system operative in Columbia in which a peso exchange broker in Columbia deposits pesos in Columbian accounts of drug dealers doing businesses in the United States. Then, the pesos are exchanged for dollars that are usually tainted. The exchanged tainted dollars are deposited in US accounts through collusion of US based operatives who belong to the same money laundering network. US goods are then imported into Columbia by Columbia importers with the use of the tainted dollars. The goods are further smuggled into Columbia. He submitted that the Mexican drug cartel through the use of trade-based laundering and other methods of laundering launders about \$40 billion annually.<sup>24</sup>

It is trite that trade-based laundering is used in laundering illicit funds, however to my considered view; it is not only used in respect of drug money. Money laundering involves a wide range of predicate offences such as prostitution, fraud, drug trafficking, human trafficking, tax evasion, child labour, sex trade, blackmail to mention but a few. For instance, in a country like Nigeria which is the focus of this work, illicit funds laundered comes from predicate offences such as corruption, fraud, embezzlement, drugs, human trafficking and business transactions (trade-based laundering) which is the crux of this research work.

Therefore, in the present day money laundering activities, the scope has expanded beyond drug trafficking but include any financial activity whereof illicit financial flows could be made and be concealed to prevent possible suspicion, arrest, prosecution and conviction and not only restricted to drug money.

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<sup>23</sup>P Lilley *'Dirty Dealing: The Untold Truth about Global Money Laundering, International Crime and Terrorism'* (2006) 30

<sup>24</sup> Lilley(n 18) 30

Thamasegaran et al<sup>25</sup> construe trade related laundering of illicit funds as the act of disguising the proceeds of crimes by manipulating the international trade system. They argued further that trade based laundering is possible because there is an increase in trade activities, usage of many foreign exchange businesses and multiplicity in terms of trade financing arrangements. They stated further that the common tools used to launder illicit funds through the instrumentality of the international trading system are over-and under-invoicing of goods and services, under-and over-shipment of goods and services, multiple invoicing of goods, a false description of goods and complex trade arrangements.<sup>26</sup> They argued that laundering of illicit funds affect countries globally through the international trading system. Such international trade transactions have negative impacts on economic growth and development of such countries. For instance, exporting goods at a reduced price compared to the ordinary market price reduces or has the likelihood of reducing the overall revenue generated within that time.<sup>27</sup> They argued further that a system that is effective by detecting misrepresentation of prices, the quantity and quality of goods and services is likely to reduce to the barest minimum the menace of trade-based laundering of illicit funds activities in most countries, Nigeria inclusive.<sup>28</sup> According to them, about US\$4 billion was laundered through misrepresentation of prices through exports from South-American countries to the USA sometimes in 1995.<sup>29</sup> Also, about US\$400 million was laundered from the USA to Greece in the same year.<sup>30</sup>

It is settled that the sole purpose of laundering is to conceal proceeds of illegally obtained wealth, however the objective behind laundering is not one-way traffic, but two-way traffic in the sense that entities engage in laundering with the intent to cover up an already prohibited and committed act or omission, which in the world of money laundering is called predicate offence(s) on the one hand, and the need to create a constant financial flow or availability of fund to further propagate this 'already committed predicate offence' or use the laundered money to engage in other businesses which may be legitimate or illegitimate on the other

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<sup>25</sup> H Thamasegaran & B Shanmugam, 'International trade based money laundering: the Malaysian perspective' (2007) 10 *Journal of Money Laundering Control* at 431

<sup>26</sup> Thamasegaran ( n 20) 431

<sup>27</sup> de Boyrie, M.E., Pak, S.J. and Zdanowicz, J.S., 'Money laundering and income tax evasion: the determination of optimal audits and inspections to detect abnormal prices in international trade' (2004) 12 *Journal of Financial Crime*

<sup>28</sup> Thamasegaran ( n 20) 431

<sup>29</sup> Zdanowics, J.S., Pak, S. and Sullivan, M. 'Brazil-United States trade: capital flight through abnormal pricing' (1999)13 *The International Trade Journal*, p 423-443.

<sup>30</sup> Pak, S.J., Zanakis, S.H. and Zdanowicz, J.S., 'Detecting abnormal pricing in international trade: the Greece-USA case'(2003) 33 *Interfaces*, No. 2, pp. 54-64

hand. Therefore, it could be safe to submit that money laundering is an organised business activity.<sup>31</sup>

I am also in agreement with the authors to the extent that strong, effective and coherent anti-money laundering procedures/systems and or laws are needed to curb the menace of money laundering globally and in particular in the African Continent. However, having strong and coherent procedures/systems and or laws are not enough in curbing money laundering generally, and in particular trade related laundering where there is no strong political will on the part of the government in fighting same by making all necessary resources available. Nigeria is a country that has been bedeviled with incidences of corruption, fraud, prostitution and kidnapping to mention but a few; thereby culminating into high rates of trade related laundering notwithstanding the implementation of the Nigerian Money Laundering (Prohibition) Act, 2011, the ratification of the Palermo Convention and the (FATF)'s recommendations on money laundering.

Cassara<sup>32</sup> on his part adopted the definition of the Financial Action Task Force (FATF)'s typology report and defined trade-based laundering of illicit funds as the medium through which criminals disguise the proceeds of criminality with the intent of transferring value through trade related transactions from one country to another with the intent of legitimising the origin of the illicit funds. He stated further that trade related laundering could be attained by misrepresenting prices, quantity or quality of both the imports and exports. He argued *inter-alia* that it could also be used in abusing the financial system of a country through fraudulent transactions such as money transactions like wire transfers. He stated, however, that trade-based laundering of illicit funds receives less attention in the academic terrain. This is because it is a new frontier mechanism presently used to launder illicit funds. Much literature has not been written on it compared with other forms of money laundering.<sup>33</sup> As trade activities and capital flows are increasing in a rapid way, entities that engage in laundering take advantage of the weak regulations and or legislations to launder their proceeds of crime globally.

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<sup>31</sup> Lilley ( n 18) 28

<sup>32</sup>JA Cassara, '*Trade based money laundering :New Frontier in International money laundering enforcement* (2015) 3

<sup>33</sup> Cassara (n 25) 3



I am in agreement with the author to the extent that less literature had been written on trade-based laundering of illicit funds. This is predicated on the fact that it is assumed that trade is the weakest arsenal in the campaign against illicit funds.<sup>34</sup>

However, it is my well-considered view, the tide is changing as trade-based laundering of illicit funds is now being seen and recognised as an important method used by entities that engage in laundering in moving illicit funds cross-borders. Notable writers and or authors are now emerging in that area of law.

Furthermore, to the extent that I am in agreement with the author that the essence of laundering illicit funds is to conceal and disguise the original source of illicit funds, I argue that laundering of illicit funds is also a business activity.<sup>35</sup> Entities that engage in money laundering activities also do so to use the proceeds to engage in further businesses which may be legitimate or illegal for the purpose of making more money or profit. Making more money is the incentive that keeps the laundering process interesting and inciting. Money laundering provides a steady cash flow to facilitate more offences on one hand and serves as an incentive on the other hand. Therefore, entities that engage in trade-based laundering or any other forms of laundering illicit funds will adopt practices which are sometimes limitless and advanced such as online technology and new developments in payment systems to conceal its criminal deeds and make more money.

Delston et al<sup>36</sup> argued that trade-based laundering of illicit funds is the method of disguising the source of illicit funds by misrepresenting prices of goods and services with the intent of giving legitimacy to such funds. They argued that the campaign against laundering and international terrorist activities over the years have brought about the new method of laundering illicit funds which involves the manipulation of the international trading system.<sup>37</sup> According to the authors, laundering of illicit funds through trade activities is one of the three main avenues used by entities that engage in transferring value across border.<sup>38</sup> They further stated that trade-based laundering of illicit funds may be achieved in many ways

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<sup>34</sup>Cassara (n 25) 3; see also:<https://www.economist.com/international/2014/05/03/uncontained> accessed 26th July 2019

<sup>35</sup> Lilley (n 18) 28

<sup>36</sup> RS, Delston & SC Walls, 'Reaching Beyond Banks: How to target trade based money laundering terrorist financing outside the financial sector' (2009) 41 *Case Western Reserve Journal of International Law* p. 85

<sup>37</sup> Delston (n 28) 86; <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> accessed 26<sup>th</sup> July 2019

<sup>38</sup><https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> accessed 26<sup>th</sup> July 2019

by deliberately misrepresenting the prices, the quality or the quantity of the goods and services.<sup>39</sup> They advocated for a new recommendation, in addition to the already existing FATF's forty (40) recommendations on money laundering compliance requirements that will be encompassing to include not only non-financial businesses so designated, professions, and financial institutions already covered under the FATF's 40 Recommendations, but all those individuals such as importers, air couriers, exporters, shippers, and freights forwarders referred to as '*traders*'.<sup>40</sup> They further argued that the scope of the new recommendation should be extended to the multi-nationals that may not be complying with the anti-money laundering compliance requirements within the jurisdiction wherein they carryout businesses.<sup>41</sup>

I humbly agree with the authors that there is a need to have a new recommendation that will added to the existing FATF's 40 Recommendations which deal solely with TBML to cover individuals such as importers, shippers, air couriers, exporters and freights forwarders. This is predicated on the fact that couriers, ships and other related means of carriage have been identified as means of smuggling physical cash from one jurisdiction to another.<sup>42</sup> It means that if this recommendation is allowed by the FATF, the governments will mandate the shippers, air couriers, exporter, importers, freights forwarders and other entities that offer related services to carryout customer identification program, conduct customer due diligence and file suspicious transactions reports (STRs) as applicable to financial institutions and designated non-financial businesses and professions (DNFBP).<sup>43</sup> Therefore, this recommendation once added will cut across board.

To the extent that this research agrees with the authors that there is a need to have additional recommendation to the existing FATF's 40 Recommendations that will deal solely with trade-based money laundering, it is the view of this research work that the effects of doing so may not last long and achieve the necessary intended purpose if not properly managed. This is predicated on the fact the FATF Recommendations are mere guiding principles and soft law which are non-binding. They do not create an enforceable obligation on the state parties.

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<sup>39</sup> Delston (n. 28) 87; <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> accessed 26<sup>th</sup> July 2019

<sup>40</sup> Delston (n 28) 88; <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> accessed 26<sup>th</sup> July 2019

<sup>41</sup> Delston (n 28) 88; <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> accessed 26<sup>th</sup> July 2019

<sup>42</sup> Sullivan (n 42 ) 17

<sup>43</sup> Delston (n 28) 89

Though a new recommendation is added that deals specifically with trade related laundering of illicit funds globally and in particular Nigeria, there is no guarantee that same will curb trade based money. It is the view of this research that there is a need for the government to do more in terms of enforcement to ensure that all machinery that involves in cross-border transactions work together to fight trade-based money laundering. Furthermore, the state is to ensure that ongoing prosecution and trial of money laundering cases are maintained and whoever is caught wanting in respect of money laundering, is tried and if found guilty, should be convicted and sentenced and or punished as the case may be according to the dictates of the law.

The arrest, trial and prosecution of the persons who engage in laundering of illicit funds generally in Nigeria and in particular, the trade-related laundering of illicit funds should not be based on sentiments, political affiliation and religious bias.

#### **1.8.0: Conclusion**

Illicit financial flows, in particular trade-based laundering of illicit funds has become a global threat which needs urgent and workable solutions. It would also be safe to conclude that the scope of money laundering had expanded from the drug-related money laundering of illicit funds to wider predicate offences. It must also be noted that entities that presently engage in laundering activities globally and in particular in Nigeria do not only launder their illicit funds solely for the purpose of concealing the source of the funds, they also launder with a view to plunging the money into other nefarious activities other than the ones the laundered fund was obtained from to make more money. In other words, launderers are professional businessmen and women who engage in criminal activities with the sole aim of making more money by using the laundered money to engage in further businesses which maybe legitimate or illegitimate.

## Chapter 2

### Historical Development of International Money-Laundering

#### **2.0.0: Introduction**

Money laundering is the process of giving legality to the proceeds of illegality. It is a global phenomenon which had found its way into the economies of the world. Money laundering cuts across all boundaries and borders. Money laundering has historical antecedence. This chapter examines the historical development of money laundering globally for the purpose of identifying where it started, the forms of money laundering used, why launderers engage in the business of laundering dirty money, and if any, the negative effects of laundering illicit funds on the world economies generally.

#### **2.1.0: Early & Modern History of International Money Laundering**

The history of money laundering is as ancient as the world itself. However, scholars and writers are divergent on its history. Early history of money laundering is argued to have started sometimes around 2000 BCE by the Chinese merchants who with the intent of evading taxation or confiscation of their wealth by the state move their money to remote provinces or even across the border.<sup>44</sup> The Chinese traders after making huge sum of profits from the businesses will deliberately move their capital from their present jurisdiction to evade the possibility of paying the due taxes. It must be noted also that in the beginning the predicate offences upon which the early money launderers obtain their illegal proceeds of crime were drug trafficking and tax evasion.<sup>45</sup> Presently, the scope of offences that constitute and or have the likelihood of constituting predicate offences have become more encompassing such as drug trafficking, fraud, sex trade, corruption, human trafficking, embezzlement, extortion, prostitution and trade related laundering.<sup>46</sup>

Modern concept of money laundering could be traced to Meyer Lansky whose criminal activities could be said to lay the foundation for what is called modern money laundering methods.<sup>47</sup> He devised a process through which the physical cash which forms the proceeds of crimes in the United States were moved to Switzerland and further loaned back to the entities owned and or controlled by the various illegal gangs.<sup>48</sup> Criminals had over the years

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<sup>44</sup> <https://evercompliant.com/brief-history-money-laundering/> (accessed 7 September 2019)

<sup>45</sup> P Aldridge '*Money Laundering Law*' (2003) 3

<sup>46</sup> Lilley (n 18) 2

<sup>47</sup> Jason-Lloyd (n 1) 1

<sup>48</sup> JE Turner '*Money Laundering Prevention: Deterring, Detecting, and Resolving Financial Fraud*'(2011) p.2-3

devised the smartest means of concealing their illegal proceeds to look like legally obtained money.<sup>49</sup>

Money laundering, being a criminal activity and which in most cases is done in the secret, it has become a business engaged by entities such as drug dealers, fraudsters, tax evaders, human traffickers with the primary aim of concealing the predicate offence(s) from which they obtained the illegal wealth on the one hand and the purpose of engaging the money in legitimate and or illegitimate business activities in making more and further money.

Also, with the advancement in information and technology, modern money laundering has increased over the years through the use of wire transfers.<sup>50</sup> Wire transfer systems allows the entities engaged in laundering activities, criminal organizations, including legitimate businesses and individual banking customers and daily users to enjoy a swift and movement of funds among the continents of the world.<sup>51</sup>

Laundering illicit funds through the wire transfers is possible due to the fact that wire transfers require no reporting requirements as obtainable under the banking regulatory requirements of most countries. Therefore, money launderers with the intent of evading the statutory reporting requirements resort to the use of wire transfers which allow for the transfer of funds quickly and easily. This allows them to evade possible suspicion, arrest and prosecution by the appropriate law enforcement agencies.

## **2.2.0: Forms of Money Laundering**

### **2.2.1: Structuring**

Structuring is the most frequently used form of laundering money. This is the process of manipulating the cash-reporting regulations of a country or in other words, it is the process of avoiding the reporting requirements of the banking system of a country by way of dividing large deposits of cash into multiple smaller units of less than \$10, 000 each.

Therefore, a person structures a transaction if that person, acting alone, or in conjunction with or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any

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<sup>49</sup> CD Schaap 'Fighting Money Laundering: With comments on the Legislations of the Netherlands Antilles and Aruba' (1998) 9

<sup>50</sup> Electronic transfers of funds refer to wire transfers.

<sup>51</sup> Turner (n 4) 91-92

manner, for the purpose of evading the reporting requirements by dividing a currency exceeding \$10, 000 into smaller units below the \$10, 000..<sup>52</sup>

The most notorious case of money laundering was the 60 year old grandmother that laundered \$25 million (\$25, 000,000) using other aged women in Florida at various California banks.<sup>53</sup>

It must be noted, however, that structuring or smurfing is resulted to by criminals in a situation wherein there is a maximum threshold of cash or securities that could be transferred at a given point in time. Therefore, in a country that has no such restriction; cross-border money laundering transfer would be prevalent and rampant as there is no existing legal framework that requires maximum threshold of cash or securities that could be transferred at a particular point in time.

### **2.2.2: Bulk Cash Smuggling**

This is another notable form of laundering illegal proceeds of crime. This involves the physical movement of a large sum of money hidden on a person, in luggage, in cars or boats and even on a cargo from a particular location to another.<sup>54</sup> This is usually resulted to when all possible means of laundering money through the financial systems had proved abortive due to the financial reporting requirements.

The method is usually used in developed countries like United State of America that has good road transport system, unlike African countries wherein the roads, in most places are not in good condition. About 5,000 trucks enter US from Mexico each day, with only about 200 of that number inspected. This provides a greater opportunity for cash to be laundered undetected.<sup>55</sup> In US for instance, a criminal may smuggle cash unceremoniously and without detection to a nearby country like Mexico without declaring the cash on a Currency and Monetary Instrument Report (CMIR). He then turns around and comes back to the US declaring the funds at US Customs as being legitimate and supported with invoices, receipts from phony business dealings in Mexico.<sup>56</sup> The Customs Authorities then issue the proper form authenticating the funds, thereby giving the launderer opportunity to deposit the cash in any US bank without possible suspicion. The money once it entered the financial mainstream,

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<sup>52</sup> JR Richards *'Transnational Criminal Organisations, Cybercrime and Money Laundering'* A Handbook for Law officers, Auditors, and Financial Investigators (1998) 52.

<sup>53</sup> Richards (n 43) 52

<sup>54</sup> Sullivan (n 42 ) 17

<sup>55</sup> Richards (n 43) 51

<sup>56</sup> Richards (n 43) 50

it becomes an object of wire-transfers to anywhere in the world due to lack of reporting requirements for wire transfers.

Launderers, over the years, in the US, have attempted to hide the proceeds of their illegal businesses in automobile transmissions, phony television sets, electrical appliances, diaper boxes, grocery goods and battery chargers to mention but a few.<sup>57</sup> Car usage are also not exempted in the smuggling of money across the border, thereby establishing the fact that not only cars with traps are used for drugs, but they are also used to smuggle cash.<sup>58</sup> Often than not, launderers will also attempt to use couriers, private planes, commercial vessels and even Postal Service; US is a good example. They also convert the cash to negotiable instruments like money orders and traveler's checks and sent to overseas banks.<sup>59</sup> In some African countries, individuals have been alleged to have laundered or attempted to launder illicit funds through private planes and other means of transportation such as road.

### **2.2.3: Gold**

The use of precious metals such as gold is another important conduit used by the money launderers in moving value from one jurisdiction to another. Gold is acquired with the illicit proceeds of crime from gold refiners and wholesalers.<sup>60</sup> The gold is then further melted down into sizeable shapes of various objects such as bolts, nuts, tools, and other variety of automobiles parts. The gold so melted into shapes are disguised with a view to avoiding suspicion and possible arrest by the law enforcement agencies and same transported by courier or air cargo to the available markets for sales usually when the selling price is high or satisfactory.<sup>61</sup>

It must also be noted that gold could be bought online through some notable websites and anonymity is guaranteed especially when used after the laundering process must have been completed.<sup>62</sup>

### **2.2.4: Wire Transfers**

Cyber-laundering is the process of laundering illegal and illicit funds through the instrumentality of the technological advancement such as the internet. Money launderers with a view to evading possible suspicion, arrest and prosecution resorts to laundering money

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<sup>57</sup> Sullivan (n 42 ) 17

<sup>58</sup> Sullivan (n 42) 17

<sup>59</sup> Sullivan (n 42) 17

<sup>60</sup> Sullivan (n 69) 17

<sup>61</sup> According to the FATF 2002-2003 typology report, gold has high value and could be melted into sizable shapes for easy transport to evade suspicion. It has global acceptability and does not lose value.

<sup>62</sup> B Unger *'The scales and impacts of money laundering'* (2007) 104

through wire transfers also known as electronic transfers. This is predicated on the fact that there is no existing legal framework that requires financial reporting requirements when it comes to the amount of cash or securities that could be transferred at a time. It is estimated that over \$2 trillion were laundered daily using wire transfer globally.<sup>63</sup> Therefore in a situation wherein a launderer cannot manipulate the financial reporting requirements by way of structuring,<sup>64</sup> he or she makes use of the cyber space through the use of wire transfers in laundering money.

Cyber-laundering has been used thus far by the money launderers to move huge illicit funds globally notwithstanding the international law through the application of the United Nation Convention against Transnational Organised Crime (also known as the Palermo Convention),<sup>65</sup> and the Financial Action Task Force (FAFT) recommendations.<sup>66</sup>

### **2.2.5: Trade-based money laundering**

Money laundering could also be seen in the context of trade-based money laundering. Trade-based laundering of illicit funds is the process by which proceeds of crime are disguised through the use of multilateral trading system.<sup>67</sup> In practice, it is usually done by misrepresenting prices, quantity or quality of imports and exports of goods or services. It is a new frontier presently used in laundering of illicit financial funds by manipulating the prices, the quantity and quality of goods and services.

Trade-based laundering of illicit funds techniques are very complex in nature. It is used with other laundering methods to obscure the source of the funds.<sup>68</sup> Entities that involve in TBML purchase high-valued products, and then export them at very low prices to a colluding foreign partner. The colluding partner sells the products at the true market price.

This research will examine regulating trade-based illicit financial activities and its implication for the ratification of the Palermo Convention in Nigeria with the intent of identifying and examining the activities that constitute trade-based money laundering within

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<sup>63</sup> Turner (n.4) 91-92

<sup>64</sup> A person structures a transaction when he breaks down a currency that exceeds \$10, 000 into smaller units and below \$10, 000, to evade the reporting requirements. This mode was used by a grandma in Florida who laundered \$25 million (\$25, 000,000) using California banks.

<sup>65</sup> Palermo Convention, 2000

<sup>66</sup> Financial Action Task Force is an inter-governmental organization formed for the purpose of setting rules, regulations and standards in combating laundering activities and terrorist financing. It developed forty (40) recommendations in 1996 to curb international money laundering and nine (9) special recommendations in combating terrorist financing in 2001.

<sup>67</sup> FATF '*Trade-Based Money Laundering*' 2006 FATF/OECD

<sup>68</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf) p.76 (accessed 17 June 2019)



Nigerian jurisprudence, and the extent to which the Nigerian Money Laundering (Prohibition) Act, 2011 had helped to curb trade-based laundering of illicit proceeds of crimes in Nigeria on the one hand, and the need for a regional legal and regulatory framework within the Africa that deals with trade-based laundering of illicit funds that may ensue from the working and implementation of the African Continental Free Trade Area (AfCFTA)

### **2.3.0: Why Laundering?**

Generally, entities that involve in laundering business do so in order to conceal the true source of the illicit funds to evade arrest, prosecution and possible conviction. It must be noted; however, they do so for multifaceted reasons. The following, *inter-alia*, are the reasons for business of laundering.

#### **2.3.1: Concealing the Illegal Proceeds of Crime(s)**

This reason has always been the cardinal and or primary objective of money laundering. This could be deduced from various definitions of money laundering as given by scholars or writers. The most encompassing of all definitions was the one given by US Custom Service wherein money laundering was defined as ‘the process whereby proceeds, reasonably believed to have been derived from criminal activity, are transported, transferred, transformed, converted, or intermingled with legitimate funds, for the purpose of concealing or disguising the true nature, source, disposition, movement or ownership of those proceeds’.<sup>69</sup>

For there be a successful laundering activity, there must be existence of predicate offence(s) such as fraud, prostitution, tax evasion, human trafficking, sex trade, extortion, embezzlement, and corruption to mention but a few. Therefore, money launderer’s primary purpose is to conceal the already committed offence and evade possible suspicion, arrest, prosecution and conviction.

#### **2.3.2: To make more Money**

Money launderers also engage in money laundering as a secondary objective for the purpose of establishing a constant financial flow for their already existing illegal activities or engaging the money in other nefarious activities to make more money. Money is the blood life of every crime. In the world of money laundering, evil is the root of money. The more

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<sup>69</sup> Richards (n 43) 44

evil engaged in, in the form of predicate offences, the more money the launderers make or have the likelihood of making money

For a criminal activity to be continuous and surviving, there must be a constant flow of cash. Thus, criminals ensure by making sure that the 'profit' obtained from an illegal activity is further invested in the same offence/illegality or similar illegality with sole aim of making more and bigger money. Thereby, money laundering is a business activity usually in large sums with the aim of making more profits illegally.

### **2.3.3: To live a flamboyant life.**

Desiring to live big has led many individuals to money laundering activity globally. Many individuals engage in crimes such as armed robbery, kidnapping, online fraud, embezzlement, corruption, drug trafficking, human trafficking to mention but a few for the purpose of creating an appearance or status of being wealthy and living a flamboyant life. The politically exposed individuals launder money mostly through corruption, misappropriation and embezzlement globally and in particular within the African continent. Corruption accounts for 5% of the US\$50 billion illicit funds that leaves Africa annually.<sup>70</sup> Although it has been argued that corruption is the main conduit through which Africa loses funds illegally, the 2010 report estimates that 35% of IFFs arise from criminal activities, with an additional 5% stemming from corruption and the theft of public funds.<sup>71</sup> In order to evade possible suspicion, arrest and prosecution, the entities that engage in money laundering do so involve in cross-border laundering processes. Several personalities have been prosecuted globally for corruption and other criminal activities that are related and or connected with money laundering.

In the course of this research, regulating trade-based illicit financial activities and its implications for the ratification of the Palermo Convention in Nigeria will be made with the purpose of identifying and examining the trade activities being used as conduits in laundering illicit funds and the extent to which the Nigerian Money Laundering (Prohibition) Act, 2011 has helped to curb trade-based laundering of illicit proceeds of crimes in Nigeria. The need for a regional legal and regulatory framework within AfCFTA that will regulate trade-based

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<sup>70</sup> <https://issafrica.org/iss-today/how-corruption-drives-illicit-financial-flows> (accessed on 26 October, 2019)

<sup>71</sup> <https://www.gegafrika.org/publications/66-illicit-financial-flows-estimating-trade-mispricing-and-trade-based-money-laundering-for-five-african-countries> (accessed on 26 October, 2019)

money laundering activities that may ensue from the working and implementation of the African Continental Free Trade Area (AfCFTA) will also be examined.

#### **2.4.0: Effects of money-laundering on the world economies**

The negative impacts of illicit financial flows in general, and money laundering in particular cannot be under-estimated globally. It may be of economic, social or of political nature.<sup>72</sup> It could also affect the financial sector by undermining the integrity, reputation, stability and liquidity of the sector.<sup>73</sup> It also has social effects such as corruption,<sup>74</sup> bribing,<sup>75</sup> increase in the crime rate,<sup>76</sup> and contamination of legal activities through illegal activities<sup>77</sup> and also notable political effects. The effects of money laundering on the world economies may be short and long term. These shall be examined under this heading.

#### **2.4.1: Increased crime and corruption.**

It is a known fact that where there is an incentive for doing an act or mission, there is a greater likelihood that such an act or omission would continue to increase in magnitude. In the same sense, money laundering increases crime and corruption in any economy it creeps in. This is predicated on the fact that money launderers see laundering activity as business activity with desire to make more money.<sup>78</sup> Therefore, when a country is known as a haven for money laundering activities, it will attract more people to crime and invariably will make such a country an abode for criminals. Laundering of illicit funds also encourages corruption in the sense that the launderers, with the intention of maintaining their dubious activities, will tend to bribe and corrupt the law enforcement agencies to prevent possible arrest<sup>79</sup>.

Laundering of money activities corrupt or has the greater likelihood of corrupting financial system and undermine governance of the banks. Once bank managers are exposed to and corrupted by large sums of money involved in money laundering, unethical behavior can be

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<sup>72</sup> BL Bartlett, *'The Negative Effects of Money Laundering on Economic Development'* (2002) 19; N Mackrel, 'Economic Consequences of Money Laundering', in A. Graycar and P. Grabosky (Eds), *'Money Laundering In The 21<sup>st</sup> Century: Risks And Countermeasures'*, (1997) 2; J walker, *'Estimates of the extent of Money Laundering in and through Australia'* (1995) 30; Unger (n 21) 109-110

<sup>73</sup>Unger (n 21) 110; Aldridge (n 1) 310

<sup>74</sup>V Tanzi, 'Macroeconomics of Money Laundering' in E.U Savona, *'Responding to Money Laundering: International Perspectives'*(1997) p. 92, 99; P.J Quirk, *'Money Laundering: Muddying the Macro economy'*(1997) 19; D.I. Keh, *'Economics Reform and Criminal Finance'*(1996)11; Aldridge (n 1) 308; Unger (n 21) 110; Bartlett (n 31) 18

<sup>75</sup> Aldridge (n 1) 308; Unger (n 21) 110

<sup>76</sup> Unger (n 21) 110

<sup>77</sup> Aldridge (n 1) 315; Unger (n 21) 110

<sup>78</sup> Turner (n 4) 4-5; see also: Lilley (n 18) 28

<sup>79</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf) (accessed 13 June 2019)

introduced into system to favour money laundering process.<sup>80</sup> In other words, it means that when bank managers who are expected to protect the integrity of their banks have been corrupted and exposed to proceeds of money laundering, it would be difficult, if not practically impossible for them to put in place regulations that would prevent or put to the barest minimum money laundering in their financial institutions. Financial professional gatekeepers such as bankers, accountants and lawyers are also not exempted.<sup>81</sup>

#### **2.4.2: Undermining the financial sector/markets**

Money laundering has detrimental effect on the operation of the markets.<sup>82</sup> Washing of dirty money affects the development of every financial sector. It is contaminated through the fraudulent dealings of the employees that work in it.<sup>83</sup> It also erodes away the confidence that customers have in the financial institutions.<sup>84</sup> A financial institution loses credibility and customer confidence when it is indicted in money laundering operations. This has multiplier effects on the entire financial system especially in countries where several of its financial institutions involve dirty money washing.<sup>85</sup>

Money laundering affects the stability of financial institutions such as banks, insurance companies and securities firms. The adverse effects of money laundering maybe reputational, operational and legal. Reputational risk deals with the public image of an organization. When the public image of a financial institution is tainted due to the alleged involvement in money laundering activities, members of the public, especially the customers of such institution will cease to have sound confidence in the institution.

It must be noted also that loss of high-quality borrowers reduce profitable loans and increases the risk of overall loan portfolio of a bank.

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<sup>80</sup>P Quirk 'Macroeconomic Implications of Money Laundering' IMF Working Paper 96/66 (1996) 24; see generally: SR Du Pasquier 'The Swiss Anti-Money Laundering Legislation' (1998) 13 *Journal of International Banking Law*, 160; G Stessens 'Money Laundering : A New International Law Enforcement Model' (2000) 100; R Cranston 'Principles of Banking Law' (1997) 75; G Smith 'Competition in the European Financial Services Industry: the Free Movement of Capital versus the Regulation of Money Laundering' (1992) 13 *University of Pennsylvania Journal of International Business Law*, 101 at 111.

<sup>81</sup> Aldridge (n 1) 34

<sup>82</sup> Aldridge (n 1) 31

<sup>83</sup> Unger (n 21) 145; Bartlett ( n 31)

<sup>84</sup> Unger (n 21) 145

<sup>85</sup> R McDonnell, 'An overview of the global money laundering problem, international anti-money laundering standards and the world of the financial action task force' paper delivered at the international conference on global drugs law, New Delhi, 28 February, 1997; Unger (n 21) 146

### 2.4.3: Unfair Competition

Money laundering encourages unfair competition. Illicit funds drives out good money or has the likelihood of driving out the dirty money. Money launderers ordinarily will not want to hold on to their illicit proceeds of crime to prevent being suspected, arrested and possible prosecution. They will do anything possible to dispose same by engaging the funds in legitimate businesses. Money launderers outbid potential honest buyers due to the large funds they have access to for the purchase of expensive products.<sup>86</sup> They drive out honest and legitimate competitors of the business because they have large sum of money to subsidise their products to a relatively low price from the illicit funds.<sup>87</sup>

### 2.4.4: Loss of tax revenue

Another notable effect of money laundering is the fact that it reduces the government revenue.<sup>88</sup> As it has been established *ab-initio*, that one of the predicate offences that entities that involve in laundering of illicit funds engage in is tax evasion.<sup>89</sup> Revenue that ordinarily would have accrued to the coffers of the government are siphoned away through tax evasion, thereby reducing the revenue generation of the government which indirectly affect the possibility of government in providing basic social amenities for the citizenry. It also makes the process of collection of taxes more difficult and cumbersome.<sup>90</sup> A government revenue deficit is at the centre of the economic difficulties of many countries, including Nigeria notwithstanding the efforts of the International Monetary Fund (IMF) to improve the tax collections capabilities of its members and the efforts of the Organisation for Economic Cooperation and Development (OECD) towards ensuring tax transparency in many jurisdictions.<sup>91</sup>

### 2.4.5: Reputational Risk to the country

The reputational damage to a country when it is known as a money laundering haven cannot be under-estimated. Once a financial institution in a country is indicted in money laundering operations, it will lose credibility and customer confidence.<sup>92</sup> This has multiplier effect on the entire financial system especially in cases where several financial institutions are involved in

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<sup>86</sup> J Walker, 'Estimates of the extent of Money Laundering in and through Australia' (1995) 33

<sup>87</sup> Unger (n 92) 132

<sup>88</sup> Unger (n 21) 137; [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf), p 23 (accessed 20 June 2019)

<sup>89</sup> Unger (n 21) 113

<sup>90</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf), p 23 (accessed 20 June 2019)

<sup>91</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf) (accessed on 20 June 2019)

<sup>92</sup> Unger (n 21) 145

the dirty money washing.<sup>93</sup> This also on the long run affects the confidence of the foreign investors in investing in the business activities of such a country. Legitimate businesses in such countries are affected. They are subjected to excessive ownership and control systems scrutiny. When a country is known for laundering illicit funds through trade activities, its international trading relationship will be affected globally. To build this confidence again, may require a long period of time. It is easier to destroy good a reputation than to build it.

According to the International Narcotics Control Strategy Report 2015,<sup>94</sup> most African countries are transshipment points in the world and notable haven for criminal financial activities like money laundering and other ancillary matters notwithstanding the fact that most of them have anti-money laundering domestic regulations and are signatories to the Palermo Convention. Internet fraudsters, corrupt officials and businessmen including criminal and terrorist organisations exploit these countries' location, inadequate enforcement, porous borders, poor socioeconomic conditions, weak laws and corruption to launder proceeds of crime.

Therefore, if there are no concerted efforts on the part of the governments of these named countries, it creates a bad reputational damage as African continent would continue to be seen as haven for nefarious activities. The possible way of curbing the menace of money laundering in general and in particular, trade-based laundering of illicit funds within Africa is to ensure that all government agencies that involve in combating money laundering work together as a team. There must be political will on the part of the governments. This also extends to the regional arrangement of the African Continental Free Trade Area (AfCFTA). There must be a strong and coherent law and or regulations that will address trade-related laundering that may ensue from the free trade. This could be done by putting in place a legal framework within the free trade area.

### **2.5.0: Conclusion**

Money laundering is the life blood for criminal activities and evil is the root of money laundering. The history of money laundering is as ancient as the world itself. It has experienced changes from primitive stage to the present modern and technological era of cyber-laundering. It was also discovered that several methods have been developed by the

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<sup>93</sup> R McDonell, 'An overview of the global money laundering problem, international anti-money laundering standards and the world of the financial action task force' paper delivered at the international conference on global drugs law, New Delhi, 28 February, 1997; Unger (n 21) 146

<sup>94</sup>The report is issued by the United States' Department of State, and Bureau for International Narcotics and Law enforcement affairs.

launderers in the money laundering process with their distinctive features and characteristics. Entities that engage in money laundering business do so for many reasons and intentions such as the need to make more money and hide the origin of the illicit funds. The effects of the laundering of illicit funds are multifaceted. The effects have the capacities of crippling any viable and stable economy in the world if not properly managed and or curbed

## Chapter 3

### **Trade-based money laundering activities in Nigeria**

#### **3.0.0: Introduction**

TBML threatens global economic systems. It navigates virtually every sector of the economy. The effects of money laundering generally and in particular, trade-based money laundering are evident nationally and internationally. They are both at the micro and macro levels. In this chapter, the legal status of the money laundering will be examined in order to determine whether or not it has legal backing and or known to the Nigerian jurisprudence.

#### **3.1.0: The legal status of trade-based money laundering**

The legality or otherwise of the crime of money laundering is a question of law and not of fact. This is predicated on the fact that several statutes both nationally and internationally have criminalised money laundering activity and therefore same known to the jurisprudence of most countries of the world.

In Nigeria, section 15 of the Nigerian Money laundering (Prohibition) Act, 2011 recognises money laundering as a criminal offence which upon conviction entitles the accused person so convicted to a term of imprisonment of not less than 7 years but not more than 14 years.<sup>95</sup> A body corporate that contravenes this section shall upon conviction be liable to a fine of not less than 100% of funds and properties acquired as a result of the offence committed and a withdrawal of the license of such a body corporate.<sup>96</sup>

Sub-section 6 of the same section states predicate offences that may constitute offences for money laundering in Nigeria. These are: corruption, human trafficking, racketeering, terrorism, environmental crimes, murder, grievous bodily injury, terrorist financing, smuggling of migrants, sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, bribery, fraud, kidnapping, counterfeiting, illicit arms trafficking, illicit trafficking in stolen goods, corruption, extortion, forgery, piracy, insider trading, piracy of products, hostage taking, robbery or theft, smuggling that relate to customs and excise duties and taxes, tax crimes that relate to direct and indirect taxes, and market manipulation or any other criminal act allowed under the Act or any other law in Nigeria.<sup>97</sup>

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<sup>95</sup> Section 15(2)(3) of the Money Laundering (Prohibition) Act, 2011

<sup>96</sup> Section 15(4) of the Money Laundering (Prohibition) Act, 2011

<sup>97</sup> Section 15(6) of the Money Laundering (Prohibition) Act, 2011



It must be stated at this juncture that the relationship or the relevancy these predicate offences to trade-based money laundering is the effect that those predicate offences are ways, mediums or avenues that illicit funds are made or gotten by entities that involve laundering activities using TBML mechanism. Therefore, there cannot be TBML without making a reference to all or any of the above-mentioned predicate offences. All or any of the above-stated offences are the foundation that holds the edifice of TBML. Without them, TBML cannot stand or else the narrative will be like building something on nothing which cannot stand.<sup>98</sup> It is settled that there cannot be a laundering of illicit funds without one or more predicate offences. It is the funds gotten from any of the predicate offences that entities which may be natural or artificial persons launder through trade-related laundering. Therefore, Nigerian Money Laundering (Prohibition) Act, 2011 that states these predicate offences is relevant to this research work because the Act ‘exposes’ and or ‘states’ offences through which entities that engage in TBML obtain their illicit funds.

Trade-based money laundering itself is also a criminal offence. It further relies on other predicate offences to exist in law. It serves as a medium by which the illicit funds obtained from criminal activities or offences mentioned above are moved from one jurisdiction to another to evade possible suspicion, arrest and prosecution. What constitute predicate offences is determined by each member country to the FATF’s Recommendations. Predicate offences to money laundering in Nigeria are as contained in the Money Laundering (Prohibition) Act, 2011.<sup>99</sup> It must be noted, however, that none of these offences are transactions-based offences which are directly related to the TBML, though they still remain as major offences from which illicit funds are gotten and which are laundered using TBML in Nigeria.

In terms of trade-based laundering of illicit funds through any of the above-mentioned predicate offences, it must be established by credible evidence that the accused person which

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<sup>98</sup> Lord Denning (MR) said in *McFoy v. UAC*(1961) 3 WLR Pt. 1404 at 1409

<sup>99</sup>These offences are: corruption, human trafficking, racketeering, terrorism, environmental crimes, murder, grievous bodily injury, terrorist financing, smuggling of migrants, sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, bribery, fraud, kidnapping, counterfeiting, illicit arms trafficking, illicit trafficking in stolen goods, corruption, extortion, forgery, piracy, insider trading, piracy of products, hostage taking, robbery or theft, smuggling that relate to customs and excise duties and taxes, tax crimes that relate to direct and indirect taxes, and market manipulation or any other criminal act allowed under the Act or any other law in Nigeria.

may be natural or a body corporate has intention to launder dirty money through the use of businesses transactions.<sup>100</sup>

Furthermore, for there to be an effective laundering of illicit funds through trade, especially through over-and under-invoicing, there must be a *consensus ad idem* (collusion) between two or more parties which maybe between an exporter and importer, both controlled by one money laundering network to carry out the illegal transaction.<sup>101</sup>

For instance, Company B (a foreign exporter) ships about 2 million cowries worth \$2 each, but invoices Company C (a colluding domestic importer) for 2 million cowries at a price of only \$1 each. Company C pays Company B for the goods by sending a wire transfer for \$ 2 million. Company C then sells the cowries on the open market for \$4 million and deposits the extra \$3 million (the difference between the invoiced price and the ‘fair market’ value into a bank account to be disbursed according to Company B’s instructions.<sup>102</sup>

According to article 6(1)(a)(i) of the Palermo Convention,<sup>103</sup> money laundering is defined as the conversion or transfer of property, knowing it is derived from a criminal offence, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of his actions; the concealment or disguising of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property knowing that it is derived from a criminal offence.

The position of the law under the Convention is apposite to what is required under the Nigerian Money Laundering (Prohibition) Act, 2011 in the sense that it must be proved beyond the reasonable doubt that the accused person has mental intent and knowledge that the property in question is a proceed of crime(s).<sup>104</sup> The courts had held in various international money laundering cases that intent and knowledge required may be inferred from the ‘objective factual circumstances’. That is, the intent and knowledge of the fact that the proceeds from crime(s) may be deduced from the surrounding circumstances of the

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<sup>100</sup> See generally section 15 of the Money Laundering (Prohibition) Act, 2011

<sup>101</sup> Duggan (n 10) 34

<sup>102</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering p. 4 <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundersing.html> accessed 1 August 2019

<sup>103</sup> United Nations Convention against Transnational Organised Crime, 2000 [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf) (accessed 1 August 2019)

<sup>104</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf), p.14-15 (accessed 20 June 2019)

case.<sup>105</sup> In the cases of Appeal Committees in *HKSAR v. Wong Ping Shui & Another*<sup>106</sup> and the court of Final Appeal in *Oei Henghky Wiryp v. HKSAR*,<sup>107</sup> the court held that the prosecution needs not to prove that the money is illicit money to secure conviction. It shows that a person will be liable if he or she fails to exercise reasonable level of due diligence to know whether or not the funds or property he or she is dealing with proceed from illicit funds.<sup>108</sup>

Therefore, it will be safe to conclude that trade-based laundering is illegal both globally and nationally and the predicate offences of which illicit funds are obtained are stated under the laws both internationally and nationally. Nigerian Money Laundering (Prohibition) Act, 2011 is a good example. The question begging for an answer therefore is: what are the forms of trade-based money laundering known to law?

### **3.2.0: Forms or types of trade-based money laundering in Nigeria**

The Nigerian Money Laundering (Prohibition) Act, 2011 does not explicitly provide for the forms and or types of trade-based money laundering. However, the FATF's best practices on trade-based money laundering state the forms and or types. It is actually mind-blowing and surprising that the need to incorporate the forms and or types was not considered during the amendment of the Act in 2011 bearing in mind that the FATF's Best practices on trade-based money laundering actually came out in 2006 and the legislature and the stakeholders involved in the campaign against money laundering do not deem it fit to lobby for same to be incorporated. This research work will consequently recommend the amendment of the Act to accommodate the forms in accordance with the FATF's soft law.

According to the best practices, there are (4) basic non-complex techniques of trade-based laundering of illicit funds and they are: over-and under-invoicing of goods and services, over-and under-invoicing of goods and services, over-and under-shipment of goods and services, falsification of the descriptions of goods and services and the use of front companies.<sup>109</sup> The complex technique of trade-based money laundering is the Black Market Peso Exchange. The above-mentioned shall be examined in seriatim.

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<sup>105</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf) .p.14-15 (accessed 20 June 2019)

<sup>106</sup> (2001) 4 HKCFAR 29

<sup>107</sup> (No 2) (2007) 10 HKCFAR 98,

<sup>108</sup> <http://csj.hkics.org.hk/site/2016/01/11/clarifying-hong-kongs-aml-regime/> (accessed 3 August 2019)

<sup>109</sup> Duggan (n 43) 34; see also: <https://www.fatf-gafi.org/documents/documents/bestpracticesontradebasedmoneylaundering.html> (accessed 3 August 2019)

### 3.2.1: Over and under-invoicing of goods and services

Over-and under-invoicing of goods and services involves misrepresentation of the prices of goods and services for the purpose of transferring value from an exporter to an importer.<sup>110</sup>

This is the oldest method of fraudulently transferring value in the international trading system.<sup>111</sup> Through under-invoicing of goods and services, an exporter company reduces the price of a good lower than the fair market price and transfers value to the colluding affiliate importing company. The importing company in return sells the goods and services so transferred at the fair market value, thereby making more money than what she initially paid for the goods and services sent/invoiced by the exporter. It was discovered that about \$53.1 billion is lost by the U.S government as tax revenue caused by the fraudulent transfer of prices of goods and service by colluding foreign exporters and local importers in 2001.<sup>112</sup>

It was also discovered that under and over-pricing of imports and exports allows for tax evasion, terrorist financing and money laundering.<sup>113</sup> The most common and popular pricing scheme is to under-value exports instead of over-pricing imports.<sup>114</sup>

The most common activity that constitutes trade-based money laundering in Nigeria is smuggling. Different categories of goods are smuggled into Nigeria through the neighbouring smaller countries like Benin. More than 1 million tons of rice amounting to about 20million 50kg rice bags have been estimated to have been smuggled in to the country in the first quarter of this year.<sup>115</sup>

The government of Nigeria in order to protect local rice farmers and producers has banned the importation of rice into the country. However, due to the inability of the local farmers to meet up with the teeming demands for rice consumption, individuals and companies resort to illegal smuggling of rice through the neighboring countries. This, creates a platform for fraudulent persons to launder their illicit funds through the misrepresentation of prices of rice bags and other goods cross-border upon engaging in nefarious activities and predicated offences such as peculiar to Nigeria such as bribery and corruption, kidnapping, embezzlement, fraud, drug trafficking, human trafficking, robbery or theft, murder and

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<sup>110</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering p. 4 <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html> (accessed 1 August 2019)

<sup>111</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering p. 4 <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html> (accessed 1 August 2019)

<sup>112</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf), p.76 (accessed 20 June 2019)

<sup>113</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf), p.77 (accessed 20 June 2019)

<sup>114</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf), p.77 (accessed 20 June 2019)

<sup>115</sup> <https://www.ft.com/content/c2636fca-86b0-11e9-97ea-05ac2431f453> (accessed 1 August 2019)

piracy.<sup>116</sup> Recently, the President ordered for the closure of the country's border on the 14<sup>th</sup> August this year.<sup>117</sup>

Laundering of illicit funds by under and over-pricing through smuggling of goods and services has been a lingering issue of concerns in Nigeria.<sup>118</sup> Under-invoicing may be as follows: Company E (a foreign exporter) ships about 2 billion cowries worth \$2 each, but invoices Company F (a colluding domestic importer) for 2 billion cowries at a price of only \$1 each. Company F pays Company E for the goods by sending a wire transfer for \$ 2 billion. Company F then sells the cowries on the open market for \$4 billion and deposits the extra \$3 billion (the difference between the invoiced price and the 'fair market' value into a bank account to be disbursed according to Company E's instructions.<sup>119</sup>

While over invoicing is when the Company G (a domestic exporter) ships about 1 billion cowries that worth \$2 each, but invoices Company H (a colluding foreign importer) for 1 billion cowries at a price of \$ 3each. Then Company H acting on the invoices so sent pays Company G for the goods through a wire transfer for \$ 3 billion. Company G upon the receipt of the \$ 3 billion pays \$2 billion to the suppliers and remit the remaining \$1 billion (the difference between the invoiced price and the actual fair market price) in the account to be agreed on by the two colluding parties.<sup>120</sup>

It must be noted, however, that for there to be an effective laundering of illicit funds through over and under invoicing, there must be a *consensus ad idem* (collusion) between two or more parties which maybe between an exporter and importer, both controlled by one money laundering network to carry out the illegal transaction.<sup>121</sup>

Furthermore, under and over-invoicing is possible in most cases because most African countries only set rules and restrictions on what could be imported into their respective countries by imposing tariff duties, customs duties and other forms of tariff barriers because the revenue made therefrom serves as the major source of revenue for most African countries.

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<sup>116</sup> [https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20\\_combating%20the%20financing%20of%20terrorism%20\\_manual%20\(2\).pdf](https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20_combating%20the%20financing%20of%20terrorism%20_manual%20(2).pdf) (accessed 9 August 2019)

<sup>117</sup> <https://www.cfr.org/blog/buhari-orders-land-borders-closed-long-running-effort-boost-rice-production> (accessed on 26 October, 2019)

<sup>118</sup> <https://www.ft.com/content/c2636fca-86b0-11e9-97ea-05ac2431f453> (accessed 1 August 2019)

<sup>119</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering p.4 <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundersing.html> (accessed 1 August 2019)

<sup>120</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering p.4 <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundersing.html> (accessed 1 August 2019)

<sup>121</sup> Duggan (n 10) 34

Therefore, there is less attention to what happen at the exports level. Criminals exploit this neglect in perpetuating laundering.<sup>122</sup>

### **3.2.2: Multiple invoicing of goods and services**

This is another basic method used to launder illicit fund through trade activities. This simply means the use of more than one invoice for the same trade transaction.<sup>123</sup> A launderer through TBML can easily justify this multiple of payments for the same goods and services to evade suspicion. It must be noted, however, that the launderers may have legitimate excuses for such transactions such as amendment of payment terms, the payment of late fees or corrections to previous payment instructions.<sup>124</sup> The launderer also needs not to misrepresent the price of the good and service on the invoice.<sup>125</sup>

### **3.2.3: Over and under-shipment of goods and services**

This involves under-statement or over-statement of the quantity of goods shipped or services being supplied in addition to the manipulation of the prices of goods and services of both the imports and the exports.<sup>126</sup> Using this technique of trade-based laundering of illicit funds, a laundering exporter may not even export any goods or supply any services to the importer, but agree with the importer to furnish all necessary documents for the shipments of the goods are processed.<sup>127</sup> This form of technique is also known as ‘phantom shipment’

### **3.2.4: Falsification of the descriptions of goods and services.**

This is a form of trade related laundering of illicit funds that deals with the misrepresentation of the quality of goods and services. An exporter who desires to transfer value using this technique may do so by depicting and shipping a less expensive item as an expensive one or

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<sup>122</sup> [http://files.acams.org/pdfs/English\\_Study\\_Guide/Chapter\\_2.pdf](http://files.acams.org/pdfs/English_Study_Guide/Chapter_2.pdf) p.77 (accessed 20 June 2019); see also: Financial Action Task Force (FATF) Typologies-Trade-based money laundering <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html> p. 5 (accessed 4 August 2019)

<sup>123</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html> p. 5 (accessed 4 August 2019)

<sup>124</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html> p. 5 (accessed 4 August 2019)

<sup>125</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html> p. 5 (accessed 4 August 2019)

<sup>126</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html> p. 5 (accessed 4 August 2019)

<sup>127</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundering.html> p. 5 (accessed 4 August 2019)

can even ship a different item entirely.<sup>128</sup> There is therefore discrepancy in what is shown on the customs papers and what is shipped in the real sense. It must be re-iterated that this form of technique deals with misrepresentation that relates to the quality of goods shipped and services delivered.

This may be illustrated as follows: Company A (a domestic exporter) ships 1 million gold chains worth \$2 each to Company B (a colluding foreign importer), but on the paper invoices Company B for 1 million silver chains worth \$1 each. Company B pays Company A for the supplied goods for \$ 1 million. Company B then proceed to sell the gold chains at the fair market value for \$2 million and sends the balance of \$ 1 million to Company A's instructions.<sup>129</sup>

### **3.2.5: Black-Market Peso Exchange**

The black-market peso exchange system is a complex trade-based laundering technique. The black-market peso exchange system operates in Columbia in which a peso exchange broker in Columbia deposits pesos in Columbian accounts of drug dealers doing businesses in the United States. Then, the pesos are exchanged for dollars that are usually tainted. The exchanged tainted dollars are deposited in US accounts through collusion of US based operatives who belong to the same money laundering network. US goods are then imported into Columbia by Columbia importers with the use of the tainted dollars. The goods are further smuggled into Columbia. It is estimated that Mexican drug cartel through the use of trade-based laundering and other methods of laundering launders about \$40 billion annually.<sup>130</sup>

### **3.3.0: Methods of money laundering**

Generally, there are three (3) methods or processes of money laundering globally and they are: placement, layering, and integration.

#### **3.3.1: Placement**

This kick starts the laundering process. A launderer reduces the funds into a less suspicious and more portable unit. It is the physical movement of the funds by depositing same in the

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<sup>128</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundrying.html> p. 6 (accessed 4 August 2019)

<sup>129</sup> Financial Action Task Force (FATF) Typologies-Trade-based money laundering <https://www.fatf-gafi.org/publications/methodsandtrends/documents/trade-basedmoneylaundrying.html> p. 6 (accessed 4 August 2019)

<sup>130</sup> Lilley(n 18) 30

bank either through structuring<sup>131</sup> and or smurfing, smuggling or the use of negotiable instruments like money orders or traveler's check.<sup>132</sup> It is usually seen as the most difficult stage of laundering because it involves movement of large currency and most times described as the 'choke point'.<sup>133</sup> The methods adopted to place illicit funds are multifaceted such as cash into an account, using front corporations like jewelry stores or check-cashing businesses and imports/exports companies.<sup>134</sup> The method to be used depends on the organization's level of sophistication and its geographical considerations.<sup>135</sup> It simply means the process through which illicit funds move from launderers to a financial institution.<sup>136</sup>

### **3.3.2: Layering**

Layering involves engaging in multitude of financial transactions with a view to creating a smoke-screen of legitimate financial activity. At this stage, a launderer engages the already layered funds in making transactions and legitimate businesses deals such as the purchase of goods and services, properties, investments to mention but a few. In the context of trade-based laundering, an exporter that intends to launder his illicit funds will engage in the layering of the funds by purchasing high value products or legitimate products by using wire transfer from numerous accounts in order to conceal the true origins of the funds.<sup>137</sup> A successful layering operation is achieved by ensuring cross borders transactions-thereby creating a complexity for any possible suspicion and detection by the law enforcement agencies.<sup>138</sup> It could also be said to be the process whereby a launderer distances him or herself from the dirty money.<sup>139</sup> As a rule, layering should involve at least two jurisdictions, if not three. Layering creates a mouse and cat scenario between a launderer and the law enforcement agency. A launderer continues moving his illicit funds from one jurisdiction to another and the law enforcement agency or investigation body also continues chasing with a viewing to identifying and forfeiting the proceeds.<sup>140</sup>

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<sup>131</sup> A person structures a transaction when he breaks down a currency that exceeds \$10, 000 into smaller units and below \$10, 000, to evade the reporting requirements. This mode was used by a grandma in Florida who laundered \$25 million (\$25, 000,000) using California banks.

<sup>132</sup> Sullivan (n 42) 17

<sup>133</sup> Richards (n 43) 48

<sup>134</sup> Richards (n 43) 48

<sup>135</sup> Richards (n 43) 48: see also Sullivan (n 42) 8

<sup>136</sup> Sullivan (n 42) 8

<sup>137</sup> Richards (n 43) 49

<sup>138</sup> Richards (n 43) 49

<sup>139</sup> Sullivan (n 42) 8

<sup>140</sup> Sullivan (n 42) 10



### **3.3.3: Integration**

This represents final stage of the laundering process wherein the illicit proceeds already ‘placed’ and ‘laid’ are incorporated back the legitimate world of finances by several forms of instruments and investments like bill of lading, bonds, bank notes and guarantees, luxuries living and securities to mention but a few.<sup>141</sup>

### **3.4.0: Regulatory Agencies or Institutions on money laundering activities in Nigeria**

There are number of regulatory agencies and or institutions on money laundering activities in Nigeria. Under this heading, the regulatory agencies and or institutions shall be examined in order to identify the roles they all play in combating money laundering activities in Nigeria in general terms and in particular as it relates to trade-based laundering of illicit funds.

#### **3.4.1: Economic and Financial Crimes Commission**

The Commission was established by the Economic and Financial Crimes Commission (Establishment) Act in 2003. It was charged with the responsibility of staging fight against financial and economic crimes.<sup>142</sup> It was formed during the tenure of former President Olusegun Obasanjo when Nigeria was known and identified as one of the 23 countries popular internationally for cases of money laundering, corruption and other ancillary offences.<sup>143</sup> The Commission has power to conduct prevention, investigation and prosecution of economic and financial crimes like human trafficking, tax evasion, money laundering, foreign exchange malpractices, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, illegal mining, child labour illegal oil bunkering, counterfeiting of currency, theft of intellectual property and privacy, open market abuse, dumping of toxic wastes and prohibited goods as provided under the enabling law.

It hosts the Nigerian Financial Intelligence Unit (NFIU), which analyses and disseminates suspicious transactions reports (STRs) to all agencies of the government and other Financial Intelligence Units all over the world.<sup>144</sup>

The Commission also works with the Special Control Unit against Money Laundering (SCUML) which was established in 2005 in line with the directives of the Financial Action

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<sup>141</sup> Richards (n 43) 50; see also: Sullivan (n 42) 10

<sup>142</sup> <https://efccnigeria.org/efcc/about-efcc/the-establishment-act> (accessed 6 August 2019)

<sup>143</sup> EFCC Act, 2004

<sup>144</sup> L Raimi, I.B Suara & A.O. Fadipe, ‘Role of Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices & Other Related Offences Commission (ICPC) at Ensuring Accountability and Corporate Governance in Nigeria (20013) 3 *Journal of Business Administration and Education* at 111-112 <https://pdfs.semanticscholar.org/bcd5/67e40419e2654132f17d184a723cbb928563.pdf> (accessed 6 August 2019)

Task Force (FATF). The Unit monitors the activities of the designated non-financial institutions (DNFI), being the targets of money laundering activities and in accordance with Money Laundering (Prohibition) Act, 2011.<sup>145</sup>

Recently, the Nigerian Financial Intelligent Unit (NFIU) was separated from the Commission in 2018 to ensure effectiveness and efficiency in the performance of its statutory duties.

The Commission is relevant to this research in the sense that the Nigerian Money Laundering Act, 2011 empowers the Commission to prosecute matters relating to money laundering in Nigeria, trade-based money laundering activities inclusive.

### **3.4.2: Central Bank of Nigeria**

Central Bank of Nigeria also plays important role in the fight against money laundering activities in Nigeria through its Anti-money laundering/Combating the financing of Terrorism Policy and Procedure Manual. This manual sets out standards for the employees of the Bank to ensure compliance with the AML/CFT laws and or regulations. The objective of the manual is to set out policies and procedures to guide the employee and the Bank to conduct business in accordance with the anti-money laundering laws, regulations and standards.<sup>146</sup> Though this research work is not targeted to unraveling laundering activities in the banking sector, the importance of banks and the CBN AML/CFT policy manual as it relates TBML cannot be under-estimated. In money laundering process, banks are always the first point of call used as mediums in making payment for goods and services. Entities that engage in laundering using TBML use banks for money transfers, purchases and transactions. The Banks have the duty to ensure that any transfers in cash or securities exceeding US \$10, 000 are reported to the Central Bank of Nigeria, Securities and Exchange Commission and the EFCC.<sup>147</sup> Through this, Banks play pivotal role in the success of the campaign against money laundering generally, and TBML in particular.

The Bank conducts periodically risk assessments to ensure that the Bank is not used as channel for laundering money and terrorist financing. The assessment borders on the

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<sup>145</sup> <https://efccnigeria.org/efcc/about-efcc/the-establishment-act> (accessed 6 August 2019)

<sup>146</sup> [https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20\\_combating%20the%20financing%20of%20terrorism%20\\_manual%20\(2\).pdf](https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20_combating%20the%20financing%20of%20terrorism%20_manual%20(2).pdf) (accessed 9 August 2019)

<sup>147</sup> Section 2 (1) of the Money Laundering (Prohibition) Act, 2011

products, customers, geographical locations and delivery channels. The Bank adopts risk-based approaches that suit money laundering and terrorist financing.<sup>148</sup>

The manual further seeks to establish procedures and minimum standards in ensuring that the Bank and or its employee are not used as instruments for laundering illicit funds in and outside the country or engage in terrorism financing and other financial crimes.<sup>149</sup> The standards and procedures set by the manual is divided into three (3) broad areas such as conduct of financial services, dealing with the third parties beneficiaries and employees conducts.

It must be noted also that the manual is guided by the provisions of the Money Laundering (Prohibition) Act, 2011 and other enabling laws and regulations which are relevant to this research.

The AML/CFT compliance function focuses on the internal structures and reporting of the Bank to ensure compliance with the applicable laws, regulations and code of conduct and to ensure that the laws and regulations on money laundering are not breach by the Bank.<sup>150</sup>

### **3.4.3: Nigerian Drug Law Enforcement Agency**

Nigerian Drug Law Enforcement Agency is a federal agency charged with the responsibility of eliminating the growing, processing, manufacturing, selling, exporting, and trafficking of hard drugs.<sup>151</sup> The Agency performs the following responsibilities:

- (a) the enforcement and the due administration of the provisions of this Act;
- (b) the coordination of all drug laws and enforcement functions conferred on any person or authority, including Ministers in the Government of the Federation, by any such laws;
- (c) adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from drug-related offences or property whose value corresponds to such proceeds;

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<sup>148</sup> [https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20\\_combating%20the%20financing%20of%20terrorism%20\\_manual%20\(2\).pdf](https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20_combating%20the%20financing%20of%20terrorism%20_manual%20(2).pdf) (accessed 9 August 2019)

<sup>149</sup> [https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20\\_combating%20the%20financing%20of%20terrorism%20\\_manual%20\(2\).pdf](https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20_combating%20the%20financing%20of%20terrorism%20_manual%20(2).pdf) (accessed 9 August 2019)

<sup>150</sup> [https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20\\_combating%20the%20financing%20of%20terrorism%20\\_manual%20\(2\).pdf](https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20_combating%20the%20financing%20of%20terrorism%20_manual%20(2).pdf) (accessed on 9 August 2019)

<sup>151</sup> <https://www.ndlea.gov.ng/about-ndlea/history-of-ndlea/> (accessed on 26 October, 2019)

- (d) adoption of measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand for narcotic drugs and psychotropic substances with a view to reducing human suffering and eliminating financial incentives for illicit traffic in narcotic drugs and psychotropic substances;
- (e) taking such measures which might require the taking of reasonable precautions to prevent the use of ordinary means of transport for illicit traffic in narcotic drugs including making special arrangements with transport owners;
- (f) adoption of measures which shall include coordinated preventive and repressive action, introduction and maintenance of investigative and control techniques;
- (g) adoption of measures to increase the effectiveness of eradication efforts;
- (h) the facilitation of rapid exchange of scientific and technical information and the conduct of research geared towards eradication of illicit use of narcotic drugs and psychotropic substances;
- (i) taking measures for the early destruction or disposal of the narcotic drugs and psychotropic substances which have been seized, confiscated or forfeited;
- (j) facilitation or encouragement of the presence or availability of persons, including persons in custody who consent to assist in investigations or participate in proceedings relating to narcotic drugs and psychotropic substances;
- (k) enhancing the effectiveness of law enforcement to suppress illicit traffic in narcotic drugs and psychotropic substances;
- (l) establishing, maintaining and securing communication to facilitate the rapid exchange of information concerning offences and improving international cooperation in the suppression of illicit traffic in narcotic drugs and psychotropic substance by road, sea and air;
- (m) reinforcing and supplementing the measures provided in the Convention on Narcotic Drugs 1961, as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1989 as adopted by the Nigerian domestic law, in

order to counter the magnitude and extent of illicit traffic in narcotic drugs and psychotropic substances and its grave consequences;

- (n) taking such measures that may ensure the elimination and prevention of the root causes of the problems of narcotic drugs and psychotropic substances;
- (o) strengthening and enhancing effective legal means for international cooperation in criminal matters for suppressing the international activities of illicit traffic in narcotic drugs and psychotropic substances;
- (p) collaborating with government bodies both within and outside Nigeria carrying on functions wholly or in part analogous to those of the Agency concerning, amongst others-
  - (i) the identities, whereabouts and activities of persons suspected of being involved in offences mentioned in this Act;
  - (ii) the movement of proceeds or property derived from the commission of such offences;
  - (iii) the movement of narcotic drugs and psychotropic substances specified in the Second Schedule to this Act, and instrumentalities used or intended for use in the commission of such offences;
  - (iv) the exchange of personnel and other experts;
  - (v) the establishment and maintenance of a system for monitoring international dealings in narcotic drugs and psychotropic substances in order to identify suspicious transactions and persons engaged in them;
- (q) taking charge, supervising, controlling, coordinating all the responsibilities, functions and activities relating to arrest, investigation and prosecution of all offences connected with or relating to illicit traffic in narcotic drugs and psychotropic substances, notwithstanding any law to the contrary; and
- (r) strengthening co-operation with the office of the Attorney-General of the Federation, the police force, customs agencies, immigration agencies, welfare officials, health officials and other law enforcement agencies in the eradication of illicit traffic in narcotic drugs and psychotropic substances.

Drug trafficking and TBML are closely related in the sense that drug trafficking is one of the predicate offences under section 15(6) of Nigerian Money Laundering (Prohibition) Act, 2011 from which entities that engage in laundering of illicit funds using TBML obtain their funds from.

#### **3.4.4: Independent Corrupt Practices and other related Offences Commission.**

The Commission was established in 2000 by then former President Olusegun Obasanjo. The Commission has the following objectives:

- (a) To receive all form of complaints from the general public on the incidences of allegations of corrupt practices, investigate same and in appropriate cases, spearhead the prosecution of the culprits.
- (b) To ensure that the conducts of public bodies do not aid corrupt practices and if any corrupt practices is identified, it should ensure that same is reviewed.
- (c) To create a platform wherein public officers, agencies or parastatals may be advised and assisted in eliminating or minimizing corruption within their space.
- (d) To place advisory role on the heads of public bodies as it relates to any advancements, developments, or changes in trends that are necessary for the effective discharge of the public bodies in order to reduce possible likelihood of bribery, corruption and related offences.
- (e) To better inform the members of the public of the dangers of bribery, corruption and related offences and
- (f) To ensure and foster public support in the fight against corruption.<sup>152</sup>

The Commission performs the following functions:

- (a) Where reasonable grounds exist for suspecting that any person has conspire to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting Corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the Commission of such offence and, in appropriate cases, to prosecute the offenders;

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<sup>152</sup> Section 6(a-f) of the ICPC Act, 2000

- (b) To examine the practices, system and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them,
- (c) To instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal;
- (d) To advise heads of the public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the commission thinks fit to reduce the likelihood or incidence of bribery, corruption and related offences;
- (e) To educate the public on and against bribery, Corruption and related offences; and
- (f) To enlist and foster public support in combating Corruption.

The Commission is relevant to this research on the ground that offences of bribery and corruption constitute predicate offences that have been identified globally and in Nigeria in particular through which entities that engage in TBML obtain illicit funds.<sup>153</sup>

### **3.5.0: Legal/Legislative Frameworks on money laundering activities in Nigeria.**

#### **3.5.1: Money Laundering (Prohibition) Act, 2011**

Money Laundering (Prohibition Act), 2011 is the legislation that criminalises money laundering, terrorist financing and other ancillary matters in Nigeria. It repealed Money Laundering (Prohibition) Act, 2004. The Act prohibits of money laundering or any illegal act and terrorist financing. The Act also states appropriate penalties and the scope of the supervisory and regulatory authorities charged with the responsibilities of implementing anti-money laundering in Nigeria was expanded. It provides inter-alia for the wider customer identification system and anti-money laundering obligations for the financial and non-financial institutions according to FATF.<sup>154</sup>

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<sup>153</sup> [https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20combating%20the%20financing%20of%20terrorism%20manual%20\(2\).pdf](https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20combating%20the%20financing%20of%20terrorism%20manual%20(2).pdf) (accessed 8 August 2019)

<sup>154</sup> UK Ogbodo and EG.Mieseigha, 'Economic Implications of Money Laundering in Nigeria' (Vol 3, No 4, 2013) 173-176.

According to section 1(a) & (b) of the Act,<sup>155</sup> no person or body corporate shall cause to be made or accepted cash payments of a sum that exceeds N5,000,000(Five Million Naira) or its equivalent in the circumstance of an individual, or N10,000,000 (Ten Million Naira) or its equivalent when a body corporate except through a licensed financial institution. Furthermore, any foreign transfer in cash or securities made by an individual or body corporate which exceeds US\$10,000 shall as matter of law be reported to the Securities and Exchange Commission (SEC), Central Bank of Nigeria (CBN), and the Economic and Financial Crimes Commission (EFCC). The time period to do this is seven (7) days within which the transfer was made.<sup>156</sup> The report shall contain the personal and contact details of the sender and receiver of the funds or securities.<sup>157</sup>

To curb trade related laundering of illicit funds, any transfer of cash or of negotiable instrument that exceeds US \$10,000 or its equivalent by individuals in or out of Nigeria must as matter of law be declared to the Nigerian Custom Services which is also required under the Act to report back to the Central Bank of Nigeria and the Economic and Financial Crimes Commission (EFCC).<sup>158</sup> This is an innovative provision in the Act with a view to preventing laundering of illegal funds through trade.

It must be noted that failure to make the report to Nigeria Custom Service in accordance with Section 12 of the Foreign Exchange (Monitoring and Miscellaneous) Act is a crime punishable upon conviction to the penalty of a forfeiture not less than 25% of the funds or negotiable instrument not declared or to a term of imprisonment of two (2) years or more or both the monetary penalty and the term of imprisonment.<sup>159</sup>

It also provides for Know Your Customers Principle. This is a principle geared towards knowing the true identity of a prospective customer. This is done by obtaining information about their personal details. The Act mandates financial institutions and those that are not financial institutions to verify the identity of their customers and provide updates on the said customers and their accounts in order to identify customers with illegitimate and fraudulent transactions.<sup>160</sup>

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<sup>155</sup> Money Laundering (Prohibition) Act, 2011

<sup>156</sup> Section 2 (1) of the Act

<sup>157</sup> Section 2(2) of the Act

<sup>158</sup> Section 2 (3) & (4) of the Act

<sup>159</sup> Section 2 (5) of the Act

<sup>160</sup> Section 3 of the Act



The Act also provides for surveillance of suspicious transactions that cannot be justified due to its complexity or that appears to be conduits for laundering of illicit funds. The Act mandates financial institutions and those that are not financial institutions to take necessary measures in preventing laundering or any criminal activity.<sup>161</sup>

Section 2(3) & (4) of the Act is very instructive to this research in the sense that in matters that relate to trade transactions and to curb trade related laundering of illicit funds, any transfer of cash or of negotiable instrument that exceeds US \$10,000 or its equivalent by individuals in or out of Nigeria must as matter of law be declared to the Nigerian Custom Services which is also required under the Act to report back to the Central Bank of Nigeria and the Economic and Financial Crimes Commission (EFCC).<sup>162</sup> This is an innovative provision in the Act with the intent of preventing laundering of illegal funds through trade.

The Act also criminalises money laundering in Nigeria. It states the predicate offences from which illicit funds are made that entities that engage in laundering of illicit funds using TBML method.<sup>163</sup>

### **3.5.2: Economic and Financial Crimes Commission (Establishment) Act, 2002**

This Act establishes Economic and Financial Crimes Commission in 2002 by an Act of the National Assembly which was amended in 2004. Section 46 of the Establishment Act<sup>164</sup> gives the Commission power to conduct prevention, investigation and prosecution of economic and financial crimes like human trafficking, tax evasion, money laundering, foreign exchange malpractices, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, illegal mining, child labour illegal oil bunkering, counterfeiting of currency, theft of intellectual property and privacy, open market abuse, dumping of toxic wastes and prohibited goods.

It also serves as the host to the Nigerian Financial Intelligence Unit (NFIU), which analyses and disseminates suspicious transactions reports (STRs) to all agencies of the government and other Financial Intelligence Units all over the world.<sup>165</sup> The Commission has the power

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<sup>161</sup> Section 6 of the Act

<sup>162</sup> Section 2 (3) & (4) of the Act

<sup>163</sup> Section 15(6) of the Act

<sup>164</sup> EFCC Act, 2004

<sup>165</sup> L Raimi, I.B Suara & A.O. Fadipe, 'Role of Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practices & Other Related Offences Commission (ICPC) at Ensuring Accountability and Corporate Governance in Nigeria (20013) 3 *Journal of Business Administration and Education* at 111-112 <https://pdfs.semanticscholar.org/bcd5/67e40419e2654132f17d184a723cbb928563.pdf> (accessed 6 August 2019)

to ensure compliance with the provisions of other laws and or regulations that criminalise money laundering and other ancillary offences.<sup>166</sup>

This Act is crucial to the campaign against money laundering in Nigeria. It confers prosecutorial powers on the EFCC on matters relating to money laundering and other ancillary matters.

Most international trade transactions are done through foreigner transfers in cash using the US Dollars as currency. The Act mandating that any foreign transfer in cash or securities made by an individual or body corporate which exceeds US\$10,000 be reported to the Securities and Exchange Commission (SEC), Central Bank of Nigeria (CBN), and the Economic and Financial Crimes Commission (EFCC). The time period to do this is seven (7) days within which the transfer was made.<sup>167</sup> The report shall contain the personal and contact details of the sender and receiver of the funds or securities.<sup>168</sup>

This is a good step in the right direction in curbing the menace of laundering of illicit funds through trade-related activities.<sup>169</sup>

### **3.5.3: Nigerian Drug Law Enforcement Agency Act**

It establishes National Drug Law Enforcement Agency (NDLEA) in accordance with Degree Number 48 of 1989 now known as Act of Parliament. The Act established NDLEA which is identified as the oldest of all the government agencies that tackle incidences of drug trafficking, money laundering through drug trafficking and other ancillary matters.<sup>170</sup>

According to Section 11 of the Act,<sup>171</sup> it is an offence for any person:

- (a) To import, manufacture, produce, process, plant or grow drugs popularly known as cocaine, LSD, heroine or any other similar drugs and shall be liable upon conviction to imprisonment for life or

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<sup>166</sup> Banks and other Financial Institutions Act 1991; Economic and Financial Crimes Commission Establishment Act (2004); the Advance Fee Fraud and Other Fraud Related Offences Act 1995; the Money Laundering (Prohibition) Act, 2011( as amended); the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994; and Miscellaneous Offences Act.

<sup>167</sup> Section 2 (1) of the Act

<sup>168</sup> Section 2(2) of the Act

<sup>169</sup> Section 2 (1) of the Act

<sup>170</sup> <https://www.ndlea.gov.ng/about-ndlea/history-of-ndlea/> (accessed on 8 August 2019)

<sup>171</sup> National Drugs Law Enforcement Agency Decree No. 48 of 1989

- (b) To export, transport or otherwise traffic in the drugs popularly known as cocaine, LSD, heroine or any other similar drugs and shall be liable upon conviction to imprisonment for life or.
- (c) To sell, buy, expose or offers for sale or otherwise deal in or with the drugs popularly known as known as cocaine, LSD, heroine or any other similar drugs shall be liable upon conviction to the sentence for life imprisonment.
- (d) To knowingly possess or use the drugs popularly known as cocaine, LSD, heroine or any other similar drugs by smoking, inhaling or injecting the drugs and shall be liable upon conviction to a term of imprisonment not less than fifteen years but not exceeding 25 years.

Drug trafficking and TBML cannot be separated in the sense that drug trafficking is one of the predicate offences under section 15(6) of Nigerian Money Laundering (Prohibition) Act, 2011 from which entities that engage in laundering of illicit funds using TBML obtain their funds from. It is even on record that drug trafficking accounts for the highest proceeds of crime globally.<sup>172</sup> Of which some Nigeria have been important key actors in the drug smuggling business since 1970s till date as key suppliers of ‘Mule’ (human drug traffickers) for illegal movement of drugs from South Asia to the United States.<sup>173</sup>

#### **3.5.4: Independent Corrupt Practices and Other Related Offences Act, 2000**

This Act establishes the Independent Corrupt Practices and other related offences Commission to address issues of corruption and other related offences that have bedeviled the country.<sup>174</sup> Section 8 (1) provides that any person who corruptly –

- (a) asks for, receives or obtains any property or benefit of any kind for himself or for any other person; or
- (b) agrees or attempts to receive or obtain any property or
- (c) benefits of any kind for himself or for any other person, on account of-
  - (i) anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself in the discharge of his official duties or in relation to

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<sup>172</sup> <https://pdfs.semanticscholar.org/50f9/1a45f21521e1429f9df97e4f201c18624052.pdf> (accessed on 8 August 2019)

<sup>173</sup> Udama(n 147) 356

<sup>174</sup> Fadipe (n 143) 113

any matter connected with the functions, affairs or business of a Government department, or corporate body or other organisation or institution in which he is serving as an official; or

(ii) anything to be afterwards done or omitted to be done or favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of Official corruption and is liable to imprisonment for seven (7) years.

Section 9 (1) states that any person who corruptly-

- (a) gives, confers or procures any property or benefit of any kind to, on or for a public officer or to, on or for any other person; or
- (b) promises or offers to give, confers, procure or attempt to procure any property or benefit of any kind to, on or for a public officer or any other person, on account of any such act, omission, favour or disfavour to be done or shown by the public officer is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven (7) years.

Section 10 provides that any person who

- (a) asks for, receives or obtains property or benefits of any kind for himself or any other person; or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person; on account of-
  - (i) anything already done or omitted to be done, or any favour or disfavour already shown to any person, by a public officer in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organisation or institution in which the public officer is serving as such; or
  - (ii) anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by a public officer in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of official corruption and shall on conviction be liable to imprisonment for seven (7) years.

Section 17(1) provides that any person who corruptly:

- (a) accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing, forbearing to do, or for having done, or forborne to do, any act or thing;
- (b) gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his principal's affairs or business;
- (c) knowingly gives to any agent, or being an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false or erroneous or defective in any material particular, and which, to his knowledge, is intended to mislead his principal or any other person, is guilty of an offence and shall on conviction be liable to five (5) years imprisonment.

Section 18 provides that any person who offers to any public officer, or being a public officer solicits, counsels or accepts any gratification as an inducement or a reward for-

- (a) voting or abstaining from voting at any meeting of the public body in favour or against any measure, resolution or question submitted to the public body;
- (b) performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of any official act;
- (c) aiding in procuring or preventing the passing of any vote or the granting of any contract, award, recognition or advantage in favour of any person; or
- (d) showing or forbearing to show any favour or disfavour in his capacity as such officer, shall, notwithstanding that the officer did not have the power, right or opportunity so to do, or that the inducement or reward was not in relation to the affairs of the public body, be guilty of an offence and shall on conviction be liable to five (5) years imprisonment with hard labour.

The Act and TBML are closely related and relevant to this research on the ground that offences of bribery and corruption constitute predicate offences that have been identified

globally and in Nigeria in particular through which entities that engage in TBML obtain illicit funds.<sup>175</sup>

### **3.6.0: International/regional legal and regulatory frameworks on money laundering applicable in Nigeria**

Money laundering activity is a global issue of concern that has affected, and still doing havoc to the world economies daily. It is estimated that money laundered annually accounts for about 2 and 5 percent of the global Gross Domestic Product amounting to about \$1.6 to \$4 trillion.<sup>176</sup> It must be noted, however, that notwithstanding the fact that cases of money laundering are increasing daily at the global terrain, there are existing laws and regulations that criminalise same. The question that has been begging for a critical answer is: what serves as a clog in the wheel of the campaign against money laundering and other ancillary offences in the light of the existence of international laws and or regulations that criminalise same globally in general, and in particular in Nigeria despite signing and ratifying them?

#### **3.6.1: United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (Vienna Convention)**

United Nations Convention against illicit Traffic in Narcotics drugs and Psychotropic Substances also referred to as the Vienna Convention. This Convention is different and separate from the Vienna Convention on the law of treaties also called Vienna Convention. It is an international treaty that criminalise drug trafficking and money laundering. The Convention is considered as a step in the right direction in the development of concerted efforts internationally against money laundering.<sup>177</sup> The provisions of the Convention must be complied in order to be certified to produce and transit drugs.

Article 3 of the Convention<sup>178</sup> in particular defines the offence of money laundering as:

the conversion or transfer of property, knowing that such property is derived from any offence or offenses established in accordance with sub-paragraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising

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<sup>175</sup> [https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20combating%20the%20financing%20of%20terrorism%20manual%20\(2\).pdf](https://www.cbn.gov.ng/out/2019/ccd/cbn%20anti-money%20laundering%20combating%20the%20financing%20of%20terrorism%20manual%20(2).pdf) (accessed 8 August 2019)

<sup>176</sup> <https://www.imf.org/external/pubs/ft/fandd/2018/12/imf-anti-money-laundering-and-economic-stability-straight.htm> (accessed 9 August 2019)

<sup>177</sup> Richards (n 43) 224

<sup>178</sup> United Nations Convention against Illicit Traffic in Narcotics and Psychotropic Substances

the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(b)(ii) the concealment or the disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with sub-paragraph (a) of this paragraph or from an act of participation in such offence or offences.

The fact is that this Convention is crucial to the global campaign against money laundering because it criminalises money laundering and identifies drug trafficking as a predicate offence for laundering. It must be noted, however, that the Convention is narrow because it only identifies drug trafficking as a predicate offence. Presently, the scope of money laundering has expanded to many predicate offences such as kidnapping, fraud, prostitution, murder, illicit arms trafficking, corruption, bribery to mention but a few.<sup>179</sup>

Furthermore, this Convention is relevant to this research because of all predicate offences globally, it is on record that drug trafficking accounts for the highest illicit funds that is being laundered using TBML or any other methods of laundering.<sup>180</sup> Drug trafficking is prevalent in Nigeria as some Nigerians have been important key actors in the drug smuggling business since 1970s till date for illegal movement of drugs from South Asia to the United States.<sup>181</sup> The Convention has also been domesticated in Nigeria<sup>182</sup>

### **3.6.2: United Nations Convention against Transnational Organised Crime (Palermo Convention)**

United Nations Convention against Transnational Organised Crime (Palermo Convention) is a watershed international treaty that criminalises money laundering and transnational organised crime. It was adopted on 15<sup>th</sup> of November, 2000 at the 55<sup>th</sup> session of the General Assembly of the United Nations pursuant to resolution A/RES/55/25.<sup>183</sup> By virtue of article 36 of the Convention, the Convention shall be opened for signature by all States and any

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<sup>179</sup> Nigerian Money Laundering ( Prohibition) Act, 2011

<sup>180</sup> <https://pdfs.semanticscholar.org/50f9/1a45f21521e1429f9df97e4f201c18624052.pdf> (accessed 8 August 2019)

<sup>181</sup> Udama(n 147) 356

<sup>182</sup> S Erugo & CO Adekoya, *‘Lawyering with integrity: Essays in honour of Ernest Ojukwu, SAN’* (2017) 304

<sup>183</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en) (accessed 10 August 2019)

regional economic integration organisations once it is established that at least one member state of such organization has signed the Convention starting from 12 to 15 December, 2000 at the Palazzo di Giustizia in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December, 2002.

Till date more than 40 African states had signed the Convention and a considerable number also had ratified same to be domesticated as part of their local laws; Nigeria inclusive.<sup>184</sup>

Article 1 of the Convention states the purpose of the Convention which is to promote cooperation to prevent and combat transnational organised crime more effectively. Article 6 of the Convention;<sup>185</sup> criminalise money laundering and the act or omission that constitutes the offence of money laundering.

The Convention also has two (2) Protocols attached that most of the countries that signed the primary convention had also signed. The Protocols are: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. It must be noted that these Protocols are supplementary to the United Nations Convention against Transnational Organised Crime.<sup>186</sup>

The Convention is relevant to this research because it serves as the legal basis for this work. This is predicated on the fact that it is one of the major Conventions that criminalise money laundering and defines illegality of money laundering at the global space.

### **3.6.3: African Union Convention on Preventing and Combating Corruption**

African Union Convention on Prevention and Combating Corruption is a regional legal framework in Africa for the purpose of addressing the issue of corruption and other related matter. It was adopted on 1 July 2003 and came into force on 5 August, 2006.

Article 2 of the Convention provides for the objectives as follows:

1. To promote and strengthen the development in Africa by each state, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors.

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<sup>184</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en) (accessed 11 August 2019)

<sup>185</sup> United Nations Convention against Transnational Organised Crime (Palermo Convention)

<sup>186</sup> [https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_AGAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERETO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf) (accessed 11 August 2019)



2. To promote, facilitate and regulate cooperation among the State parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
3. To coordinate and harmonise the policies and legislation between the State parties for the purposes of the prevention, detection, punishment and eradication of corruption on the continent.
4. To promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights.
5. To establish the necessary conditions to foster transparency and accountability in the management of public affairs.

It is governed by the principles of:

1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance.
2. Respect for human and peoples' rights in accordance within the African Charter on Human and Peoples' Rights and other relevant human rights instruments.
3. Transparency and accountability in the management of public affairs.
4. Promotion of social justice to enhance balanced socio-economic development.
5. Condemnation and rejection of acts of corruption, related offences and impunity.<sup>187</sup>

The scope covers:

- a. The solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods or monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- b. The offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- c. Any act or omission in the discharge or his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or a third party;
- d. The diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position;

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<sup>187</sup> Article 5 of the African Convention on Prevention and Combating of Corruption

- e. The offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works, in any capacity, a private sector identity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
- f. The offering, giving, promising, solicitation or acceptance, directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper over the decision making of any person performing functions in the public or private sector in consideration of, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the assistance of the offer or the promise of such an advantage, in consideration of that influence, whether or the influence is exerted, or whether or not the supposed influence leads to the intended result;
- g. Illicit enrichment;
- h. The use or concealment of proceeds derived from any of the acts referred to in this Article;
- i. Participation of a principal, co-principal, agent, instigator, accomplice, accessory after the fact, or any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this Article.<sup>188</sup>

The World Bank and the IMF defined corruption as the abuse of the public office for personal gains. It may be a political, systematic, grand, petty and enabling corruption and has become a global menace ravaging the world economies and sectors.<sup>189</sup>

According to the Transparency International Index, 2018,<sup>190</sup> Nigeria is ranked as the 144<sup>th</sup> most corrupt country in the world. Corruption has become endemic and eaten to the fabrics of the country and its sectors and categorized by the US State Department as a country/jurisdiction of primary concern in respect of money laundering and financial crimes.<sup>191</sup>

There is an incestuous relationship between money laundering and corruption. This relationship became prominent in the 1980s and 1990s when there was an upsurge in the corruption related cases globally and this narrative remains till date.<sup>192</sup> The proceeds of corruption require laundering for the purpose of evading possible suspicion, arrest, prosecution and conviction. According to the Financial Action Task Force (FATF), 2011 typologies on money laundering, all the stages involved in the money laundering process are present in the laundering of the proceeds of corruption, the manner of corruption immaterial.

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<sup>188</sup> Article 4 of the African Union on Prevention and Combating of Corruption

<sup>189</sup> <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corrptn.pdf> (accessed on 27 October, 2019)

<sup>190</sup> <https://www.transparency.org/country/NGA> (accessed on 27 October, 2019)

<sup>191</sup> <https://www.knowyourcountry.com/nigeria1111> (accessed on 27 October, 2019)

<sup>192</sup> <https://www.cairn.info/revue-internationale-de-droit-penal-2012-1-page-161.htm#> (accessed on 27 October, 2019)

Article 6 of the Convention further shows the nexus between money laundering and corruption. It defines money laundering to mean when the proceeds of corruption is intended for the purposes of concealing or disguising the illicit origin of the property or helping any person who is involved in the commission of the offence to evade the consequences of his action or her action, or concealment or disguise of the true nature, source, location, disposition, movement or ownership of, or rights with respect to property which is the proceeds of corruption or related offences or the acquisition, possession or use of property with the knowledge at the time of receipt, that such property is the proceed of corruption or related offences.<sup>193</sup>

The article establishes circumstances that proceeds of corruption could constitute offence of money laundering when same is concealed and or disguised for the purposes of evading possible suspicion, arrest, prosecution and conviction.

### **3.6.3.1: The impacts of the African Union Convention on Prevention and Combating Corruption on Nigerian's corruption and anti-money laundering policies.**

Thus far, the Convention has been impactful on the corruption and anti-money laundering policies in Nigeria. Nigeria has so far worked in tandem with the spirit of the Convention in particular article 5, by adopting legislative and other measures that are required for the fight against corruption and other related offences.

Several and notable legal frameworks have been enacted by Acts of the National Assembly establishing independent anti-corruption authorities and agencies in line with the same article 5 of the Convention. The legal frameworks include Economic and Financial Crimes Commission (Establishment Act) 2003 and Independent Corrupt Practices and other Related Offences Act, 2000 establishing Economic and Financial Crimes Commission and Independent Corrupt Practices and other related Offences Commission respectively.

Recently, the Nigerian Financial Unit (NFU) which was formerly hosted by the EFCC became independent and separated from the EFCC to ensure its autonomy, effectiveness and efficiency.

This move was lauded and given credence to by the international community and organization such as Financial Action Task Force (FATF) which initially sanctioned Nigeria. However, presently, the sanction has been removed and its Egmont Group membership has been restored.<sup>194</sup> According to the last Mutual Evaluation Report of the FATF, Nigeria was

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<sup>193</sup> Article 4 of the African Union on Prevention and Combating of Corruption

<sup>194</sup> <https://www.knowyourcountry.com/nigeria1111> (accessed on 27 October, 2019)

adjudged to have attained Complaint 2 and largely Complaint for 7 of the FATF 40 + 9 Recommendations and was partially Compliant or Non-Compliant for 5 of the 6 Core Recommendations. Presently, Nigeria is no more on the FATF list of countries with AML deficient strategies.<sup>195</sup>

Furthermore, last year, the President issued an Executive Order No. 6 of 2018 that grants wide ranging discretionary powers to the Attorney-General of Nigeria to freeze assets belonging to individuals on the grounds of reasonable suspicion of corruption. The Order provides that the Attorney-General of Nigeria is empowered to ‘coordinate the implementation of this Order and to enlist the support of any enforcement Authority... or any other person or entity as may be required or permitted by applicable law in order to give effect to this Executive Order’.<sup>196</sup>

This Order is distinct in the sense that unlike before that the order of the court must be sought and obtained to freeze such assets, no order of the court is required pursuant to the Executive Order. This is to an extent ensure rapid and effective way in which the assets could be easily frozen and remove any forms of bottlenecks in the process.<sup>197</sup>

Also, the Convention has been impactful on the corruption and anti-money laundering policies in Nigeria as some notable individuals have been tried and convicted for offences ranging from abuse of public office, embezzlement, money laundering and other corruption related offences. Though, there is still more work to be done to adequately reduce to the bearer minimum corruption in Nigeria if not totally eradicated.<sup>198</sup>

#### **3.6.4: Trade based money laundering & Financial Action Task Force (FATF) Recommendations**

Financial Action Task Force (FATF) is an international organization formed in 1989 for the sole purpose of combating global financial crime.<sup>199</sup> It was created by the Group Seven (G-7) nations at their meeting of the Heads of State and Finance Ministers Economic Summit held in July 1989. The sole goal of FATF is to ensure that the member countries enact and enforce

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<sup>195</sup> <https://www.knowyourcountry.com/nigeria1111> (accessed on 27 October, 2019)

<sup>196</sup> <https://www.commerciallawreform.com/battle-against-financial-corruption-and-money-laundering-in-nigeria-and-the-african-union/> (accessed on 27<sup>th</sup> October, 2019)

<sup>197</sup> <https://www.commerciallawreform.com/battle-against-financial-corruption-and-money-laundering-in-nigeria-and-the-african-union/> (accessed on 27<sup>th</sup> October, 2019)

<sup>198</sup> <https://www.commerciallawreform.com/battle-against-financial-corruption-and-money-laundering-in-nigeria-and-the-african-union/> (accessed on 27<sup>th</sup> October, 2019)

<sup>199</sup> Richards (n 43) 226

laws and regulations in combating money laundering activities within their respective jurisdictions based on its ‘recommendations’.<sup>200</sup> These recommendations, though a soft law, serves a legal framework for anti-money laundering efforts and meant to have universal application. The recommendations cover the criminal justice system and law enforcement (numbers 1-7), the financial system and its regulation (numbers 8-29), and international cooperation (numbers 30-40).<sup>201</sup>

In October 2001, the FATF widened the scope of its mandate to issues bordering on financing terrorism. Presently, the followings are the cardinal objectives of FATF:

- (a) To promote implementation of the standards in combating money laundering
- (b) To revise and clarify global standards for combating money laundering and terrorism financing
- (c) To engage with stakeholders and other partners worldwide in the fight against money laundering and terrorism financing
- (d) To identify and respond to the new money laundering terrorism financing threats.<sup>202</sup>

FATF carries out its works and function through its four working groups and its secretariat in Paris.<sup>203</sup> It is a policy-making body which ensures that there are national legislative and regulatory reforms on the issues of money laundering and terrorism financing.<sup>204</sup>

Over time, the FATF had developed various ‘Recommendations’. These recommendations are recognised globally as international standards for combating money laundering and terrorism financing and the increase in the weapons of mass destruction.<sup>205</sup> These recommendations serve as the guidelines for the member countries to develop their national legislations and regulations to addressing the incidence of money laundering and terrorism financing. The first set of recommendations were issued in 1990 and thereafter about four (4) revisions had been made which are in 1996, 2001, 2003 and 2012. The most recent one was made in 2012. These reviews are made to ensuring that the measures developed in combating

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<sup>200</sup> Richards (n 43) 226

<sup>201</sup> About 180 jurisdictions have adopted these recommendations.

<sup>202</sup> <https://www.fatf-gafi.org/> (accessed 7 August 2019)

<sup>203</sup> <https://www.fatf-gafi.org/> (accessed 7 August 2019)

<sup>204</sup> <https://www.fatf-gafi.org/about/> (accessed 7 August 2019)

<sup>205</sup> <https://www.fatf-gafi.org/about/> (accessed 7 August 2019)

money laundering and terrorist financing remain updated and relevant to the present global demands and the need for its universal application.<sup>206</sup>

The FATF also releases typologies like every other national and international research and law enforcement bodies, on a regular basis with a view to informing the international communities of the trends and methods for the purpose of laundering illicit financial flows. Typologies mean the study of the methods, trends and techniques of money laundering and terrorist financing.<sup>207</sup>

For the purpose of this research, the best practices on trade-based money laundering are one of the typologies so far released by the FAFT and shall be summarised briefly as follows:

- (a) That trade-based laundering of illicit funds and terrorist financing is the process of disguising the proceeds of crime and ensure movement of value through deliberate use of trade transactions with a view to legitimizing the origins of the funds or finance the activities of the terrorist groups.
- (b) That there is a strong and urgent need for training programs for authorities and or agencies involved in trade related issues to enhance their ability to identifying TBML/FT techniques.<sup>208</sup>
- (c) That the training programs should also be extended to law enforcement agencies with a view to educating and training them of the existence and relevance of financial and trade data analysis tools in identifying TBML/FT.
- (d) That the understanding of financial and trade data analysis is an important and useful tool for the identification of trade anomalies which may enhance and lead to investigation.
- (e) That trainings may also be conducted for analytical and investigative authorities by exposing them to the existence and the relevance of financial and trade data analysis in detecting possible cases of trade-based money laundering by the followings:
  - (i) comparing domestic and foreign import/export data to detect if any, discrepancies in the Harmonised Tariff Schedule, manufacturer, importer/exporter, country of origin, commodity activity by time period and the port of import/export,

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<sup>206</sup> <https://www.fatf-gafi.org/about/> (accessed 7 August, 2019)

<sup>207</sup> Duggan (n 10) 15

<sup>208</sup> FATF Guidance Document ‘Best practices paper on best practices on trade-based money laundering’ (2008) p. 2 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> (accessed 8 August 2019)

- (ii) making an analysis of the financial information collected by the FIU to identifying the patterns of fraudulent activities through importation/exportation of currency, reports of suspicious financial activities, deposits of currency in financial institutions and identifying the parties to such transactions.
- (iii) Using necessary statistical analysis on trade data concerning individual and non-aggregated imports and exports such as linear regression models.
- (iv) Examining the movement of cargos to compare import/export documentation between two countries to verify that the data so reported matches with each other.<sup>209</sup>
- (v) comparing export information with tax declarations with a view to detecting discrepancies.
- (vi) examining domestic import data with the use of an automated technique such as Unit Price Analysis to compare the average unit price for a particular commodity and if any, identify traders who import commodities at a price higher or lower than the world market.<sup>210</sup>
- (vii) Paying close and deliberate attention to trade transactions that tend to display red flag indicators of TBML/CFT activity.
- (viii) Ensuring appropriate follow-up action on the traders when there are fraudulent activities in trade and financial transactions by demanding such traders to make further and better explanation and supporting documents to clarifying the anomalies and discrepancies so detected.
- (ix) Cross-comparing the known methods, trends and techniques used to laundering money with available trade data and financial information on cross-border transfer of money as it relates to the payment of goods and services.<sup>211</sup>

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<sup>209</sup> FATF Guidance Document ‘Best practices paper on best practices on trade-based money laundering’ (2008) p. 3 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> (accessed 8 August 2019)

<sup>210</sup> FATF Guidance Document ‘Best practices paper on best practices on trade-based money laundering’ (2008) p. 3 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> (accessed 8 August 2019)

<sup>211</sup> FATF Guidance Document ‘Best practices paper on best practices on trade-based money laundering’ (2008) p. 3 <https://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP%20Trade%20Based%20Money%20Laundering%202012%20COVER.pdf> (accessed 8 August 2019)

- (f) That the measures mentioned above could be implemented to safeguard the lives of legitimate trading businesses and or activities

The issue of concern is, with all the above best practices provided by the FATF, rates of TBML through smuggling of goods including used cars and bags of rice in Nigeria are still on the alarming rate.

It must be noted, however, that notwithstanding the fact that most African countries are member countries to the recommendations, the rate of money laundering and terrorism financing has been on the increase in Africa causing socio, economic and political mayhem.

Nigeria is a country that has witnessed high level of money laundering cases especially from the politically exposed persons who abuse their political offices to commit all forms of predicate offences, and launder the proceed of crimes globally.

The question begging for answer is: what is the major clog in the wheel of combating laundering and terrorism financing in Africa generally and in particular, Nigeria with all the laws and regulations in existence. For instance, there are various laws and or regulations that criminalise and or regulate money laundering in Nigeria, but the deadly virus of money laundering and terrorist financing has and is still ravaging the country till date.

It is on record that Nigeria was backlisted as one of the countries with less efficiency in combating laundering activities and counter-terrorist financing regimes. In other words, countries with less compliance with anti-money laundering regulations and terrorism financing globally.<sup>212</sup>

### **3.6.5: The Role of World Bank and International Monetary Fund (IMF) on International money laundering.**

According to the Deputy Managing Director of International Monetary Fund (IMF),<sup>213</sup> ‘effective anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitates financial abuse’. IMF has over the years played active roles in the fight against money laundering and the terrorism financing by developing programs and assessments in that respect.

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<sup>212</sup> <https://allafrica.com/stories/201904030486.html> (accessed 8 August 2019)

<sup>213</sup> <https://www.imf.org/external/np/leg/amlcft/eng/> (accessed 9 August 2019)



In the past 18 years, IMF has been involved in over 70 AML/CFT assessments, and other ancillary programs. The IMF's activity in monitoring the economic systems of the members has proved in ensuring countries' compliance with the international AML/CFT standards. The Fund also sees to the development of programs that help in addressing shortcomings that are related to the AML/CFT compliance.<sup>214</sup>

IMF expanded its work in the area of anti-money laundering (AML) and terrorist financing 2001. In 2014, the IMF's Executive Board reviewed the Fund's strategy on AML/CFT and adopted a second 5-year phase of a donor-supported trust fund.<sup>215</sup> The review provides for the endorsement of the revised FATF AML/CFT standard and assessment methodology, a decision that all AML/CFT matters should be continuously be addressed in all FSAPs but on a more liberal basis.<sup>216</sup>

The World Bank also plays important roles in the campaign against money laundering and other ancillary issues. The Board of the Bank in conjunction with that of the IMF in 2001 came to a conclusion that money laundering is a global phenomenon that requires urgent attention as it affects major financial markets and smaller ones.<sup>217</sup> Sequel to the September 2001 attacks in the United States, the Bank with IMF adopted action plans with a view to enhancing efforts for AML/CFT and the Forty Recommendations on money laundering as given by FATF. The Bank also adopted and recognized Nine Special Recommendations on Terrorist Financing issued by the FATF.<sup>218</sup> The Bank further added AML/CFT to the lists of areas that are useful for their operational activities.<sup>219</sup> The Bank in conjunction with IMF had conducted various assessments in jurisdictions.<sup>220</sup> The Fund and Bank carry out about 20

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<sup>214</sup> IMF Factsheet, 'The IMF and the fight against money laundering and the Financing of Terrorism' (2016) p. 2-3 <https://www.imf.org/external/np/exr/facts/pdf/aml.pdf> (accessed 9 August 2019)

<sup>215</sup> <https://www.imf.org/external/np/exr/facts/pdf/aml.pdf> (accessed 9 August 2019)

<sup>216</sup> The World Bank & IMF Research guide: World Bank and International Monetary Fund fight against money laundering and control, p.2 [http://siteresources.worldbank.org/INTAML/1983064-1133906114980/20934730/RG\\_AML\\_en\\_Ch10.pdf](http://siteresources.worldbank.org/INTAML/1983064-1133906114980/20934730/RG_AML_en_Ch10.pdf) (accessed 9 August 2019)

<sup>217</sup> Intensified Work on Anti-Money Laundering and Combating the Financing of Terrorism. Joint Progress Report on Work of the IMF and World Bank, <https://www.imf.org/external/np/mae/aml/2002/eng/092502.htm> (accessed 9 August 2019)

<sup>218</sup> The World Bank & IMF Research guide: World Bank and International Monetary Fund fight against money laundering and control, p.2 [http://siteresources.worldbank.org/INTAML/1983064-1133906114980/20934730/RG\\_AML\\_en\\_Ch10.pdf](http://siteresources.worldbank.org/INTAML/1983064-1133906114980/20934730/RG_AML_en_Ch10.pdf) (accessed 9 August 2019)

<sup>219</sup> The World Bank & IMF Research guide: World Bank and International Monetary Fund fight against money laundering and control, p.2 [http://siteresources.worldbank.org/INTAML/1983064-1133906114980/20934730/RG\\_AML\\_en\\_Ch10.pdf](http://siteresources.worldbank.org/INTAML/1983064-1133906114980/20934730/RG_AML_en_Ch10.pdf) (accessed 9 August 2019)

<sup>220</sup> The World Bank & IMF Research guide: World Bank and International Monetary Fund fight against money laundering and control, p.2 [http://siteresources.worldbank.org/INTAML/1983064-1133906114980/20934730/RG\\_AML\\_en\\_Ch10.pdf](http://siteresources.worldbank.org/INTAML/1983064-1133906114980/20934730/RG_AML_en_Ch10.pdf) (accessed 9 August 2019)

assessments yearly using the FAFT's methodology and the FATF style regional bodies (FSRBs).

### **3.7.0: Conclusion**

It is not in doubt that money trade-based laundering of illicit funds is prevalent in the country notwithstanding the fact that the country is a signatory and has ratified most of the international conventions and other applicable regulations or soft laws such as FATF 40 Recommendations on money laundering that criminalise money laundering and other ancillary matters. It is also not in issue that smuggling is a trade-based money laundering activity in Nigeria. Criminals manipulate prices through the illegal smuggling of goods in to the country and this has been a lingering narrative over the years to laundering illicit proceeds of crime.

It must be noted, however, that notwithstanding the fact that most African countries are member countries to the FATF 40 recommendations, the rate of laundering and terrorism financing is on the increase in Africa causing socio, economic and political mayhem.

## Chapter 4

### **African Continental Free Trade Area and Money Laundering**

#### **4.0.0: Introduction**

African continent has over the years clamored for one Africa; a liberated African continent that will be fully integrated politically, economically and socially. The drive has led to the formation of various regional integration arrangements (RIAs), groupings and or economic integration blocks. It must be emphasized that notwithstanding the existence of these overlapping regional arrangements and or blocks, no or little successes have been recorded. The lack of success may not be separated from the fact that the contribution of intra-regional trade in Africa to the total foreign trade has been traditionally low compared to other regions and the fact that most African countries have suffered from acute macroeconomic disequilibrium, lack of trade finance, over-valued currencies, foreign debt services burdens and a low tax base coupled with the fact that most revenue of the countries proceed from customs duties. These problems have been the narratives over the year.

The latest and recent initiative to bringing Africa continent together economically and politically is the African Union flagship program named African Continental Free Trade Area (AfCFTA) that entered into force on the 30<sup>th</sup> of May, 2019.

#### **4.1.0: African Continental Free Trade Area (AfCFTA)**

African Continental Free Trade Area (AfCFTA) is a regional economic arrangement established for the purposes of ensuring liberalization in goods and services, persons and capital. Liberalisation simply means the removal of all forms of barriers to trade, and the opening up of the economies/sectors for economic integration and commercial business transactions either at the regional or international levels.

By virtue of Article 4 of the Agreement establishing the African Continental Free Trade Area, the specific objectives of AfCFTA inter-alia is to continuously remove all forms of trade barriers in goods, cause liberalization of trade in services and have a level of cooperation as it relates to investment, competitive policy, intellectual property rights and cooperate on all trade-related areas.<sup>221</sup>

In the context of the AfCFTA, parties states would open up their sectors of the economy to other African party states with a view to progressively eliminate tariffs and other restrictive

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<sup>221</sup> Article 4 of the agreement establishing the African Continental Free Trade Area

regulations of commerce and or non-tariff barriers to trade until a single market would be achieved that would ensure easy and effective movement of goods and service, persons and capital. Thus far, 54 member states of the African Union had signed the Agreement establishing the free trade area while 28 had ratified same and became party states to the Agreement.<sup>222</sup>

It is expected that it would bring together all 55 member states of the African Union creating a market capacity of more than 1.2 billion people and a combined gross domestic product (GDP) of more than US\$3.4 trillion. It is also expected to be the world's largest free trade area since the inception of the World Trade Organisation and has the potential of eliminating import duties within African by 52.3 percent.<sup>223</sup>

It must be noted and as expected that the liberalization would lead to an increase in international commercial transactions between the party states within the free trade area both in terms of trade in goods and services on the one hand, and an increase in the movement of persons and capital. More cross-border businesses and companies would emerge leading to an increase in goods imported and exported within Africa; creating an increase in the cross-border movement of capital. It is the humble view of the researcher that this free trade area would further encourage or has the likelihood of encouraging or providing a good platform for entities that engage in illicit financial flows especially money laundering activities.

It is a common knowledge that the free trade area is to be designed to cover four (4) important areas of trade in goods, services, persons and capital. Presently, the first phase of the negotiation has been completed remaining issues on tariffs and rules of origins to be finalized.

The Protocol on trade in goods in article 2 of the Agreement provides for the specific objectives of the Protocol to include:

- (a) progressive elimination of tariffs.
- (b) progressive elimination of non-tariff barriers.
- (c) enhanced efficiency of customs procedures, trade facilitation and transit.

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<sup>222</sup><https://www.brookings.edu/blog/africa-in-focus/2019/07/13/africa-in-the-news-updates-on-the-afcfta-eac-border-closures-and-sudan-power-sharing-agreement/> (accessed 11 August 2019)

<sup>223</sup><https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html> (accessed on 27 October, 2019)

- (d) enhanced cooperation in the area of technical barriers to trade and sanitary and phytosanitary measures.
- (e) development and promotion of regional & continental value claims; and
- (f) enhanced socio-economic development, diversification and industrialization across Africa.

Article 7 of the Protocol states that the State parties shall progressively eliminate import duties or charges having equivalent effect on goods originating from the territory of any other State party in accordance with their Schedules of Tariffs Concessions contained in Annex 1 of this Protocol.

It is the humble view of the researcher that through the progressive elimination of tariffs and duties, it would make it easier for launderers to transfer value from one country within the free trade area to another by ways of using trade mis-invoicing such as under-invoicing and over-invoicing of imports and exports products. This is because they need not to under-price the products again to transfer value or under-price the products to avoid paying the necessary export duty on the products due to the fact that as time goes on, duties would be progressively eliminated. By this, they are able to launder illicit funds through the export and import of high value products within the free trade area.

The Global Financial Integrity Report, 2019 shows the degree of illicit financial flows to and from developing countries between 2006-2015 through mis-invoicing.<sup>224</sup>

**ILLICIT FINANCIAL FLOWS TO AND FROM SELECTED AFRICAN DEVELOPING COUNTRIES  
(2006-2015) DOTS**

S/N	COUNTRY	Potential Import Mis-invoicing		Potential Export Mis-invoicing		Inflows (B + C)	Outflows (A + D)	Total Trade (Millions of US\$)	Inflows (B + C) Millions of US\$	Outflows (A + D) Millions of US\$
		Over-invoicing (A)	Under-invoicing (B)	Over-invoicing (C)	Under-invoicing (D)					
1.	South Africa	2.5	5.8	1.2	10.7	6.9	13.2	77,339	5,365	10,207
2.	Rwanda	28.8	5.1	20.8	9.4	25.9	38.2	513	133	196
3.	Nigeria	5.1	10.7	3.6	14.9	14.3	20.2	41,227	5,902	8,251
4.	Kenya	10.7	19.7	3.1	7.4	22.8	18.0	6,811	1,553	1,229
5.	Botswana	4.7	1.6	21.2	11.0	22.8	15.7	3,890	885	610
6.	Algeria	4.9	5.9	7.2	7.7	13.2	12.6	55,276	7,284	6,971
7.	Benin	7.9	68.0	4.4	3.4	72.4	11.3	1,495	1,082	169
8.	Burkina Faso	23.5	2.8	20.3	2.7	23.1	26.2	2,370	547	620

<sup>224</sup> <https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2019/01/GFI-2019-IFF-Update-Report-1.29.18.pdf?time=1571932270> (accessed on 28 October, 2019)

9.	Cote d'Ivoire	5.1	2.7	7.3	2.8	10.0	7.9	9,998	1,003	786
10.	Cameroon	6.7	10.8	8.3	9.9	19.1	16.6	4,287	818	712
11.	Central African Republic	17.2	5.9	12.4	2.1	18.3	19.3	485	89	941
12.	Ghana	8.4	8.0	1.3	17.9	9.3	26.3	9,019	837	2,372
13.	Lesotho	17.6	0.9	0.5	38.9	1.4	56.6	567	8	320
14.	Malawi	34.0	2.6	9.4	10.1	12.0	44.1	798	96	352
15.	Mauritius	7.1	9.8	5.8	6.7	15.6	13.7	2,884	451	396
16.	Morocco	5.2	7.7	2.9	4.5	10.6	9.7	36,489	3,866	3,552
17.	Mozambique	23.5	14.5	25.2	24.6	39.7	48.1	3,892	1,545	1,870
18.	Namibia	17.6	6.7	34.0	21.1	40.7	38.7	2,241	913	867
19.	Niger	48.0	7.3	13.8	15.6	21.1	63.6	1,363	288	867
20.	Sao Tome and Principe	20.5	3.4	0.7	2.1	4.1	22.6	94	4	21
21.	Senegal	5.2	26.8	1.0	4.5	27.8	9.7	3,561	990	346
22.	Seychelles	5.7	25.7	3.8	9.0	29.4	14.7	769	226	113
23.	Sierra Leone	52.5	20.3	0.4	27.3	20.7	79.8	641	132	512
24.	Sudan	20.2	14.6	0.2	23.8	14.8	44.0	1,979	293	871
25.	Tanzania	22.1	11.7	3.4	7.3	15.1	29.4	3,540	535	1,042
26.	Togo	2.6	146.7	0.9	4.2	147.6	6.7	3,310	4,886	222
27.	Tunisia	2.5	7.9	3.5	3.1	11.4	5.6	22,863	2,612	1,280
28.	Uganda	22.1	5.1	3.0	7.1	8.0	29.2	1,622	130	473
29.	Zambia	25.4	15.0	0.0	69.9	15.0	95.3	703	106	670
30.	Zimbabwe	25.4	15.0	0.0	69.9	15.0	95.3	703	106	670
31.	Somalia	0.0	0.0	0.0	0.0	0.0	0.0	185	0	0
31.	Mauritania	20.6	10.1	3.5	10.3	13.6	30.9	1,908	260	589
32.	Mali	6.6	23.1	2.2	6.2	25.3	12.7	1,533	388	195
33.	Madagascar	8.4	12.6	6.1	7.5	18.6	15.9	2,338	436	371
34.	Libya	1.2	24.7	2.8	19.6	27.6	20.7	11,273	3,107	2,337
35.	Liberia	0.0	0.0	0.0	0.0	0.0	0.0	6,190	0	0
36.	Guinea-Bissau	14.3	18.4	2.2	0.5	20.7	14.8	129	27	19
37.	Guinea	5.5	20.2	1.1	13.7	21.3	19.2	1,775	378	341
38.	Gambia	10.6	53.6	0.0	9.5	53.7	20.1	183	98	37
39.	Gabon	5.2	2.7	20.4	13.0	23.1	18.2	4,985	1,151	908
40.	Ethiopia	15.5	27.0	8.1	2.5	35.1	18.1	5,505	1,930	994
41.	Eswatini	20.3	16.7	29.6	28.4	46.2	48.7	211	98	103
42.	Eritrea	25.1	11.0	1.2	15.2	12.2	40.3	135	16	54
43.	Equatorial Guinea	0.0	0.0	0.0	0.0	0.0	0.0	5,195	0	0
44.	Egypt	9.5	15.0	2.0	7.7	17.7	17.2	39,623	6,717	6,833
45.	Djibouti	27.1	69.6	0.4	4.8	70.0	31.9	518	363	165
46.	Republic of Congo	20.1	3.8	15.5	12.8	19.4	32.9	5,779	1,119	1,898
47.	Comoros	0.9	35.6	0.0	17.6	35.6	18.5	56	20	10
48.	Chad	0.0	0.0	0.0	0.0	0.0	0.0	2,006	0	0
49.	Democratic Republic of Congo	0.0	0.0	0.0	0.0	0.0	0.0	2,771	0	0
50.	Cabo Verde	3.8	3.4	7.4	0.2	10.8	4.0	954	103	38
51.	Burundi	28.2	19.1	15.6	20.5	34.6	48.7	190	66	92
52.	Angola	3.5	6.4	7.1	10.6	13.5	14.2	20,691	2,790	2,930

Source: Global Financial Integrity Report, 2019

[https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2019/01/GFI-2019-  
IFF-Update-Report-1.29.18.pdf?time=1571932270](https://secureservercdn.net/45.40.149.159/34n.8bd.myftpupload.com/wp-content/uploads/2019/01/GFI-2019-<br/>IFF-Update-Report-1.29.18.pdf?time=1571932270)

Also, as it relates to the technical barriers to trade and or non-tariff barriers,<sup>225</sup> such as specific market requirements that make importation or exportation of products difficult and or costly would be relaxed and progressively eliminated and or reduced. This cumulatively would make the export and or import of high value products that are used in transferring illicit funds cross-border more easily and fast.

In terms of trade facilitation, all the rigorous requirements and lengthy customs procedures at the border posts and checks that have to some extent serve as a check on the physical smuggling and or movement of illicit cash through the borders would have been progressively reduced and or eliminated. This would further allow the launderers to easily move their physical illicit cash across the borders of state parties within the free trade area using the roads.

It is also envisaged that the Protocol on trade in services (Services Protocol) would be negotiated as provided for in article 22 of the Agreement and having four (4) modes of Supply in line with the WTO General Agreements on Trade in Services (GATS). It shall contain Schedules of Specific Commitments that the State parties had agreed to be bound in each sector of the economy. The Trade in Services is divided in 12 sectors, having five (5) priority sectors of Business, Communications, Financial, Tourism and Travel, and Transport services.<sup>226</sup>

It is also the humble view of the researcher that entities that engage in laundering activities could move their illicit funds gotten from corruption, illicit enrichment or any other forms of criminality through any of the modes of supply in trade in services.

For instance, when a country opens up any of the priority sectors of the AfCFTA to other African countries by way of Commercial Presence (Mode 3), it means companies and businesses from other countries can come into the country and establish their commercial presence after such a country must have modified its domestic legal frameworks to align with the objectives of the free trade area; thereby making it easier for such companies and businesses to come in.

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<sup>225</sup> They mean barriers that impede trade through mechanisms other than the imposition of tariff. These may include restrictions that emanate from prohibitions, conditions, or specific market requirements that make importation or exportation of products difficult or costly. [https://www.tradebarriers.org/ntb/non\\_tariff\\_barriers](https://www.tradebarriers.org/ntb/non_tariff_barriers) (accessed on 28 October, 2019)

<sup>226</sup> <https://www.tralac.org/blog/article/14064-afcfta-what-next-for-services-trade.html> (accessed 28 October, 2019)

There is a possibility that such companies or businesses may be used to launder or move illicit funds outside Africa in the forms of Shell Companies. It is on record that African countries have been used as tax haven and secret jurisdictions for illicit movement of funds by the developed countries. Example of such a country is Mauritius.<sup>227</sup> In so far I agree that the state parties to the free trade area are African countries, it does not remove the possibility that African countries cannot use other African countries as channels to move illicit funds. In other words, these companies and or businesses that would be created through the Commercial Presence (Mode 3) may be used to launder illicit funds in the forms of Shell Companies.

The situation is even complicated in the sense that there is no provision of the Agreement that would regulate trade-based laundering of illicit funds that may arise upon the full implementation of the free trade area or deals with the above-mentioned issues.

This research, therefore in that respect, advocates and recommends for a strong and coherent anti-money laundering legal and or regulatory framework to curb money laundering activities generally and in particular trade-based laundering of illicit funds that may ensue within the free trade area upon its implementation.

Another issue for concerns is whether or not the AfCFTA has complied with the provision of the United Nations Convention on Transnational Organised Crimes (Palermo Convention) for the above-mentioned recommendation to be possible?

Article 36 of the Convention provides:

1. This Convention shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Head-quarters in New York until 12 December 2002.
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.
3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may

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<sup>227</sup> <https://financialsecrecyindex.com/PDF/Mauritius.pdf> (accessed on 28 October, 2019)



deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

It is on record that most African member states to this Convention had signed or ratified it within that period of time. Therefore, bringing AfCFTA within those regional economic organizations required to be signatories to the Convention.

The next question to ask is: has the leadership of African Union or the Committee on the implementation of AfCFTA signed, ratified and or submitted instrument of accession as required by law in the Convention before AfCFTA came into force on the 30<sup>th</sup> day of May, 2019 or any period so soon thereafter to comply with the Convention or make a declaration of the extent of its competence with respect to matters governed by the Convention?

In the meantime, there is no scintilla of evidence or document to show that the leadership of African Union or the Committee on the implementation of AfCFTA has deemed it fit to sign, ratify and or deposit any instrument of accession at the appropriate venue required by law or make a declaration of the extent of its competence with respect to matters governed by the Convention. If this has not been done, it shows that the Agreement establishing AfCFTA has not complied with the letter of the Convention and so, it may not benefit from the anti-money laundering provisions contained in the Convention.

It is therefore the view of the researcher that the appropriate authorities that see to the implementation and workings of the free trade area should do the needful as required by the Convention under the article.

#### **4.2.0: Conclusion**

It could therefore be submitted that for the objective of the AfCFTA not be defeated through the menace of trade-based laundering of illicit funds, African member states must be proactive to ensure that all necessary measures and regulations are put in place in combating TBML that may ensue therefrom before it comes into full implementation.

## Chapter 5

### **Conclusion**

#### **5.0.0: Introduction**

Money laundering could therefore be said to be the process of giving legality to the proceeds of illegality by concealing the source(s) of illicit assets which may be in the forms of money, properties and disguise same to appear to be clean and legitimate. It means the process of giving appearance of legitimacy to illicit funds. It would be safe to therefore conclude that the scope of money laundering had expanded from the drug-related money laundering to predicate offences such as prostitution, fraud, bribery and corruption, human trafficking, tax evasion, embezzlement, murder, kidnapping, smuggling, environmental crime to mention but a few.

#### **5.0.1: Recommendations**

The following recommendations are therefore suggested:

1. That there should be a strong political will on the part of the government of Nigeria to combating money laundering and other ancillary matters. It is not enough as it has been discovered in this work to have strong and coherent body of laws and or regulations in combating laundering activities and other ancillary matters is there is no strong political will for its enforcement. This is not only an epistle to Nigeria as a country but to all the countries of the world in their efforts against laundering activities and terrorist financing.
2. That all the agencies of government in Nigeria that involve in the campaign against money laundering and the ancillary matters should work together as a formidable team by sharing information and intelligence together in the fight against it. All forms of bottleneck or unnecessary bureaucracy should be removed to ensuring that these agencies would effortlessly and without breaking their respective ranks and areas of power in combating terrorism financing and money laundering in the country.
3. That the legislature should make new laws or amend the existing ones establishing these agencies to ensure that all the existing bottlenecks and or bureaucracy are removed totally or reduced to the barest minimum in order for them to work together as a team.

4. That the Money Laundering (Prohibition) Act, 2011 should be amended to incorporate predicate offences that are trade-based related.
5. That there should be a regional anti-money laundering legal and or regulatory framework within the African Continental Free Trade Area that will address trade-based laundering of illicit funds that may likely ensue therefrom upon its full implementation.
6. That the proposed legal and or regulatory framework should be framed or adapted to meet African trade needs and peculiarities. There should be not a copy and paste work from the Western world regimes. Inspirations could be gotten from their legal and or regulatory frameworks in developing it but should not be copied and pasted without necessary adaption.
7. In addition to item 5 above, there should be a strong political will to ensuring that the law and or regulation that will be put in place is complied with and followed to the letter by putting in place necessary enforcement mechanisms and sanctions or penalties.
8. There should be a committee or agency that will see to the enforcement of the proposed trade based anti-money laundering regulation or law within the AfCFTA.
9. That sanctions and or penalties for erring party states within AfCFTA that breach the provisions of the proposed anti-money laundering law or regulation should be stated clearly in the law and or regulation.
10. That in drafting the proposed anti-money laundering legal and or regulatory framework for AfCFTA, the provisions of the FATF's 40 Recommendations on money laundering should be taken into consideration.
11. That a new recommendation should be added to the existing FATF's 40 Recommendation that will deal solely with TBML to cover individuals such as shippers, freights forwarders, importers, exporters and air couriers.
12. That governments of the state parties should adopt and fully implement all of the FATF anti-money laundering recommendations and those already on implementation should be strengthened.
13. That policymakers of the state parties should require multinationals companies that intend to come in to their respective countries by way of Mode 3 (Commercial Presence) to publicly disclose their revenues, profits, losses, sales, taxes paid, subsidiaries and staff levels.

14. That governments of the state parties should boost their customs enforcement by equipping and training officers in order to be better equipped to detect intentional mis-invoicing of trade transactions that may likely increase, particularly through access to the real time world market pricing information at a detailed commodity level.

15. That there should cooperative partnerships by the customs of the state parties with other regulatory governments agencies such as Tax authorities, Financial Intelligence Units (FIUs), the Police, custom administrations and other law enforcement agencies in order to have timely access to information and data necessary for the detection of fraudulent transactions.

### **5.0.2: Conclusion**

It will be safe to conclude that entities that involve in laundering activities in the present dispensation generally and in particular in Nigeria do not only launder their dirty money solely with the intention of concealing and or disguising such dirty money only. They launder with a view to plunging the money into other nefarious activities other than the ones the laundered fund was obtained from to make more money. In other words, launderers are professional businessmen and women who engage in criminal activities with the sole aim of making more money by using the laundered money to engage in further businesses which maybe legitimate or illegitimate.

Also noted is the fact that money laundering is the life blood for criminal activities and evil is the root of money laundering. The more predicate offences engaged in, the greater tendency of making more money. Therefore, in order to curb the prevalence of predicate offences, the flow of money for their propagation must be curbed as money is the life blood of all criminal activities.

It was discovered that the impacts of money laundering are so overwhelming around socially, economically and politically. The possible ways of curbing the menace of money laundering in general and in particular, trade-based laundering of illicit funds in Nigeria is to ensure that all government agencies that involve in the campaign against money laundering work together as a team by sharing information and intelligence together in the performance of their statutory duties.

Furthermore, it was found that there must be a strong and coherent law and or regulations that will address trade-related laundering in Nigeria, and that which may ensue generally from the

African Continental Free Trade Area (AfCFTA) upon its full implementation and a political will to ensure its strict compliance.

In addition, having strong and coherent procedures and or laws is not enough in curbing money laundering through trade related activities where there is no strong political will on the part of the countries. Countries of the world in general, and Nigerian leaders must have, and show a strong political will in fighting this cankerworm called laundering of dirty money generally and in particular, the trade-related laundering that may ensue upon the full implementation of the African Continental Free Trade Area (AfCFTA).

In the same vein, it was discovered that it is not in doubt that money trade-based money laundering activities are rampant in Nigeria notwithstanding the fact that the country is a signatory and had ratified most of the international conventions and other applicable regulations or soft laws such as FATF 40 Recommendations on money laundering that criminalise money laundering and other ancillary matters. It is also not in issue that smuggling is a trade-based money laundering activity in Nigeria. Entities that engage in trade-related laundering of illicit funds launder the proceeds of their illegal funds through smuggling of goods (used cars and bags of rice etc.) in to the country.

Furthermore, it was discovered that notwithstanding the fact that most African countries are member countries to the FATF 40 recommendations, the rate of money laundering and terrorism financing is on the increase in Africa causing socio, economic and political mayhem.

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