

**A CRITICAL ANALYSIS OF THE LEGAL MECHANISMS  
FOR COMBATING MONEY LAUNDERING IN NIGERIA**

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**ABSTRACT**

Money laundering is a global phenomenon. Political leaders, civil servants in government and business elites in the public sector usually commit it. These are people who are entrusted with managing public funds for the benefit of the larger society but they turn around to betray such trust and confidence reposed on them and cart away huge sums of money stashing it in foreign banks that connive with them. They carry on the illicit activities by creating phantom companies, over-pricing contracts, using fronts and paying for contracts not executed or poorly executed. Many jurisdictions, including Nigeria, worried about this malaise have but the crime is yet to be drastically reduced. It is these worry which stimulates this discourse and which galvanizes this piece to advocate for more global actions against the scourge of money laundering across the world.

*Keywords:* Money laundering, Nigeria, Crime

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**1. INTRODUCTION**

The historical evolution of money laundering could be traced to Mafia ownership of Laundromats in the United States. Gangsters were earning huge sums of money in cash from extortions, prostitution, and gambling. They needed and were expected to show a legitimate source or sources for this money. They were able to succeed by purchasing outwardly legitimate business and these gangsters chose mixing them with their illicit earnings and Laundromats because they were cash businesses. This was an advantage to someone like Al Capone who purchased them.

It was an increasing awareness of the huge profits generated from this criminal activity and a concern at the massive drug problem in western society, which created the impetus for government to act against the drug dealers by creating legislation that would deprive them of their illicit gains. Al Capone, however, was prosecuted and convicted in October 1931 for tax evasion. It was for this reason rather than the predicate crime that he was sent to prison.

It seems, however that the conviction of Al Capone for tax evasion may have been the trigger for getting the money laundering business off the ground. Meyer Lansky was particularly affected by the conviction of Al Capone for something as obvious as tax evasion. Determined that the same fate would not befall him, he set about searching for ways to hide money.

Therefore, the history of modern day money laundering could be traced as far back as the 1930's, following the activities of Mayer Lansky who introduced in 1932, an off-shore account in a Swiss bank. The account was used to hide the profits or proceeds of the illegal activities of Governor Huey Long of Louisiana, United States of America. Lansky later established slot machine houses in New Orleans. The Swiss bank provided funds as 'loans' to Lansky & Co., thereby allowing the return of "illegal" money into the United States of America.

The use of the Swiss facilities gave Lansky the means to incorporate one of the first real laundering techniques, the use of the 'loan-back' concept, which meant that hitherto illegal money could now be disguised by 'loans' provided by compliant foreign banks, which could be declared to the 'revenue' if necessary, and a tax deduction obtained into the bargain.

Subsequently, this phenomenon was given impetus during the Second World War, when some Nazi officers carted away war loots and stocked in secret bank accounts in Switzerland. Since then, the phenomenon of money laundering has developed both in patterns and manifestations, and further entrenched by technological advancement.<sup>1</sup> Money laundering, as an expression, is one of fairly recent origin. The original sighting was in newspapers, reporting the Watergate scandal in the United States in 1973.

The expression first appeared in a judicial or legal context in 1982 in America in the case of *US v. \$ 4,255,625.39*; the case was an appeal from the United States District Court for the Southern District of Florida. This appeal involved two civil forfeiture cases, consolidated in the court below, and it arose under 21 U.S.C. Sec. 881 (a) (6), which applies to the proceeds of narcotics transactions, and 31 U.S.C. Sec. 5317, which applies to currency transported across the borders of the United States without the filing of a required report. Acting under these two statutes, the District Court ordered the forfeiture to the United States of \$ 4, 255,625.39 in currency and \$3,686,639 in funds on deposit in a bank account. Claimant Beno Ghitis, whose company, Viajes Atlas, owned both the currency and the bank account, appealed from the District Court's judgment, asserting that 21 U.S.C Sec. 881 (a) (6) was inapplicable because (1) government failed to prove a "substantial connection" between the forfeited money and narcotics transactions; (2) the money did not constitute the "proceeds" of such transactions and (3) Ghitis had no knowledge of such transactions. Ghitis also claimed that 31 U.S.C. Sec. 5317 did not apply because (1) the forfeited money did not cross the United States border, (2) the money was not "in the process of transportation" when it was seized, (3) the funds on deposit in the bank account did not constitute a "monetary instrument", and (4) there was no evidence that whoever may have transported the money knowingly failed to file the required reports. Numerous additional claimants holding cheques written on the forfeited bank account appealed from the District Court's entry of summary judgment against them.

The Appeal Court held that both the currency and the funds in the bank account were forfeitable under 21 U.S.C. Sec. 881 (a) (6). The government demonstrated a "substantial connection" between the forfeited money and narcotics transactions, and Ghitis failed to prove that he lacked knowledge of such transactions. In view of these conclusions, the appellate court did not address Ghitis' argument concerning the applicability of 31 U.S.C. Sec. 5317.

Finally, the court held that the District Court did not err in entering summary judgment against those persons holding cheques written on the forfeited bank account. It thus affirmed the judgment of the court below ordering forfeiture of both the currency and the funds in the bank account to the United States.<sup>2</sup> This marks the origin of popular usage of the term money laundering at the world stage.

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<sup>1</sup> Adewale, A. O (1997) History and Definition of Money Laundering" in Adewumi, W *Money Laundering* (Ed.) Chartered Institute of Bankers of Nigeria (CIBN), Lagos, Nigeria

<sup>2</sup> Available at <http://ftp.resource.org/courts.Gov/c/F2/62/762.F2d.895.83-5026.html>, retrieved on 02/05/2011.

## 2. DEFINITION AND NATURE OF MONEY LAUNDERING

The word “Laundering” is used to describe the investment of profits or transfers of funds made from criminal activities or illegal sources into legitimate or legal business, so that the original source becomes difficult to trace. Thus, to “launder money” that has been obtained illegally means to process it through a legitimate business or to send it abroad to a foreign bank; so that nobody knows that it was illegally obtained.<sup>3</sup>

However, there is no consensus on the definition of the concept of money laundering. Most definitions, including the United Nation’s definition, conceive and relate money laundering to drug trafficking only. This is understandable because a greater chunk of the suspicious wealth being laundered may have originated from or is associated with drug trafficking.

However, an acceptable definition of money laundering should be all embracing to capture in the criminological index and other forms of organised crimes which also generate substantial profits that would require laundering. In addition, the concept would remain an unresolved dilemma because, whereas some jurisdictions believe it is harmful to the stability of the system, others on the other hand, overlook it as a source of foreign investment in a free market environment.

It is worthy to observe that the United Nations’ (UN) definition fits into the foregoing premise. It defines money laundering “The conversion or transfer of property knowing that such property is derived from an offence, for the purpose of concealing or disguising the illicit origin of the property, or of assisting any person who is involved in the commission of such an offence to evade the legal consequences of his actions. In other words, it is the concealment or disguising of the true nature, source, location, disposition, movement rights with respect to or ownership of property, knowing that such property is derived from an offence”<sup>4</sup>

In his view, Robert Powes opines that “Money Laundering simply means the use of money derived from illegal activities by concealing the identity of the individuals who obtained the money, converted it to assets that have come from a legitimate source.”<sup>5</sup> This means the conversion of money illicitly obtained or the proceeds of illicit transactions into clean money through legitimate transactions, thus concealing the criminal origin of the money.

Adewole defines money laundering as an “illegitimate attempt to legitimize acquisition.”<sup>6</sup> In a simple parlance, money laundering is the washing of dirty money clean in order to cover its dirty origin. The need to launder money arises because its origin is criminal and therefore illegitimate assets.<sup>7</sup>

Money laundering is, therefore, the integration of illicit funds into the main-stream of legitimate finance in order to conceal the criminal sources and nature of such funds, and ultimately make the funds look clean. It is the smuggling in, of funds with criminal stain into the channel of the legitimate financial system.<sup>8</sup> According to Robinson (1998);

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<sup>3</sup> See Ohanyere, A. N., “Strategies in Combating Money Laundering in the Financial System” (National Seminar on Economic Crime, 22 July 2002), pp.1- 4.

<sup>4</sup> Document on the U. N. Global Programme Against Money Laundering, UN Office for Drug Control and Crime Prevention (UN-ODCCP), Vienna, Australia, 1999.

<sup>5</sup> Asomugha, E. M. 102. *Nigerian Law of Banking and Negotiable Instrument*, (Lagos: Bolabay Publications, 1997), p. 102.

<sup>6</sup> Adewole, J. A., “Definition, History, Stages and International Preventions Against Money Laundering” being a paper presented at a Seminar on Money Laundering organised by CNB/FITC at Ijebu – Ode, Ogun State (May 6 – 7, 1996), p. 1.

<sup>7</sup> *Ibid* at p.2.

<sup>8</sup> Mu’ Azu A. Umar, “The Effects of Money Laundering on the Global Economy and International Efforts to Fight it,” being a paper presented at a – 2 day Conference on “Money

Money laundering is called what it is because that perfectly describes what takes place – illegal or dirty money is put through a cycle of transactions, or washed, so that it comes out the other end as legal or clean money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income.<sup>9</sup>

Flowing from the above, there seems to exist such a litany; of definitions of money laundering. The common elements amongst them are “the transfer of illegal assets (funds) into the official economic system.”<sup>10</sup> *Black’s Law Dictionary* defines Money laundering as “the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced”. This means the transfer of money flowing from racketeering, drug transaction and other illegal sources into legitimate channels so that its original sources are concealed.

Money laundering, therefore, may be generally defined as making the funds used in, or resulting from, criminal activity appear legitimate.<sup>11</sup> Although drugs are an important factor behind money laundering, it is not limited to drug-related activities. Money laundering facilitates all manner of crimes, including terrorism, extortion, kidnapping, bribery, corruption, immigrant smuggling, fraud, robbery and tax evasion.<sup>12</sup> In fact, large scale criminal activity would only be able to operate at a fraction of current levels without the ability to hide and move, through various laundering techniques, the enormous wealth that it generates.<sup>13</sup> Billy Steel describes money laundering as the crime of the ‘90s’ and states that:

Money laundering is sleight of hand... a magic trick for wealth creation ... the lifeblood of drug dealers, fraudsters, smugglers, arms dealers, terrorists, extortionists and tax-evaders. It is also the world’s third largest business. Though a relatively new and a vogue subject, it {money laundering} has in fact been around for centuries. Criminals throughout history have had to hide the source of newly acquired wealth in order to escape prosecution for the predicate crime<sup>14</sup>.

The Financial Action Task Force (FATF), the only international body solely designed to combat money laundering, defines money laundering as:

The conversion or transfer of property knowing that such property is derived from an offence, for the purpose of concealing or disguising the illicit origin of the property, or of assisting any person who is involved in the commission of such an offence to evade the legal consequences of his

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Laundering and the Nigerian Economy” held at Eko Hotel, Lagos on 28<sup>th</sup> – 29<sup>th</sup> October, 2003. Vol. 1 p. 2.

<sup>9</sup> Jeffrey Robinson, “*The Laundrymen*”: (London: Pocket, 1998), p. 15.

<sup>10</sup> Javier Carcia, “International Measures to Fight Money Laundering”, *Journal of Money Control*, Vol. 3 No. 1 (2000), p. 37.

<sup>11</sup> See International Chamber of Commerce, *Guide to Prevention of Money Laundering*, Vol. 6, 1998

<sup>12</sup> See James D. Harmon, Jr., “United States Money Laundering Laws: International Implications”, 9. N.Y.L. Sch J. Int’l & Comp. L. 1, 2 (1988).

<sup>13</sup> *Ibid.*

<sup>14</sup> Billy’s Money laundering Information Website: [http:// www.laundryman.u-net.com](http://www.laundryman.u-net.com), retrieved on 02/05/2011.

actions. In other words, it is the concealment or disguising of the true nature, source, location, disposition, movement rights with respect to or ownership of property, knowing that such property is derived from an offence; (and) the acquisition, possession or use of property, knowing at that time of receipt that such property was derived from a criminal offence or from an act of participation in such an offence<sup>15</sup>.

Money laundering is being employed by launderers worldwide to conceal criminal activity associated with it such as drug/arms trafficking, terrorism and extortion. From an estimate of the International Monetary Fund, the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's gross domestic product.<sup>16</sup> Money laundering is known as the "alternate economy", thriving as world third largest business after foreign exchange and natural gas<sup>17</sup>. Part of the difficulty in seizing these culprits relates to the particular quality of money:

Money is the fungible of all commodities. It can be transmitted instantaneously and at low cost... It can change its identity easily and be traced only with great effort... These characteristics work to the disadvantage of governments and their efforts to tax, regulate and control economic activity.<sup>18</sup>

Sultzter suggest that money laundering is the process of taking the proceeds of criminal activity and making them appear legal<sup>19</sup>. Laundering allows criminals to transform illegally obtained gain into seemingly legitimate funds. It is a worldwide problem, with approximately \$300 billion going through the process annually in the United States. The sale of illegal narcotics accounts for much of this money. Those who commit the underlying criminal activity may attempt to launder the money themselves, but increasingly, a new class of criminals provides laundering services to organised crime. This class consists of lawyers, bankers and accountants. Money Laundering as a crime only attracted interest in the 1980s, essentially within a drug trafficking context.

The absence of, or a lax or corrupt, anti-money laundering regime in a particular country permits criminals and those who finance terrorism to operate, using their financial gains to expand their criminal pursuits and fostering illegal activities such as corruption, drug trafficking, illicit trafficking and exploitation of human beings, arms trafficking, smuggling, and terrorism. It was from an increasing awareness of the huge profits generated from this criminal activity and a concern at the massive drug abuse problem in western society, which created the impetus for governments to act against the drug dealers by creating legislation that would deprive them of their illicit gains.

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<sup>15</sup> Financial Action Task Force quoted Kern Alexander, "*International Anti- Money laundering control*" Vol. 4 No. 3 (2001), p. 233.

<sup>16</sup> Ganash, "Overview of Money laundering" Available at [http://rbdocs.ribs.org.in/ribadmin/Script/BTC\\_Display.aspx](http://rbdocs.ribs.org.in/ribadmin/Script/BTC_Display.aspx), retrieved on 10/5/2011 .

<sup>17</sup> Jeffrey Robinson, *op.cit* , p. 16.

<sup>18</sup> Laurense Krause quoted in Phil Williams, "Transactional Criminal Organizations and International Security", *Survival*, Vol. 36, No. 1 (Spring 1994), p. 318.

<sup>19</sup> Sultzter,. Scott. Money Laundering: The Scope of the Problem and Attempts to Combat it. "*Tennessee Law Review* 63, 1995.

### **3. METHODS ADOPTED FOR MONEY LAUNDERING**

Money Laundering techniques have become so complex and fluid that the perpetrators are always very cunning in circumventing the laws. They avail themselves of information/communication technology such as internet connectivity<sup>20</sup> to perpetrate the crime. However, the most pervading type of money laundering that the Banks experience on a daily basis takes the form of accumulated cash transactions which are normally deposited in the banking system or exchanged for items of value such as travelers' cheques, money and/or postal orders, bank drafts, gold, diamonds, etc.

There is also the use of the 'loan-back' concept, which meant that hitherto illegal money could now be disguised by 'loans' provided by compliant foreign banks, which could be declared to the 'revenue' if necessary, and a tax-deduction obtained into the bargain. The process of money laundering is accomplished through three (3) processes namely: placement, layering and integration.

#### **3.1 Placement**

This is the first stage in the Money Laundering process. It involves the introduction of the proceeds of criminal activity into the main stream financial system. This may involve the opening of bank account with genuine or fictitious names and the subsequent lodgment of funds in the account; or funds exported or cash used to buy high value goods, property or business assets.

It is also involves importation of goods at deliberately inflated price and the actual price is deposited offshore and repatriated as they (perpetrators) wish.<sup>21</sup> Placement may also be by way of smuggling or shipping large amount of currencies out of a country. It includes conversion of currency to commodities and making physical deposits in the bank<sup>22</sup>. Placement of huge sums of money in most cases, attracts attention, arouses suspicion and may lead to report to the law enforcement agencies. This is the most vulnerable stage in Money Laundering.

#### **3.2 Layering**

This process involves the creation of a complex layer of financial transactions with the aim of evading the audit trail. The launderer may as well decide to purchase high valued commodities such as automobiles, jewelry, etc. and exporting to a different jurisdiction, or it may involve the purchase of shares of companies at the stock market. A typical example of money laundering is the capitalizing of an ailing public company with laundered fund by buying off either all or a substantial proportion of its equity with a view to assuming full control and ownership of such a company.

There is also the over invoicing aimed at disguising the audit trail and providing anonymity. Through this dubious device, the dirty money is manipulated using a number of financial and other institutions to disguise the true ownership and the original source of the funds.

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<sup>20</sup> Ohanyere, A. N. *Op.cit*, p. 2.

<sup>21</sup> Akpala, E. P. & Amusu, H. O. "Money Laundering and other Financial Crimes". Paper presented at the 1997 Bank Examination Conference held at CBN Training Centre on 9<sup>th</sup> October, 1997.

<sup>22</sup> Inim V. E., "Money Laundering Meaning, History Processes and Impact", being a paper presented at Seminar on Money Laundering at Eko Hotel Lagos, 2000.

### **3.3 Integration**

This stage involves the recycling of the laundered wealth to the direct benefit of the Launderer to appear as if it was derived from legitimate activity. It may involve the selling off of some valuable items, which were purchased during the layering process. It may also involve false loan repayments or forged invoices used as cover for laundered money. Here, income realised from property or legitimate business assets could be regarded as being clean.

## **4. MONEY LAUNDERING (PROHIBITION) Act 2004**

The National Assembly in 2004 passed the Money Laundering (Prohibition) Act and signed into law by former President Olusegun Obasanjo. The new Act provides for the repeal of the Money Laundering Act. It makes enormous provisions to prohibit the laundering of the proceeds of a crime or an illegal act; and provides appropriate penalties and expands the interpretation of financial institutions and scope of supervision of regulatory<sup>23</sup> authorities on money laundering activities, among other things. The repealed 2003 Act had initially repealed the 1995 Money Laundering Decree (Act) for lack of adequate of provisions on enforcement powers and coordinating strategies, among others.

The 2004 Act also enlarged the provisions of the repealed Act 2003 in that more bodies were identified as financial institutions for purposes of the Act, and non- financial institutions whose business involves cash transitions were brought within the scope or ambit of the Act. The Minister in charge of Commerce, or the Economic and Financial Crimes Commission (EFCC), Securities and Exchange Commission (SEC), National Insurance Commission (NIC), National Drug Law Enforcement Agency (NDLEA) or the Central Bank of Nigeria (CBN) can designate any business as a non-financial institution for purposes of the Act.<sup>24</sup> Section 2 of the Act provides that a transfer to or from a foreign country of funds or securities of sum exceeding 10,000.00 U.S dollars or its equivalent by any person or corporate body shall be reported to the Central Bank of Nigeria (CBN) and/or Securities and Exchange Commission (SEC). There is no provision in this Act as to who shall make the report to the Central Bank of Nigeria in the manner contemplated by the Act. But it would appear from the general reading of the provision that it is the financial institutions, non-financial institution or indeed any other body or bodies, person or persons, being aware of the transaction, who shall make the report.

The provision of section 3 on the identification of customers is very important and financial institutions should be closely monitored for compliance. This is because banks especially harass customers by opening accounts for them, even when these so –called customers are unwilling or unaware of the actions of the bank, in the bank’s effort to secure as many customers as possible to stay afloat in the cut-throat competition environment of the banking industry. However, on the implementation of section 3 (2) (b), the requirement that an individual should provided proof of his address, by presenting to the financial institution the originals of receipts issued within the previous three months by public utilities is of serious concern. It is conceded that this provision is an ingenious way of getting Nigerians to settle bills for public utilities like those originating from Power Holding Company of Nigeria (PHCN), Water Boards or Corporations and revenue derivable from driving license and bills but the presumption is that every prospective bank customer has valid residence which make one wonder what proof of squatter or a hanger on can provide.

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<sup>23</sup> See Explanatory Memorandum of the Act, 2004, 23.

<sup>24</sup> *Ibid*, s. 24.

It seems that the provision did not consider that in towns or cities, most unemployed people stay at sufferance in the houses of uncles, aunts, siblings or friends and receipts of bills for public utilities are written in the names of *bonafide* occupants (if they pay at all). A further provision where a letter of guarantee or of good standing by one who attaches proof of payment of bills for his public utility receipts should have taken care of this worrisome situation.

Further, what meaning can be ascribed to the term 'casual customer' as used in section 3 (5) of the Act. The interpretation section has not defined who a casual customer is; section 12(1) (b) permits the EFCC, NDLEA, and the CBN to tap into the telephone line of a suspected person or institution. That is a controversial provision because for private persons, it may seem a violation of the Constitution of the Federal Republic of Nigeria, which guarantees right to private and family life.

By section 45 of the Constitution, it is discovered that a restriction and derogation from section 37 is allowed, although such derogation can only be done in the interest of defence, public safety, order, morality or health, or for the purpose of protecting the rights and freedoms of other persons. Money laundering activities clearly fit into this premise because they infringe on the right and freedoms of other persons.

In section 15 of the Act, provision is made for a minimum fine amount of N250,000.00 (Two Hundred and Fifty Thousand Naira) for both corporate body and an individual. This appears to be unnecessarily high for an individual. It is the lofty view of this piece that the minimum fine amount for money laundering by a corporate body should be raised from the above amount to N1000000.00 (One Million Naira) while that of an individual should be allowed to remain at N250,000.00 (Two Hundred and Fifty Thousand Naira). The same section provides for a maximum fine amount for a corporate body in the sum of N1000000.00 (One Million Naira) whereas no statutory maximum punishment has been fixed or provided by the law for an individual who launders in money. Again, it is the sublime view of this discourse that the maximum fine amount for a corporate body found guilty of money laundering should be raised from the present N1000000.00 (One Million Naira) to N10,000000.00 (Ten Million Naira), while that of an individual should now be provided for and fixed at N1000000.00 (One Million Naira). In order to entrench the foregoing in the law, the presenter writer advocates for the amendment of the current law Money laundering prohibition Act 2004 on the subject.

It seems that section 15 (2) (5) that provides for professional discipline in addition to the penalties prescribed in the Act puts the compliance officers in a dilemma, especially if they are junior officers. The situation is made worse where the management of the financial institution is working in synergy with the launderer or his principal. The Nigerian employment environment is hopeless and any compliance officer who flouts management order to handle a certain transaction in a certain way may be relieved of his post.

There should have been a provision of indemnity in the Act from sack for the compliance officer for aiding, or abetting; but if sacked and he can prove that his sack was because of his compliance with the Act, the court should accept such as conclusive proof of wrongful dismissal and impose exemplary damages in favour of the plaintiff (compliance officer).

Section 18 (2) provides that where a body corporate is convicted of an offence under the Act, the court may order that the corporate body shall thereupon and without any further assurances, but for such order, be wound up and all its assets and properties forfeited to the Federal Government. This penalty is designed to ensure strict observation of the provision of the Act. The other punishments provided as fine to be paid in bulk, as well as suspension,



revocation or withdrawal of license are illustrative of the Federal Government's policy thrust against money laundering.

Although the objects of the Act are to limit the use of cash in business and private transactions; discourage the laundering of proceeds of criminal or illegal engagement, and encourage transactions in the financial institutions, it seems that an aggressive public enlightenment programme should be embarked upon because Nigeria has a cash oriented economy.

On the whole, the Act is welcome development because it assists in regulating transactions in cash and securities in the Nigerian economy and the would de-list Nigeria as a stronghold for money laundering Task Force (FATF) of the international community will begin the process of de-listing Nigeria from amongst defaulting jurisdictions.

## **5. IMPLICATIONS OF MONEY LAUNDERING**

### **5.1 *Economic Implication***

The Economic implication of money laundering is breath taking. Money Laundering affects indigenous entrepreneurs, more so with the trade liberalization. Proceeds of drug sales and consequent money laundering activities are used in bringing goods to the market, and such goods are sold below cost prices in the exporting countries. The reason for this is not far – fetched and that is that, the drug barons embark on the importation with the disguised intention to transfer dirty money and not for profit making.

This situation discourages domestic production due to inviting pricing of the imported products. The return on investment from domestic production and other legitimate business activities will fall and becomes lower than the high returns made by the money launderers, thus, domestic production is thereby adversely affected. This situation affects small and medium scale enterprises in particular, which are the integral parts of government's millennium development goals. This will ultimately lead to declined in foreign investment, as investors will be scared of the economic environment where illicit monies are allowed to play a significant role in the allocation of resources.<sup>25</sup>

Money Laundering has a direct impact on the Foreign Exchange Market in any economy. This has been recognised by the European Union (EU) in what is called the EU directive on money laundering. The Foreign Exchange (FOREX) Market is vulnerable due to the volume of cash involved in the trade.<sup>26</sup> Apart from the above impact on capital formation, money laundering could lead to increase in the liability and heighten the risks for assets quality in the financial system. When this happens, it may create systemic risks for the financial services industry and consequently to the loss of confidence and credibility in the system.

Money Laundering could also encourage the proliferation of the underground, unregulated thriving informal market. The purpose of money laundering is not only to avoid detection, but also to avoid or evade tax; this may create some trade imbalance and balance of payment problems in the economy.

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<sup>25</sup> Joseph O. S. Sanusi , Central Bank of Nigeria's Stand Point of Anti-Money Laundering Compliance. A Speech at the Conference on Anti-Money Laundering in ECOWAS: Bringing the Anti-Money Laundering Requirement in Compliance with International Standard, Lagos, June 3, 2003.

<sup>26</sup> Quirk, Peter, Macro- Economic Implications of Money Laundering a publication of the monetary and exchange department of the International Monetary Fund (IMF), April 1996.

## **5.2 Political Implication**

Funds or income realised from money laundering bankrolls political campaigns during elections. The whole essence is to infiltrate the political arena and influence governance if such a party wins. For example, President Ernesto Samper of Columbia was accused of funding his political campaign with about US\$6million donated by the Cali Cocaine Cartel in the 1996 elections.<sup>27</sup> Money Laundering can also “undermine the democratic and economic basis of societies,” resulting in a “weakening of institutions and a loss of confidence in the rule of law”.<sup>28</sup>

This occurred in Russia following the 1998 meltdown of the national economy that resulted in the transfer of \$74 billion from Russian banks to offshore financial centres (OFCs). Inflation rose by 200%, the unemployment rate by an estimated 12% and crime by 4%.<sup>29</sup> In some cases, money launderers could run parallel governments to those democratically elected and might have their own armies that could confront the legitimate government. The experience of some Latin American Countries like Columbia lends credence to this fact.

## **5.3 Social Implication**

The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and ultimately, the democratic institutions of society. This criminal influence can undermine countries undergoing the transition to democratic systems. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generates it. Laundering enables criminal activity to continue.

The good image of this country had been badly dented by unwholesome activities of a few misguided and unscrupulous elements that indulge in Money Laundering and criminal activities. This imposes some constraints on Nigeria in international economic relations.<sup>30</sup>

Until fairly recently, Nigerians were treated with disrespect in virtually all the entry points of western countries on account of the country's association with money laundering and other crimes; even though a very insignificant number of Nigerians are engaged in these criminals' activities.

## **5.4 Global Effects**

Above all, the fact that organised crime recognizes no territorial boundaries or the niceties of sovereignty poses a fundamental challenge for the global society. Money Laundering has emerged as a major threat to global societies, facilitated by the removal of capital controls and the liberalisation of global finance. A “dark side” of globalisation, Money Laundering has been recognised as the lifeblood of transnational criminal networks, including drug smugglers, terrorist and human trafficking groups.<sup>31</sup>

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<sup>27</sup> See George Henry Millard, “Drugs and Organized Crime in Latin America”: *Journal of Money Laundering* Vo. 1 Nov. 1997.

<sup>28</sup> G8 Communiqué; (Birmingham, 17 May 1998). Available at [www.g7utoronto.ca/summit/1998birningham/finalcom](http://www.g7utoronto.ca/summit/1998birningham/finalcom) retrieved on . 10/05/2011.

<sup>29</sup> Moore and James Carter, “The Meltdown: Don't Blame Capitalism,” (Cato Institute, 23 October, 1998), available :<http://www.cato.org/analysis.html>, and Vladimir Petrovich Vorozhtsov, “ Chapter 17 – Combating Crime in Russia: The Particular and the Common”, in Sergey Oznobishchev and James H. Brusstar, U.S.-Russian, retrieved 25/05/2011.

<sup>30</sup> Inim, V. E., “Money Laundering, History, Processes and Impact”, being a paper presented at a seminar on Money Laundering at Eko Hotel Lagos, 2000.

<sup>31</sup> “G7 Finance Ministers vow to hit Money Laundering”, *Toronto Star*, (July 11, 2000) , p. A7.

Apart from destabilising the fiscal policy and budgeting statistics of the world economic plans, money laundering has sustained the influence of a great number of international crimes. Money Laundering sustains the hard drug trade all over the world, much as it is responsible for the re-capitalisation of the trade, since no international crime can truly thrive without Money Laundering.

It is this prospect that sustains the various international Mafia groups and their criminal operations in the developing nations. Money Laundering has in many ways had a destabilising influence on their socio-political economies. Terrorists and persons engaged in the weapons trade often employ laundered money to fund their activities. Extremists, guerrillas and other bellicose groups use these weapons in uprisings against their governments, often agitating their regional surroundings.

The events of September 11, 2001 (9/11) led to a destabilisation of the international system, with the United States of America (U.S.), the global hegemonic power, embarking upon a 'War on Terror' and corresponding military campaigns in Afghanistan and Iraq. This created a cleavage amongst allies, challenging the status quo, and given the instability present in the Middle East, the imminent danger to the international system is high.

## **6. INADEQUACIES IN THE LEGAL FRAMEWORK**

The enforcement of any law cannot go further than the contemplations of the law itself. These contemplations are made manifest in the provisions of the law. Therefore, inadequacies in our legal framework on financial crimes especially the money laundering Act and ICPC Act have hindered the success of these agencies in the performance of their duties. For instance, section 18 of Decree No. 3 1995 (now Act) provides that:

If an accused person is found with resources that his known sources of income cannot justify, it shall be taken into consideration as corroborating the evidence against the accused, except he proves that legitimacy of the fund. The contemplation of the law was that for the accused whose resources are doubtful, the onus would shift on him to establish the source of the enormous resources or that the pecuniary interest he possesses is not a product of crime. The reason was that the source of the wealth is a fact exclusively within the knowledge for the accused and, as such, he alone is in the position to prove its source.<sup>32</sup> Incidentally, the provision could not achieve the effect that was intended. The court resisted it in view of our Common Law heritage by which the innocence of the accused person must always be presumed until prosecution proves otherwise. The court tagged the effect to be a shift in the evidential burden rather than a shift in the burden of proof. This provision could not therefore remedy Decree No. 3 of 1995.<sup>33</sup>

In view of the ICPA Act, Justice Emmanuel Ayoola stated that the Economic and Financial Crimes Commission (EFCC) had prosecuted and convicted more people over corruption than the ICPC, following the existence of interlocutory injunctions in the Act setting up the ICPC Commission, stressing that EFCC Act does not condone interlocutory injunctions<sup>34</sup>. It is

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<sup>32</sup> Dr. Ndanusa, Director – General, Securities and Exchange Commission (SEC): "Recognising and Combating Suspicious Financial Transactions: the roles of Financial Institutions and Regulatory Authorities", a paper presented at a 2-day Conference on Money Laundering and the Nigerian Economy at Victoria Island, Lagos on October 29<sup>th</sup> 2003, p.3.

<sup>33</sup> Femi Oloruntoba, "Emphasizing the Proceeds of Financial Crimes than the Criminals as a Panacea for Fighting Money Laundering", a paper presented in a 2-day Conference on Money Laundering and the Nigerian Economy at Victoria Island, Lagos on October 29<sup>th</sup>, 2003.

<sup>34</sup> Lawrence Njoku (Enugu), *The Guardian*, "ICPC convicts 16 Nigerians, lists hurdles to anti graft war", Wednesday 22<sup>nd</sup> July 2009.

expected that the ICPC Act should have given room for the continuance of the trial of substantive allegations of graft even in the face of interlocutory injunctions.

The agencies are unable to secure adequate convictions in money laundering crime as a result of the faulty and assumptive provision of the Money Laundering Decree N. 3 of 1995 (now Money Laundering Act). The weakness in the always turns the judicial interpretations in favour of criminals on grounds of fundamental human rights. One example is the case of *Orji Usor Kalu EFCC & or.*<sup>35</sup>

In that case, EFCC arrested Orji Usor Kalu on the grounds of financial crimes. The embattled ex-governor went to Umuahia High Court to seek the leave of court to enforce his fundamental rights. The court, presided by Justice A. U. Kalu, granted him leave to apply for the enforcement of his fundamental rights and that the order shall operate as a stay of all actions on matters relating to or connected with the compliant until the determination of the motion on notice.

## **7. SLOW CRIMINAL JUDICIAL PROCESS**

Slow criminal judicial process is a major challenge to the enforcement function of these agencies as, the legal strategies surrounding interlocutory injunctions cause great delay and stall the trial of the substantive matter. Defence counsels have always relied on this option to delay prosecution of offenders and will continue to move from one motion to another in their bid to gate the accused out of court.

Beside, cases involving people, who were either sacked from their places of work or got killed after providing useful information to the enforcement agencies on various levels of corruption, have resulted in the reluctance of people to give evidence in court, hence, a delay in the judicial process. Also, there are many cases pending without accelerated trials as a result of court congestion.<sup>36</sup>

The challenge of accusatorial system of criminal justice administration as opposed to the inquisitorial system is another cause of slow judicial process.<sup>37</sup> In the accusatorial system, the judge acts as an impartial umpire; prosecution and defence, each put their case; and the jury decides whereas in the inquisitorial system the inquiry into the facts is conducted by the judge, who also examines the evidence and interrogates witnesses.

The challenge of the accusatorial system is that juries have to decide on the basis of the evidence put in court, which may be limited by rules of evidence. The same evidence would not be hidden under the inquisitorial system, where all evidence must be put forward and this will enhance the peace of justice delivery.

The immunity in favour of some political office holders who have continued to loot the treasury with impunity and are evading prosecution with the aid of the 'immunity clause' slows down criminal judicial process. If things are allowed to continue, as they are, the suffering in the land will remain.

The possible abuse of power by the Attorney-General also adds to the show judicial process. This was evidenced when the late President Umaru Musa Yar'dua granted the written request of the then Attorney-General and Minister of Justice, Mr. Mike Aondoaka, SAN to the effect that:

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<sup>35</sup> No. *HU/177/N/2007*.

<sup>36</sup> Kalu Okpi, "EFCC and the war against corruption" *News of Nigeria*, News Extra. Published on 22/01/2010.

<sup>37</sup> Section 308, Constitution of Federal Republic of Nigeria, 1999

- All agencies involved in the prosecution of criminal offence such as EFCC and ICPC should report and initiate criminal proceedings with the consent of the Attorneys-General of the Federation.
- That the Attorney-General of the Federation should exercise powers conferred on him pursuant to Section 43 of the EFCC Act 2004 to make rules and regulations the respect to the exercise of any of the duties, functional or powers of the EFCC.<sup>38</sup>

This incident slowed down criminal prosecution during that period and also generated a lot of criticisms until the President reverse that decision.

## **8. ADVANCEMENT IN INFORMATION TECHNOLOGY**

The phenomenal advancement in information technology has been exploited by criminals in the country to perpetrate their illicit transaction. The use of microchip based electronic money for financial transactions, via smart cards and the interest, has the potential to assume an important place in the future domestic and Currency paper notes and metal coins have always been of particular importance in payment involving illicit activities. Currency attributes include ease of use, wide acceptability, and anonymity. A significant feature of the new cyber payments systems is that some systems are being engineered to be an electronic emulation of paper currency. Cyber currency includes the attributes of conventional currency: a store of value, a medium of exchange, a potential anonymity and convenience.

But there are added features: transfer velocity (almost instant electronic transfer from point to point) and substitution of elections for paper currency and other physical means of payment. Obviously this is an innovative addition to the payments system, but it also requires close attention since the use of microchip and telecommunications technologies adds some significant new dimensions from law enforcement.

Yet, currency is not the only monetary instrument innovation. Cyber payments also comprise other payment components. Already in use or design are cyber checks, an emulation of paper checks, cyber credit, cyber debit, etc. The common element is that these systems are designed to provide the transacting parties with immediate, convenient, secure and potentially anonymous means by which to transfer financial value. When fully implemented, this technology will impact users worldwide and provided readily apparent benefits to legitimate commerce; however, it may also have the potential to facilitate the international movement of illicit funds.

## **9. INADEQUATE FUNDING OF THE AGENCIES/OFFICIALS**

Another very serious factor that inhibits the fight against money laundering is inadequate funding of the various agencies and officials that are supposed to fight this crime. The officials of these agencies are not well remunerated and this situation skills the urge and morale of the officials to put in their utmost in the performance of their job.

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<sup>38</sup> Dele Adesina, "The Prosecutorial powers of the Attorney-General of the Federation and Minister of Justice versus the Prosecutorial powers of Economic and Financial Crimes Commission (EFCC) . . . Aneedless controversy". In Suleiman Abdullahi (Ed):Corpus of Topical Legal Issues: Collection of legal Essays written in honour of Honourable Justice S.U. Onu, JSC, CON. Kaduna:Suleiman Abdullahi & Associate, 2008.

Money Laundering is a sophisticated crime and the operators employ electronic devices and other hi-tech equipment to perpetrate the crime. Hence, the officials of the enforcement agencies need capacity building, not only in terms of staff training, but also in the provision of modern equipment from developing databases that will enable them to stay ahead of the criminals. But the funds to provide such equipment are not available.<sup>39</sup>

## **10 GLOBALIZATION OF THE WORLD'S ECONOMY**

Globalization is the buzzword: bringing together nation states, as it were, in what might be called a "global village". The main pillars of this process are Liberalization and Deregulation of national economies. These developments combined, created both opportunities and risks for the society.

Criminals are now taking advantage of the globalization of the world economy by transferring funds quickly across international borders. Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money laundering more cumbersome.

The deeper "dirty money" gets into the international banking system, the more difficult it is to identify the origin. There have been a number of developments in the international financial system during recent decades that have made the three F's finding, freezing and forfeiting of criminally derived income and assets- all the more difficult.

These are the "dollarization" (i.e. the use of the United States dollar in transactions) of black markets, the general trend towards financial deregulation, and the progress of the Euro market and the proliferation of financial secrecy havens. Fuelled by advances in technology and communication, the financial infrastructure has developed into a perpetually operating global system in which "megabyte money" (i.e. money in the form of symbols on computer screens) can move anywhere in the world with speed and ease.<sup>40</sup>

The attitude of members of the society who honour wealthy men irrespective of the source of their wealth constitutes a serious hindrance to the fight against money laundering in Nigeria. Political thugs and supporters of suspects usually prevent officials of anti-graft bodies from arresting the culprits, who use public funds to enrich themselves.

Recently, it was reported in the newspapers that 1000 pro-Ibori youths engaged the Police in gun duel to assist the ex-governor of Delta State, Chief James Ibori, to escape arrest by EFCC for alleged crime of Money Laundering.<sup>41</sup>

Beside, The Nigerian Television Authority (NTA) reported<sup>42</sup> how the youths who were said to be supporters of the ex-governor of Sokoto State, Alhaji Attahiru Bafarawa, resisted the arrest of their mentor by the police at the court premises after the adjournment of his case with EFCC on Monday Laundering. This attitude is a serious threat to the smooth functioning of the Anti- Money Laundering officials in the performance of their assigned duties.

To complement the efforts of the Anti - Money Laundering Agencies, there must be a change in attitude of Nigerians who hero-worship persons who possess wealth, no matter the sources. Members of the society must shun those who acquire wealth using their office as they are the source of desperate poverty

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<sup>39</sup> A.N. Ohanyere, *op cit*, p. 43

<sup>40</sup> See George Henry Millard, "Drugs and Organized Crime in Latin America" *Journal of Money Laundering* Vol. 1 Nov. 1997.

<sup>41</sup> "1,000 pro-Ibori youths, police in gun duel" *The Punch*, April 21, 2010.

<sup>42</sup> Network news of 17<sup>th</sup> March, 2010 at 4.00 pm.

in the land, decay infrastructure, joblessness, hunger, ill-health and economic backwardness which have turned Nigerians into Economic refugees all over the world.

## 11. PRESCRIPTIONS

The war against money laundering should be co-ordinated under a common legal framework instead of being handled by multi-faceted institutions as is presently done. This will be in synergy with the recommendation of Financial Action Task Force (FAFT), which provides that, all financial crimes that are considered serious be organised and categorised as money laundering offences in *corpus juris* of a given legal system.

Emphasis now is focused on banks and financial institutions only, to report customers' questionable transactions to anti-money laundering agencies. The focus should be extended to cover such bodies as insurance companies, micro-finance institutions, mortgage institutions, leasing companies, stock brokers, *Bureau de change*, and other going concerns.

The Central Bank of Nigeria should strategise more in order to check the activities of banks from perpetrating money-laundering activities with their customers principally for the purpose realising staggering amount of money as profits at the end of the financial year.

There is need for training and re-training of personnel of anti Money Laundering institutions, so that they would be properly equipped and positioned to tackle the crime conscientiously and holistically. Furthermore, the collective attitude of all Nigerians and even foreigners should be aimed at eliminating and totally eradicating this economic virus in the nature of money laundering.

## 12 CONCLUSION

The forgoing exposition has shown that the federal government of Nigeria has demonstrated genuine concern and commitment in the enforcement of money laundering laws. It has added impetus and vitality to the fight against the crime by enacting a 2011 amendment to the previous law, thereby sending signal to the perpetrators that there is no safe haven for them.

The legislative efforts, the establishment of relevant institutions together with the enforcement drive so far adopted, collectively comply with the requirements of the recommendations of the Financial Action Task Force (FATF) which represent the international standard which nations' performances are measured<sup>43</sup>.

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<sup>43</sup> A. N. Ohanyere, *op.cit* p. 85.