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The Impact of Money Laundering on Economic, and
Financial Stability and on Political Development of
Developing Countries

LLM 2011-2012
**International Corporate Governance, Financial Regulation and
Economic Law (ICGFREL)**

The Impact of Money Laundering on Economic and Financial
Stability and on Political Development in Developing Countries.

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Abstract.

Money Laundering is indeed a global phenomenon which undermines the economic and political stabilities of States. The devastating effect and impact of the phenomenon has raised national and international concerns. In response to these concerns, along with the perceived threats to national and international economies and political process, there have been various international and national initiatives and measures to combat the menace of the phenomenon. As much as money laundering is a global phenomenon, over the last decade, it has been apparent that development countries have been more exposed and vulnerable to its exploits. In this regards, it is argued, with evidence, that money launderers, along with other economic and financial criminals have found most developing countries as havens for their criminal activities due to the lax regulations and enforcement mechanisms. As such with the increasingly infiltration of money laundering into the economic and political structures of developing countries, this work will attempt to examine the concise impact of money laundering in the economic and political structures of developing countries. It shall also examine the legislative measures that are being taken in combating the menace of money laundering the effectiveness of these measures.

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INTRODUCTION

In developing this research, emphases will be placed on primary sources of information and references to secondary sources of information where relevant. The work evaluates, specifically, the impact of money laundering on Economic development, financial stability and also political development of 'Developing Countries'. The objective is to critically analyse the large scale and concise effect and impact of money laundering practices that hinder economic and political development in developing countries in contrast to the developed countries.

Over the last two decades, since its criminalisation, there has been an increasing interest in the phenomenon of money laundering globally. However, most of the study has focused on money laundering from the perspective of developed countries. Accordingly, international opinion, policies and legislation aimed at combating money laundering have also been designed mainly on the needs of the developed countries. However, money laundering is indeed an international phenomenon and its impact and effect reflect on all the facets of the global society. In particular, money launderers, most often, look for ways of to disguise their wealth, which is the basic component of money laundering practice. As such, most developing countries have characteristics and attributes that the money launderers find attractive to carry out their act. Consequently, this impacts on the economic,

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political and social facets of such countries. Therefore, understanding the economic, political and social settings of these developing countries is fundamental ingredient in the war against money laundering.

The work is divided into five further chapters. Chapter one will evaluate the phenomenon of Money laundering in relation to the main activities and practices in global context. Furthermore, the chapter will analysis the critical perceptions of money laundering globally and seek to explore its impact in the society. Further, the chapter will evaluate the global response to the menace of money laundering. Much has been said of the devastating impact of money laundering in all facets of the developing countries; hence the chapter will evaluate the hidden benefits of money laundering particularly to developing

Chapter two of the work will focus explicitly on the various impact of money laundering on the economic and financial stability in developing countries. The chapter will initially evaluate the attribute and characteristic of the economy in developing countries. The chapter will then identify and analysis the effects of uncurbed money in developing countries with main focus being Nigeria. Chapter three will examine explicitly the impact of money laundering on political development and governance of developing countries. The chapter will analysis the correlation between money laundering, organised crime and corruption, being the three vital

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components of economic and financial crimes. The impact of these three in political structure of most developing countries will be identified and again Nigeria being the main reference.

Chapter four of the work will analysis the legislative development in combating ML in developing countries with Nigeria as a case study. The work then closes with analytical conclusions and suggests measures of combating effective the menace of money laundering in the developing countries, with Nigeria as a case study.

The work will conclude by reiterating the essence of money laundering on the global stage and literally account for the basis of the spread of money laundering, along with other economic and financial crimes, to developing countries and how

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CHAPTER 1

The Phenomenon of Money Laundering

1.1. Overview of Money Laundering

Money laundering, in essence, means 'making money dirty money look clean. The modern term of Money laundering was first used in a legal context in 1982 in America in the case *US v \$4,255,625.39*, relating to the confiscation of laundered Columbian drug proceeds¹. However, historically, the concept of money laundering was originally used by the American enforcement officers in the 1920s. The concept was used in reference to the mafia ownership of Laundromats in America during Prohibition. During this period, the notorious mobs earned vast sum of money in cash from their criminal enterprises. Hence, in their quest to legitimise the proceeds made from their criminal enterprises, the gang ventured into buying out rightly legitimate businesses, thereby, laundered the illicit proceeds from the criminal

¹ Bantekas I. & Keramidas G, *International and European Financial Criminal Law*. Lexis Nexis – Butterworths 2006. Pg.22.

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enterprises with proceeds made from the legitimate business they acquired². This particular practice, the legalisation of illegal proceeds, is very significant as it represents the common component in regard to the various definitions of money laundering. Thus, the aim of money laundering is to cover up the predicate offences from which proceeds are derived and to ensure that the criminals can enjoy their proceeds, by conserving or investing them in the legal economy³.

Following the criminalisation of the phenomenon of money laundering and the legalisation of the term, the term has been defined in various contexts by various stakeholders. As mentioned earlier, the common basis of the various definitions is such that relates to the legalisation of the illicit proceeds of criminal activities. As such, the American President's commission on Organised Crime in its interim report in 1985: *The cash connection: Organised Crime, Financial Institutions and Money Laundering*, defined Money Laundering as the process by which one conceals the existence, illegal source or illegal application of income, and then disguises that income to make it appear legitimate⁴. Furthermore, the Financial Action Tasks Force defines money laundering as 'the processing of criminal proceeds to disguise their

² Alastair N Brown, *Money Laundering*: Thomson Reuters Publishing 2009. Pg.2.

³ Guy Stresses, *Money Laundering: A new International Law Enforcement Model*, Cambridge University Press, 2000. Pg.82.

⁴ Ibid. Pg .83.

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illegal Origin⁵. The International Monetary Fund, also defines money laundering as ‘ a process in which assets obtained or generated by criminal activity are moved or concealed to obscure the link between the crime and the assets’⁶.

In practice, the act of money laundering entails a highly complex process that consists of three main stages. These stages include placement, layering and integration. At the placement stage, money launderers move the proceeds of their criminal enterprise to an area where the proceeds could be changed to a less unwieldy form or simply hidden from authority inquiries. Once this is achieved, then the capital is integrated into the financial system. At the layering stage, after the capital has been integrated into the financial system, it is then moved in a sequence of complicated financial transactions so as to distance the money from the illicit source. The technological advancement in today’s world has made movement of funds across the globe an easy task. Hence, funds are moved through accounts, banks, countries or mixture of the three. The process of money laundering is

⁵ FATF definition of Money Laundering at http://www.fatf-gafi.org/document/29/0,3746,en_32250379_32235720_33659613_1_1_1_1,00.html#Whatismoneylaundering

⁶ IMF, *Financial System Abuse, Financial Crime and Money Laundering-Background Paper*, prepared by the Monetary and Exchange Affairs and Policy Development and Review, Feb. 12 2001. Available at <http://www.imf.org/external/np/ml/2001/eng/021201.pdf>

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completed at the last stage, integration. At the stage, money launderer has legalised the proceeds of his criminal enterprise by integrating them in legitimate business activities⁷. Hence, the money launderer can move his funds about the economy or reinvesting the proceeds.

1.2. Main activities and attributes surrounding Money Laundering globally

Money laundering, since its criminalisation, remains at the fore front of criminal activity. This is so as money laundering is the basis of predominantly all other criminal activities. In essence, money laundering constitutes vital component of any transnational organised crime, more so as it cannot be distinguished from other modes of crime⁸. Hence, the transnational criminal groups have resorted to money laundering in different countries, particularly, the developing the countries, in their quest to legalise the proceeds from their criminal activities.

Over the last two decades, there has been a surge in international movement of money. This surge is consequential to the geo-political developments, a surge in

⁷ Op. cit., Bantekas I. & Keramidas G, Pg. 24.

⁸ See journal on *Analysis of current situation of Money Laundering*. Available at www.unafei.or.jp/english/pdf/RS_No59/No59_43RC_Group3_Phase1.pdf

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economic globalisation and advancement in technology. Over the decades, the speedy growth of global financial movements set the platform for the growth of transnational organised crime, taking the benefits of political borders and exploiting the disparity amongst national legal systems thereby maximising their proceeds.

The criminal activities of these highly organised groups have posed to be threats to the financial stability of the global economic structures particularly in the developing countries. Considering the fact that the aim of the highly organised criminal groups is to generate profits, the process of the criminal proceeds to disguise their illegal origin, money laundering, becomes essential. This allows these criminal groups to enjoy the proceeds derived from their criminal activities without jeopardizing their source. Since the activities of organized crime, including drug trafficking, trafficking in illegal firearms, smuggling, prostitution, etc., can generate vast sum of money, they create an incentive to legalise the illicit proceeds by the act of money laundering. When criminal activity generates substantial profits, the individuals or groups involved must find a way to control the funds without attracting attention to the underlying criminal activity or the persons involved. Criminals do this by disguising the sources, changing the form or moving the funds to a place where they are less likely to attract attention.

Evidently, across countries, money launderers and organised criminal groups have deployed techniques in laundering money. One of such techniques is investing the

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proceeds from their crime in legitimate business by buying shares in the financial markets. They also establish companies under bogus identities. Another modus operandi deployed is depositing money in tax heavens or in banks in countries deemed to condole money laundering practices. The money is then transferred back to the host country through normal banking network. Furthermore, the launderers make use of the underground banking network in transferring their illicit funds.

1.3. Current critical perceptions of Money practices. Bad for whom?

Money laundering is a global phenomenal that has, if uncurbed, a corrosive impact on a nation's economy and socio political facets. Money laundering provides the platforms for criminal individuals and groups such as drug dealers, terrorists and their financiers, illegal arms dealers, corrupt public office holders, to conduct and expand their criminal activities⁹.

Although, the extent of money laundering is such that is tricky to quantify since it is an illicit activity for which no precise statistics are available, its effect and impact can

⁹ John McDowell (Senior Policy Adviser) and Gary Novis, (Program Analyst), *The Consequences of Money Laundering and Financial Crime*, Bureau of International Narcotics and Law Enforcement Affairs, US Department of State, May 2001. Also available at http://www.apgml.org/issues/docs/30/Negative%20Effects%20of%20ML_Economic%20Perspectives%20May%202001.pdf

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be devastating in any country, be it developed or developing country. The International Monetary Fund (IMF) estimated that the summative amount of money laundering in the world could be somewhere between two to five percent of the world's gross domestic product (GDP). Using 1996 statistics, this would translate into approximately US \$590 billion to US \$1.5 trillion, which suggests the size of the problem¹⁰.

Over the years, criminal activities have become more and more international and expansive in operation and the financial aspects of the criminal activities have become more complex as a result of the swift technological advancement coupled with the globalisation of the financial industry. As such, the global financial services, more than any other sector, has remain vulnerable to the attributes of and practices of money laundering. On the economic and financial front of the society, money laundering, in effect, impairs and erodes the financial structures which are very vital to economic growth and financial stability of any nation¹¹. Particularly, the impact and

¹⁰ Based on 1996 statistics that are available <http://www.fatf-gafi.org>.

¹¹ Brent L. Bartlett, *The negative effects of Money Laundering on Economic Development*, report for the Asian Development Bank Regional Technical Assistance Project No.5967 Countering Money Laundering in the Asian and Pacific Region., May 2002. Available at http://www.adb.org/documents/others/ogc-toolkits/anti-money-laundering/documents/money_laundering_neg_effects.pdf

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cost of money laundering is felt on legitimate business enterprises¹². In this sense, where a money launderer uses an enterprise as a front in concealing his illicit acquired funds, there is the possibility of the enterprise being subsidized. Thus, this can allow the enterprise to carry out its business at or below cost thereby swindling legit competition out whist the front enterprise expands its business ventures. Therefore, as the business expands, it provides more opportunity for the launderer to move even more illicit funds. However, it should be acknowledged that in this instance, the money launderer does not share mutual goals of legitimate business vendors, who desire to attain maximum returns of their business ventures through the profitable, ongoing process of their ventures. In contrast, the money launderers in this instance are concerned about hiding the origin as well as ownership of the money he controls. As such, it is this practice that leads to the concern of economic distortion. Often this economic distortion can result to misguided economic data by government economic policy makers. This is in the sense that without proper analysis of the economic trends, there is that risk of making vital economic decisions and projections that are not necessarily in the interest of the society. In an economy that has been infiltrated with laundered money, the impact and cost can be of devastating proportions. A good launderer is not going to expose just his own money when he can use that of financial institutions and other investors.

¹² Ibid.

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Evidently, the costs and impact of money laundering extend beyond economic and financial sectors of the society. Thus, there are significant socio political costs associated to money laundering. The sheer magnitude of the economic power that accrues to criminal organizations from money laundering has a corruptive effect on the socio political elements of the society¹³. The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society. Organized crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments¹⁴. In extreme cases, it can lead to the virtual takeover of legitimate governments. Furthermore, in countries transitioning to democratic systems, this criminal influence can undermine the democratic transition. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.

1.4. Hidden benefits of Money laundering for developing countries?

Undoubtedly, the evidence illustrates the damaging effect of money laundering in the economic and socio political spheres of a country. However, as devastating as the act of money laundering can be, there is an argument for short term economic

¹³ See <http://www.scribd.com/doc/57004765/8/Dark-side-of-Money-Laundering>

¹⁴ http://www.fatfgafi.org/document/29/0,3746,en_32250379_32235720_33659613_1_1_1_1,00.html

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benefits of money laundering to the developing economies. For once, the International Monetary Fund studies suggest that developing countries can become favoured from large scale money launderers for short periods of time causing a sharp surge in financial activities¹⁵. In this context, money laundering funds flow from the developed countries to the developing countries, thus, resulting into surge in the flow of capital to developing economies. In other words, cash transfers can still be a useful channel for investment in developing countries. Cash paid to corrupt political exposed persons, (PEPs), can be used to purchase products, such as agricultural products which can be sold officially in agricultural markets thereby accumulating official wealth. Also, laundered funds can be used to acquire shares in under value companies or those in the early stage of development, thereby generating long term proceeds that may not mature for a number of years to disarm models of suspicious conduct that may rely on the demonstration of immediate linked benefits¹⁶.

¹⁵ Manual on *Countering Money Laundering and the Financing of Terrorism*, published by Asian Development Bank, January 2003. Available at http://www.adb.org/documents/manuals/countering_money_laundering/countering_money_laundering.pdf

¹⁶ Michael Levi, *The Impact of Anti-Money Laundering Measures within Developing Countries against Proceeds of Corruption*, Sept.2009. Draft paper for the World Bank Seminar. Also available at www.publicpolicy.umd.edu/.../Levi_final_world_bank_paper_310809.doc

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On the whole, as most of the developing countries are characterised by ailing economies, such economies tend to benefit, at least for short period of time, from money laundering practices with the infiltration of the illicit proceeds into the economy. Thus, there is the instant creation of wealth and upright in financial status. However, the negative effects of money laundering far outweigh any benefits derived from money laundering practices, even in the developing the countries. For a fact, these hidden benefits are usually in the short term with long terns devastating effect. The sharp surge in financial uprising and wealth creation are usually followed by an equal sharp decline there thereby leading to severe macroeconomic instability.

1.5. Development of Anti Money Laundering Laws

Unsurprisingly, the last two decades has seen an outburst of regulatory measures, at the global, regional and national levels, aimed at combating money laundering. Most of these measures were initiated by the developed countries in their quest to reduce the impact and effect of money laundering practices. On the global stage, two of the most fundamental international instruments combating money laundering are the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic

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Substances 1988, the 1988 Vienna Convention, and the United Nations Convention against Transnational Organized Crime 2000, the Palermo Convention¹⁷.

The 1988 Vienna Convention contains detailed anti-money laundering measures against drug trafficking. The Convention further requires member states of the United Nations to make money laundering illegal, adopt measures to enable the tracing, freezing, seizing and confiscation of the proceeds, cooperate with other countries in identifying, tracing, freezing and seizing those assets, and to provide for bank, financial or commercial records to be available to investigators, notwithstanding bank secrecy¹⁸. Of more importance, the 1988 Vienna Convention is the first international instrument to deal with the issue of the proceeds of crime and require states to criminalise money laundering and take measures to curb it. As such, the convention can be seen as a prototype of the typical AML legislation that has emerged in recent times. The Palermo Convention deals with transnational organised crime in general as well as some of the major operations engaged by such groups such as money laundering, corruption and the obstruction of investigations or

¹⁷ UN Response, *Money Laundering and the Financing of Terrorism*, excerpts from the main legal instruments and resolutions against money laundering and financing of Terrorism adopted under the auspices of the United Nations. Available at <http://www.imolin.org/pdf/imolin/UNres03e.pdf>

¹⁸ See http://www.unodc.org/unodc/en/crime_cicp_convention.html

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prosecutions¹⁹. To supplement the Convention, 3 Protocols also tackle specific areas of transnational organised crime that are of particular concern to UN Member States - the Trafficking in Persons, especially Women and Children Protocol, the Smuggling of Migrants Protocol and the Trafficking in Firearms Protocol.

Following suit, regional jurisdictions and financial institutions within the major financial centres also responded to the menace of money laundering by establishing Anti Money Laundering Regimes. The Council of the European Communities, in June 1991 adopted a directive on the "Prevention of the Use of the Financial System for the purpose of Money Laundering." This directive was issued in response to the new opportunities for money laundering opened up by the liberalization of capital movements and cross-border financial services in the European Union²⁰. The directive imposes an obligation on member states: (1) to outlaw money laundering. (2) They must require financial institutions to establish and maintain internal systems to prevent laundering. (3) To obtain the identification of customers with whom they enter into transactions of more than ECU 15,000. (4) To keep proper records for at least five years. (5) Member states must also require financial institutions to report suspicious transactions and must ensure that such reporting does not result in liability for the institution or its employees.

¹⁹ See http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf

²⁰ Peter Lewisch, *Money Laundering Laws as a Political Instrument: The Social Cost of Arbitrary Money Laundering*. Online publication, Springer science & business media, LLC 2008.

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In December 1988, the G-10's Basle Committee on Banking Supervision issued a "statement of principles" with which the international banks of member states are expected to comply. The Basle Committee on Banking Supervision is a Committee of banking supervisory authorities founded by the central bank Governors of the Group of Ten countries in 1975. The Committee consists of senior representatives of banking supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom and the United States. These principles cover identifying customers, avoiding suspicious transactions, and cooperating with law enforcement agencies. In issuing these principles, the committee acknowledged the risk to public confidence in banks, hence, their stability, that can arise if they involuntarily become associated with money laundering.

However, the leading international organisation in both setting and implementation of AML standards, over the last decade, has been the Financial Action Task Force (FATF). FATF was founded in 1989 by the G7 summit in Paris. The rationale behind the formation was to develop and promote policies both at national and international levels, to combat money laundering and terrorist financing²¹. As such FATF

²¹ J.C Sharman, *The Global Anti-Money Laundering Regime and Developing Countries: Damned if they Do, Damned if they Don't?*, 2006. Available at

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published a report in 1990, in which the widely known 40 recommendations, revised in 1996 and 2003 were made to tackle the menace of money laundering. The recommendations are aimed to be of global application. From October 2001, FATF mandate includes terrorist financing. Subsequently FATF issued 8 Special Recommendations against Terrorist Financing in October 2001²². A ninth Special Recommendation was also added in June 2004. In addition, in 2003, terrorist financing issues were added to the scope of the 40 FATF Recommendations, where appropriate.

In strict terms, FATF is not an international organisation, being an ad hoc international rather than a treaty organisation. Rather, FATF has a largely overlapping membership with the OECD. However, over the years, it has expanded and incorporated some strategically important developing states. As of today, the FATF consists of 34 member states and 2 regional organisations, representing most financial centres in the world. FATF also has associates that include The Asia/Pacific Group on Money Laundering (AP), Caribbean Financial Task Force (CFATF), Eurasian Group (EAG), Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Financial Action Task Force on Money Laundering in South America

<http://www.u4.no/pdf/?file=/document/literature/nd%20Sharman%20Damned%20if%20they%20do%20and%20dont.pdf>

²² FATF IX Special Recommendations, Oct 2001. Available at <http://www.fatf-gafi.org/dataoecd/8/17/34849466.pdf>

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(GAFISUD), Inter Governmental Action Group against Money Laundering in West Africa (GIABA), Middle East and North Africa Financial Action Task Force a (MENAFATF) and Council of Europe Committee of Experts on the Evaluation of Anti – Money Laundering Measures and the Financing of Terrorism (MONERVAL)²³.

1.6. Implementation and adherence of Anti Money Laundering Laws; a case for converged global standards.

The landmark of the Vienna convention arguably laid the foundation for a global comprehensive anti-money laundering framework .The multitude of broad and interrelated international, regional and national initiatives against money laundering, once led to a call for ‘no more laws’. It was asserted that after the problem of harmonising legislation, implementation and compliance may be the most important task²⁴. However, the achievement of what the UN called a ‘ global strategy for a global problem’ continues to pose a herculean task, thereby raising the question of achieving converged global standards of Anti-Money Laundering legislation. Diverging legal cultures, economic, social and political conditions amongst countries arguably render the globalisation of anti-money measures a mere utopia.

²³ See http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236869_1_1_1_1_1,00.html

²⁴Ernesto Savona, *Money Laundering, the Developed Countries and Drug Control: the New Agenda in Dorn, Jepsen and Savona, eds., European Drug Policies and Enforcement, Pg 224 - 225*

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This situation becomes further complicated with on-going advancement in the international arena. These result largely from a mirror effect produced by the interaction of transnational criminality with the laws to counter it²⁵. In this respect, the evolution of money laundering countermeasures has led to significant changes in typologies, with the increasing professionalization in the phenomenon being coupled with the use of mechanisms and professions not covered by the existing legislation. This trend, along with the increasing use of technological developments beyond conventional transactions methods has the potential to render the existing countermeasures obsolete.

Comparatively, diverging economic and socio political attributes and priorities between the developed and developing nations complicate the attainment of global regulatory standards. The globally encompassing nature of the Anti-Money Laundering laws was pioneered by international organisations. However, it has come about in spite of lack of evidence as to whether the anti-money laws that were designed for the developed countries would be appropriate for developing countries, considering economic and socio political status. Money laundering activities are being pushed into developing countries due to tighter regulations in the developed world. To complication the dilemma, in contrast to the developed countries,

²⁵ Ernesto. U. Savona, *Mafia Money Laundering versus Italian Legislation*, European Journal of Criminal Policy and Research, 1993, Vol. 1, No. 3, Pg 51-52

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developing countries face a much broader slate of challenges in curbing these activities. Virtually all developing countries have Anti Money Laundering laws in place; however, they are not as advanced as those in developed countries²⁶. In some cases, increasing population and governments' inability to provide to basic welfare needs of people have resulted in illegal activity of different sorts. Furthermore, the developing countries need foreign currency and capital inflow, hence, they often willingly not acknowledge the source of the capital and avoid as far as they are able, the imposition of Anti Money Laundering measures. Furthermore, developing countries are characterised with political instability, Government corruption, and social unrests. These persistent attributes provide obstacles to an effective implantation of anti-money laundering measures.

Nevertheless, developing countries, over the last decade, have been making significant progress implementing Anti Money laundering regimes. In this respect, developing countries like Nigeria and Naura were delisted from FATF list of non-cooperative countries in acknowledgement of the progress both countries have

²⁶ Standard Chartered Journal, Asia, Africa and the Middle East, *The Guide to Working Capital Management* 2009/10. Accessed at <http://www.infosys.com/offerings/industries/banking-capital-markets/Documents/laundrying-programs.pdf>

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made implementing Anti Money laundering regimes²⁷. Also, the Caribbean Financial Action Task Force (CFATF), a FATF-style regional body, comprised of 25 jurisdictions, continues to advance its anti-money laundering initiatives, within the Caribbean basin.

Combating the menace of money laundering requires a well-coordinated international cooperation. Money laundering presents the global community with a complex and dynamic challenge. Indeed, the global nature of money laundering requires a global standards and international cooperation. It is almost unattainable for individual jurisdictions to tackle the menace of money laundering alone as money laundering practices are increasingly transnational. Thus, effective global compliance of Anti Money Laundering measures reduces the impact of money laundering in the global financial system and also increases transparency and effective international co-operation. However, effective implementation of Anti Money Laundering measures rests upon cooperation of countries around the world. This cooperation is further depends on other factors other than ideal of preventing money laundering. It is subject to political pressures as well as differences in national legislation.

²⁷ FATF Eighth NCCT Review, 12 Oct. 2007. Accessed at <http://www.fatf-gafi.org/dataoecd/14/11/39552632.pdf>.

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Chapter 2

Impact of Money Laundering on Economic and Financial stability in developing countries

2.1. Attributes of developing economy

Developing countries, in particular, have been more exposed to the exploits of money laundering as a result of the nature of their economies. In practice, the economies of most developing countries are regarded as informal economies, characterised primarily with informal economic activities. In broad terms, an informal economy is the unregulated non-formal component of the market economy that produces goods and services for sale or for other forms of remuneration²⁸. Thus, the term informal economy refers to the economic activities by workers and other economic components, in law or in practice, not covered or inadequately covered by

²⁸ GIABA Report, *Threat Assessment of Money Laundering and Terrorist Financing in West Africa*,

May 2011 Accessed at

http://www.giaba.org/media/T_reports/THREAT%20ASSESSMENT/%20MONEY%20LAUNDERING%20%20%20AND%20TERRORIST%20FINANCING%20IN%20WEST%20AFRICA%20-%20English%20rev051410%20_1_.pdf

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formal arrangements²⁹. Hence, in most developing countries, local traders and vendors work unregistered and unregulated and they constitute as the most perceptible components of the informal economy³⁰.

Traditionally, the informal economy was adjudged to consist of survivalist activities³¹. As such, different negative attributes were used to portray informal economy, varying from undeclared labour, tax evasion, unregulated economic and financial ventures, illegal and criminal activities³². However, considerable informal economic activities supply legally produced goods and services. On the other hand, informal economic activities are not necessarily carried out with the conscious motive to evade payment of taxes and infringe legislations and regulations, however, the activities can consist of confined illegal and legal operations or legal and irregular operators, but no criminal operators³³.

²⁹ Kristina. F. Becker, *Fact Finding Study: The Informal Economy*, March 2004. Accessed at <http://rru.worldbank.org/Documents/PapersLinks/Sida.pdf>

³⁰ Op. cit., GIABA Report

³¹ Op. cit., K F Becker

³² OECD Round table on *Competition Policy and the Informal Economy*, February 2009. Accessed at <http://www.oecd.org/dataoecd/12/47/44547855.pdf>

³³ Op. cit., K F Becker

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A vast size of informal economy in most developing countries goes hand-in-hand with the cash- and commodity-based nature of the economy³⁴. For instance, in the West African region, the informal economy of the region is virtually cash and commodity oriented. As such, cash payment is the most common method of purchasing products and most often services. According to the World Bank, across Africa more than 80% of households do not use formal banking³⁵. For instance, In Nigeria, the Central Bank of the country declared that just an estimated 23% of the country's population own bank accounts³⁶. This, arguably, is attributed to various factors such as cultural and religion barriers and lack of trust between the banks and local customers.

Furthermore, the practices that are norms in the informal sector contradict the basic standards for banks on transparency of financial operations and accounting procedures³⁷. Consequently, traditional potential customers tend not use regular bank services. Rather, such customers turn to a decentralized financial system as an alternative solution. With this financial system, the investors in the informal sector mobilize savings and benefit from small funds that allow them to generate wealth in

³⁴ Op. cit., GIABA Report

³⁵ The World Bank Report, 2009, *Africa-Development in the Private Sector*. Available at http://siteresources.worldbank.org/INTAFRICA/Resources/The_Africa_Competitiveness_Report_2011.pdf

³⁶ The World Bank Report estimates this proportion at 21%: World Bank

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their domestic economies. With the development of this financially link, substantial amount of money is infiltrated into the global financial system thereby exposing the informal sector and its ventures to money laundering exploits.

In analysing the impact of money laundering on developing economies, Bartlett (2002) specified five directions of money laundering flows in such economies³⁸. First, domestic flow, in which illicit domestic funds are laundered within the country. Second, returned flow means criminal activities occurred in the developing country, fund placed outside the country and later on integration occurred in the developing country. Third, Inbound funds, for which the predicate crime occurred abroad, are either initially laundered ("placed") abroad or within the developing country, and ultimately are integrated into the developing economy. Fourth, outbound funds, constitutes laundered fund originated in the developing country and integrated outside the economy or capital flight. Fifth, Flow-through funds originate and integrate in the developed country, by using the financial institution of developing country during the period of layering.

³⁷ Op. cit., GIABA Report

³⁸ Brent L. Brent, *The Negative Effects of Money Laundering on Economic Development. Economic Research Report*, May 2002. Available at

http://www.adb.org/documents/manuals/countering_money_laundering/chapter_01.pdf

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2.2. Undermining the integrity of financial institutions and markets

The success of money laundering exploits has far reaching impact on the whole financial systems of many developing countries. Laundered money eventually flows into the international financial system and in the course of this process; countries that integrate into the global financial systems are exposed to the phenomenon of money laundering³⁹. Elaborating on the this fact, the one-time chairman of the EFCC Nigeria, Nuhu Ridadu, stated that the amount involved in various forms of transnational economic and financial crimes especially corruption, are often so large that it affects both the integrity of domestic economies and the global financial systems⁴⁰. For instance, an estimated amount of \$100 billion was corruptly exported from Nigeria between mid 1980s and 1999 while more than \$ 1 trillion illicit funds flowed into the United States annually through the international financial systems and this includes the proceeds from drug trafficking and other forms of economic and financial crimes.

In further reference to the Nigeria financial system, between the 80s and 90s, the reputation of the financial system in the country was at its lowest at this period. This was primarily down to the damaging status of the nation's financial system attributed to the negative impact of economic and financial crimes that were rampant at the time. During this period, most potential foreign investors were reluctant to extend

³⁹ B. L Brent, op. cit.,

⁴⁰ See www.efccnigeria.org

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their commercial ventures to the Nigeria primarily because of the aforementioned reason⁴¹. Consequently, the financial institutions in the country relied overwhelmingly on the ill-gotten capital drained off by corrupt political office holders. Hence, these financial institutions were unable to endure the tests of market competition. As a result, many of these financial institutions disintegrated⁴², thus, exposing the instability of the country's financial system and deemed not to investment friendly. The situation amounted to hindrance that hampered the surge of investments and economic development in the country, even to this moment.

2.3. Loss of control of the national economic policy

One time director of the International Monetary Fund (IMF), Michael Camdessus, once estimated the scale of money laundering as between 2% to 5% of world Gross Domestic Product (GPD)⁴³. In his this perspective, developing countries are poised to losing control of their domestic economic policies as illicit capital accrued from

⁴¹ Sharon LaFraniere, Africa Tackles Graft, with Billions in Aid in Play, New York Times July 6 2005.

Accessed at

<http://query.nytimes.com/gst/fullpage.html?res=9804E6DF163DF935A35754C0A9639C8B63>

⁴² Financial institutions that disintegrated include the National Bank, Bank for Credit and Commerce International and Allied Bank.

⁴³ Address by Michel Camdessus Managing Director of the International Monetary Fund at the Plenary Meeting of the Financial Action Task Force on Money Laundering, February 10, 1998.

Accessed at <http://www.imf.org/external/np/speeches/1998/021098.htm>

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money laundering activities and other economic and financial crimes are capable of dwarfing government budgets and destabilise domestic markets⁴⁴. Furthermore, an IMF working paper concludes that money laundering impacts financial behaviour and macro-economic performance in different forms such as policy mistakes, due to measurement errors in national account statistics, volatility in exchange and interest rates due to unanticipated cross border transfers of funds; the threat of monetary instability due to unsound asset structures; effects on tax collection and public expenditure allocation due to misreporting of income; misallocation of resources due to distortions in asset and commodity prices; and contamination effects on legal transactions due to the perceived possibility of being associated with crime⁴⁵. Thus, in some developing countries, the illicit proceeds from criminal ventures dwarf government budgets, thereby, leading to a loss of control of their economic policies.

⁴⁴ John McDowell & Gary Norris, Bureau of International Narcotics and Law Enforcement Affairs, US Department of State, *The consequences of Money Laundering and Financial Crime*, May 2001.

Accessed at

http://www.apgml.org/issues/docs/30/Negative%20Effects%20of%20ML_Economic%20Perspectives%20May%202001.pdf

⁴⁵ Ibid.

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Furthermore, the exploits of money laundering and currency manoeuvring can harmfully undermine currencies and interest rates⁴⁶, more predominantly, in a developing economy. This is evident in a developing country such as Nigeria. The country relies on the acquisition of other currencies so as to fulfil her international obligations in satisfying local needs. Thus, uncurbed money laundering practice in the country adversely impinges on currencies and interest rates through reinvestment of funds where the schemes will be fairly safe from suspicion than where rates of returns are higher. As profit making is not the stimulating factor for investing the proceeds of economic crimes in any business⁴⁷, it is always convenient for money launderers to move the funds around as the situation may demand. Therefore the economic insinuation is such that the unfounded movement of funds establishes inexplicable changes in monetary demand and escalate instability of international capital flows, interest and exchange rates⁴⁸. This is a situation that works, in return, against sound national economic policy formation and implementation.

⁴⁶ Op. cit., John McDowell & Gary Noris

⁴⁷ Paul Freeman, *The Economic and Social Consequences of Money Laundering*' Article published February 17 2010. Accessed at http://ezinearticles.com/?expert=Paul_Freeman

⁴⁸ Op. cit., B. L Brent

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2.4. Economic distortion and investment instability

Money launderers, in their quest to disguise the source of their ill-gotten proceeds, divert the proceeds from one economic venture to another without sound economic reasons. Also, as there is no motive to generate profits, money launderers, most often, invest their illicit funds in economic and commercial ventures that do not, primarily, benefit the economy of the country where such illicit funds are situated⁴⁹. When making the investment decisions, money launderers apparently pay high premiums on the investments that will allow the illicit proceeds be protected from suspicion. In other words, money launderers do not necessarily pursue high profits generated investments but for investments that simply allow the recycling of their illicit proceeds even if it entails taking a low rate of return⁵⁰. Consequently, the situation rises in which there is the movement of capital from countries that produces higher rates of returns to countries with poorer economic policies and low rates of return, thereby infringing the law of economics.

According to Vito Tanzi, a renowned international economist, at the domestic stage, large capital inflows or outflows artificially accentuated laundering process would adversely affect exchange rates and interest rates thereby fundamentally influencing

⁴⁹ Op. Cit., John McDowell & Gary Norris

⁵⁰ Vito Tanzi, *Macroeconomic Implications of Money Laundering* in Responding to Money

Laundering, International Perspectives, edited by Erenest U. Savona, Malaysia: Harwood Academic Publisher, 1997. Pg.96

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the process of particular assets towards which the capital is invested⁵¹. With the exchange rate left to fluctuate unhampered, the inflow of vast amounts of capital into a country would lead to its appreciation and to an expansion of the country's money base due to capital inflow therefore resulting to increasing the demand for domestic money which would be contented by the monetary authorities of the countries that are affected⁵². According to Vito Tanzi, the inflation of the exchange rate would result to the situation in which traditional exports lose competitiveness to the imports while domestic prices rise up as a result of the pressure from the country's monetary base. Vito Tanzi describes this economic nature as "Dutch disease" and will incite the country's economic policy makers to "tighten its fiscal policy in order to create a budgetary surplus to use to sterilize the money effects of the capital inflows⁵³. Vito further declared that a country undergoing a capital outflow would have reverse effects of the above explanations⁵⁴. In practical terms, the artificial inflow and outflow of capital and investments from one country to another would have weakening effects on the international financial markets due to its integrated nature⁵⁵. Therefore, a distortion of this nature means that financial difficulties arising from one financial

⁵¹ Ibid

⁵² Ibid.Pg.97

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

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centre can easily spread to other financial markets and therefore stall economic growth and create financial instability.

In this context for instance, the Nigerian economic policies in the 80s and late 90s endured serious economic distortions channelled predominantly by money laundering activities as well as other economic and financial crimes through diversion and redirection of capital from sound to low quality investments⁵⁶. It was not for a while for the consequences of these criminal activities to reflect on the financial system of the country⁵⁷. Major financial institutions in the country, primarily banks, collapsed midstream and were officially liquidated as a result of diversion of funds⁵⁸. Also, many other financial institutions endured untimely distress and in some cases, total collapse as deposits of the illicit proceeds of money laundering activities lodged in these financial institutions disappeared ceremonially and within a short period of time.

⁵⁶ Central Bank of Nigeria Banking Supervision Annual Report, 2000. Accessed at <http://www.cenbank.org/out/Publications/reports/BSR/2001/bsdar00.pdf>

⁵⁷ Ibid

⁵⁸ Nigeria Deposit Insurance Corporation (NDIC) 2003 Annual Report & Statement of Accounts for the end of the year December 31, 2003. Accessed at <http://ndic.org.ng/files/Sec0ar2003.pdf>

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2.5. Undermining the Legitimate Private Sector

One of the most serious microeconomic impacts of money laundering, particularly in many developing countries, is felt in the private sector⁵⁹. Money launderers often use front companies, to fuse the proceeds of their illicit activities with legitimate funds, to hide their illicit proceeds⁶⁰. With access to substantial illicit funds, these front companies are able to subsidize their products and services at levels that are well below market rates⁶¹. In some instances, the front companies offer products at prices that are below what it costs the manufacturers to produce⁶². Therefore, the front companies, in this instance, usually have a competitive advantage over legitimate companies or manufacturers that draw capital funds from financial markets. This makes it difficult, if not impossible, for legitimate business to compete against front companies with subsidized funding⁶³. As a consequence, the private business sectors of many developing countries are, often, overcrowded with criminal

⁵⁹ Bangladesh Bank publication, *Managing Core Risks in Banking: Guidance Notes on Prevention of Money Laundering*. Available at

https://www.imolin.org/doc/amlid/Bangladesh/Bangladesh_Guidance_Notes_on_Prevention_of_Money_Laundering.pdf

⁶⁰ Noris, Op. Cit., John McDowell & Gary

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

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organizations⁶⁴. Clearly, the management principles of these criminal enterprises are not consistent with traditional free market principles of legitimate business, which results in further negative macroeconomic effects⁶⁵.

2.6. Risks to government privatisation efforts

Seemingly, the concept of privatization in many developing countries, with the aim of promoting economic growth, attracts money launderers⁶⁶. This is attributed to the 'legitimacy' that a money launderer is able to acquire by purchasing into a previous government corporation and/or by being linked to the high volume of transactions⁶⁷. As a result, government corporations are ideal vehicles for laundering money⁶⁸. Money launderers are also able to bid higher prices for these corporations, a practice

⁶⁴ Ibid

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Maiendra Moodley, *The extent and security implications of Money Laundering in South Africa*, Strategic Review for Southern Africa, November 2008. Available at http://findarticles.com/p/articles/mi_hb1402/is_2_30/ai_n31607812/

⁶⁸ Ibid

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that undermines fair and legitimate competition⁶⁹. Legitimate buyers who believe that the bidding process has been compromised are unlikely to bid in future. In this regard, money laundering activities threaten the efforts of many developing countries to reform their economies through privatization, thereby stalling economic growth⁷⁰. Organised criminal organizations are capable of outbidding legitimate purchasers of state-owned enterprises⁷¹. When illicit proceeds are invested in this manner, criminals increase their potential for more criminal activities and corruption, as well as deprive the country of what should be a legitimate, market-based, taxpaying enterprise⁷².

In reference to Nigeria, over the two decades, different government administrations have embarked on structural reforms of the nation's economic and financial systems, in response to the country's economic and financial instability. The reforms were intended to stabilise the country's economic and financial sector. One of such

⁶⁹ Celarier, M, *Privatization: A Case Study in Corruption*, Journal of International Affairs, Vol 50, No 2, 1997, Pg 531-543.

⁷⁰ Paul Allan Schott, *Reference Guide to Anti- Money Laundering and Combating the Financing of Terrorism*, Second Edition and Supplement on Special Recommendation IX, World Bank & IMF, 2006. Also available at

http://siteresources.worldbank.org/EXTAML/Resources/3965111146581427871/Reference_Guide_A_MLCFT_2ndSupplement.pdf

⁷¹ Ibid

⁷² Ibid

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reforms has been the privatisation and deregulation policy. In essence, the policy permits the private business enterprises and individuals to be involved in the vital facets of the economy such as the midstream and downstream in the oil and gas, communication and energy sectors, with the goal of attaining economic and commercial growth⁷³. In this regard, many of the state owned enterprises have been bought up by private business enterprises and individuals. However, the exploits of money launderers along with corrupt officials have threatened the effective implementation of the policy. In other words privatisation exercise has been usurped by individuals and corrupt public office holders with financial ability to outbid legitimate and prospective purchasers of formerly state owned enterprises. Furthermore, while deregulation and privatisation policy initiatives are often economically beneficial in term of efficiency, better services delivery, job creation and so on, the policies if not properly monitored, can also serve as a venue to accommodate and integrate illicit drug funds and ill-gotten wealth from corruption and embezzlement of public funds. So much so that EFCC Nigeria in a report stated that the privatisation exercise in Nigeria was being threatened by the involvement of funds from questionable sources⁷⁴.

⁷³ See memorandum on Economic and Financial Policies of the Federal Republic of Nigeria 2000

⁷⁴ Kola Ologbondiyan, Sufuyan Ojeifo & Funsho Muraina, 'Senate Probes Obasanjo, Atiku', Thisday Newspaper, 27 September 2006.

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2.7. Reputation Risk

With the increasingly infiltration of money laundering activities in the economies of the developing countries along with lack of transparency and high level of corruption, developing countries having been finding it difficult to attract foreign investments which are contributory factors to economic development and financial stability. The negative damaging reputation attributed to these activities reduces legitimate international opportunities and sustainable economic growth and, on the other hand, drawing international organised criminal groups with undesirable reputations and temporary goal, therefore diminishing development and economic growth⁷⁵. On this basis, most developing countries characterised with high level of corruption, insecurity, economic and financial instability and social unrest, have persistently failed to attract adequate foreign investments to boost their economic and financial growth. In practice, international financial markets as well as investors only extend their ventures and investments to an economic environment perceived to be investor friendly⁷⁶.

In this context, as a case study, Nigeria today is struggling with the huge task of providing an investor-friendly economic environment short of market manipulation, insider trading, money laundering, advance fee fraud, insecurity and other forms of

⁷⁵ Op. Cit., John McDowell & Gary Noris

⁷⁶ Hans Geiger & Oliver Wuensch, *The fight against Money Laundering: An economic analysis of a cost-benefit paradox*, Emerald, Journal of Money Laundering Control, Vol. 10 No. 1 2007.

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corruption and financial abuse practices, in its quest to attract adequate foreign investments. The dominance of economic and financial crimes in the country has been, to a degree, liable for this lack of adequate foreign inflow of investments. In its report, the World Bank alleged that the Nigerian government misappropriated about sixty five billion Naira (N65 billion) out of the \$ 458 million repatriated to Nigeria by the Swiss government⁷⁷. This was the money hidden in Swiss Banks by the country's late head of state, General Sani Abacha. Furthermore, The 2002 Report of the Accountant General of the Federal Republic of Nigeria on the management of the country's finances in year 2001 was sated with copious occasions of financial irregularities, non- compliance with standard financial procedures varying from lack of audit inspection, over invoicing, non- retirement of cash advances, payment for contract not executed, double debiting, lack of receipt to back up purchases made, and release of monies without prior approval from the appropriate authority⁷⁸. The

⁷⁷ See The Nigerian Tribune, "FG Misused N65bn Abacha Loot". Tuesday December 19th, 2006.

Note that the report was made public by the Nigeria Public Expenditure Management and Financial Accountability Review (PEMFAR), African Network for Environment and Economic Justice (ANEEJ) and the Nigerian Network on Stolen Assets (ANSA). These bodies were initiated by the World Bank to execute reform in budget spending of the Federal Government of Nigeria by analysing the use of the repatriated Abacha loot in implementing the National Economic Empowerment Development Strategy (NEEDS) in support of the Millennium Development Goals (MDGS) priorities of education, health and basic infrastructure

⁷⁸ *The Auditor General's Report*, The Guardian Nigerian News Magazine, January 16th 2007.

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cumulative effect of the above development has been attributed as one of the reasons why the Financial Action Task Force (FATF), until May 2006, retained Nigeria in the list of Non- Cooperative Countries and Territories (NCCTs)⁷⁹.

2.8. Loss of revenue

Money laundering, amongst other economic and financial crimes, is a source of reduction of government revenue⁸⁰. In essence, the phenomenon of money laundering, together with other economic and financial crimes, reduces government tax revenue. Maiendra Moodley in her article stated that money laundering and its predicate offences are factors that contribute to the tax gap, as these activities decrease the amount of tax collected in South Africa⁸¹. The tax gap in Africa is has been estimated to be over 40 percent⁸², while South Africa loses an estimated sum R30 on from tax invasion and other tax related fraud⁸³. The South African Revenue

⁷⁹ Op.cit.,FAFT eighth NCCT Review

⁸⁰ Op. Cit., Maiendra M

⁸¹ Ibid

⁸² United Nations, Economic Commission for Africa, *The Millennium Development Goals in Africa: Progress and Challenges*, New York, 2005.

⁸³ Op. Cit., Maiendra M

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Services (SARS), in its review in 2006, declared that that between 25 and 35 per cent of all domestic businesses did not pay income tax, and that a large number of individuals were not registered as taxpayers⁸⁴. These businesses and individuals would then need to launder the income that they received, and/or hoard this income to avoid being detected by⁸⁵. As a result, government revenue was reduced due to tax evasion, therefore impeding service delivery.

2.9. Conclusion

It is quite apparent that the phenomenon of money laundering is not most embracing economic development Policy. In essence, money laundering stalls economic growth and financial stability. The phenomenon harms financial institutions that are vital to economic growth, limits productivity in the economy's real sector by deflecting resources and encouraging crime and corruption, and often alters the economy's international trade and capital flows at the expense of long-term economic development.

As much as money laundering is a global phenomenon, developing countries, in particular, have been more exposed to the its exploits. In this regards, money launderers as well as other economic and financial criminals, find the lax economic

⁸⁴ Ibid

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environment of the developing countries, too conducive to carry out their illicit activities. As most economies of developing countries are informal economies, the infiltration of money laundering and along with other economic and financial crimes into the economies of these countries, has invariably slowed the pace of economic growth and in some cases, destabilise financial system and structures. This is, certainly, in contrast to the developed world.

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Chapter 3

Impact of Money Laundering on Political Stability and Governance

3.1. Introduction

Undoubtedly, the impact of money laundering in any society goes beyond the economic and financial mechanisms of such society. In essence, money laundering has damaging costs and effects on the political facet of the society⁸⁶. The phenomenon of money laundering provides the channel for drug dealers, illegal arms dealers, terrorists, public office holders as well as other classified criminals, to function and expand their criminal ventures⁸⁷. Its infiltration, along with other economic and financial crimes, into the political arena of any society can only be detrimental to such society. Such is the situation in most developing countries. In other words, the exploits of money laundering, as well as other economic and

⁸⁶ Bhure Lal, *Money Laundering – An insight into the Dark World of Financial Frauds*, Siddharth Publications, First Edition Jan. 2003.

⁸⁷ Angela V Mei Leong, *The Disruption of International Organised Crime; an Analysis of Legal and Non Legal Strategies*, Ashgate, 2007. Pg.32

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financial crimes, in the political sphere of these countries, over the years, have brought about political instability, inept governance, civil and social unrest e.tc., In essence, organized crime, high level of corruption and money laundering activities are arguably the integrated attributes of most political processes of most developing countries. This is in stark contrast to the political features of the developed countries.

3.2. Corruption and Organised Crime: Political tools of Money Laundering

The infiltration of corruption and organized crime in the political structures of many developing countries arguably explains the political instability and underdevelopment that persist in these countries⁸⁸. Corruption and organized crime are more than independent criminal phenomenon⁸⁹. Theoretical study has shown the interdependent correlation between the political, socio-economic, criminal justice and legal domains.⁹⁰. One time UNODC director Jan van Dijk identified the bond between organized crime and "grand" or political corruption and poverty on the one hand, and

⁸⁸ Nicholas A. Goodling, *Nigeria's crisis of corruption--can the U.N. global programme hope to resolve this dilemma?*, Vanderbilt Journal of Transnational Law, Vol. 36, 2003

⁸⁹ Edgardo Buscaglia and Jan van Dijk, '*Controlling Organised Crime and Corruption in the Public Sector*', Forum on Crime and Society, Vol. 3, Nos. 1 and 2, December 2003. Available at http://www.unodc.org/pdf/crime/forum/forum3_Art1.pdf

⁹⁰ Ibid.

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low urbanization, poor development of law and limited judicial autonomy on the other⁹¹. Political corruption is an essential characteristic of organized crime⁹². The two go mutually, organized crime attempts to acquire political influence and to provide room for or remove blockages to their illicit activities⁹³. This relates to bribery of police, judges, politicians etc., and infiltration of these offices of government by organized crime⁹⁴. Examples are found in most African countries and as well as those in Latin America.

Essentially, the act of money laundering allows the criminal activities of the organized crime worthwhile as it enables criminals to expand their criminal endeavours such as drug trafficking, arms dealings, terrorism, human trafficking, etc⁹⁵. In recent times, the exploits of organised crime have become major threats to political stability and security, of many developing countries. Organized crime uses many forms of corruption to infiltrate into political process of most developing

⁹¹ Jan van Dijk, *The World of Crime, Breaking the Silence on Problems of Security, Justice, and Development across the World*, SAGE Publications 2008.

⁹² Op. Cit., Edgardo Buscaglia and Jan van Dijk

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Op. Cit., Angela V Mei Leong

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countries⁹⁶. Furthermore, the lack of judicial and enforcement tools plays a premeditated role in the growth of crime syndicates' management of trafficking drugs, arms, human beings, counterfeiting and money laundering⁹⁷. In essence, organised crime benefits of impunity when a government is unable to perform its functions⁹⁸.

Corruption predicates the abuse of Governments' resources by diverting them from sectors of critical importance such as health, education and development⁹⁹. Consequently, ordinary people are deprived of economic growth and development opportunities¹⁰⁰. Furthermore, the cost of public services escalates and the economically disadvantaged people can no longer afford these services. Thus, the poor become poorer, whilst corruption feeds the poverty and social inequality¹⁰¹.

⁹⁶ United Nations Interregional Crime and Justice Research Institute (UNICRI), *Emerging Crimes: Organised Crime and Corruption*, Available at http://www.unicri.it/emerging_crimes/organized_crime/

⁹⁷ See report on *Measures to Combat Economic Crime including Money Laundering*, Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, 18-25 April 2005. Available at http://www.unafei.or.jp/english/pdf/Money_Laundering_pdf/MeasuresToCombatCrime.pdf

⁹⁸ Ibid

⁹⁹ Op. Cit., UNICRI

¹⁰⁰ Ibid

¹⁰¹ Ibid

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Fragile governance often mutually exists with corruption and a mutually causal correlation between corruption and frail governmental institutions, often results to a vicious cycle¹⁰². This growing socio-economic inequality triggers the loss of confidence in public institutions¹⁰³. Social instability and violence escalate due to the increasing inequality, poverty and mass mistrust of political process, therefore leading to civil and political unrest.

Furthermore, in other situations, corruption weakens the formal processes and institutions of the state, such that such state nearly becomes nearly non-existent. There are a number of instances where high-level and systemic corruption has been a contributory factor in the start of political and civil unrest and in some cases, a revolution¹⁰⁴. The current civil and political unrest in the Arab world is a testimony to this fact.

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Bryan R Evans, *The Cost of Corruption: A discussion paper on corruption, development and the poor*. Available at

<http://www.tearfund.org/webdocs/Website/Campaigning/Policy%20and%20research/The%20cost%20of%20corruption.pdf>

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3.3. What is corruption?

The word 'corruption' originates from the Latin word 'corruptus' which means to break. Its origin emphasizes the damaging effects on societal structure and includes circumstances in which private stakeholders and public officers breach the confidence bestowed to them by the society at large¹⁰⁵. In essence the term corruption comprises of different activities ranging from petty bribery to grand corruption, private sector inside trading to public sector embezzlement¹⁰⁶. In agreeing to a consensus definition of corruption, a group of international organisations comprising of the Asian Development Bank, World Bank and the IMF, in 2006, settled to define corruption as the offering, giving, receiving, and soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party¹⁰⁷. However, the United Nations Convention against Corruption is the first international organisation that embraces a wider range of anti-corruption measures taken at global level. Although the UNCAC did not exclusively define corruption, rather, it classified and specifies actions that generally identified as corrupt.

¹⁰⁵ Colin Nicholls, *Corruption and Misuse of Public Office*, Oxford: Oxford University Press, 2006.

Pg.1

¹⁰⁶ David Chaikin and J.C. Sharman, *Corruption and money laundering : a symbiotic relationship*, New York : Palgrave Macmillan, 2009. Pg.8

¹⁰⁷ See <http://www.adb.org/documents/guidelines/governance-anticorruption-project-design/governance-anticorruption-project-design.pdf>

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These actions include bribery of national public officials¹⁰⁸; bribery of foreign public officials and officials of international organisations¹⁰⁹; embezzlement, misappropriation or other diversion of property by public officials¹¹⁰; trading influence¹¹¹; abuse of functions¹¹²; illicit enrichment¹¹³; bribery in the private sector¹¹⁴; embezzlement of property in the private sector¹¹⁵; laundering of proceeds of crime¹¹⁶; concealment¹¹⁷ obstruction of justice¹¹⁸.

In the realm of public sector, the definition of corruption seeks to provide a boundary between politicians and bureaucrats¹¹⁹. Hence, in this context, corruption is defined

¹⁰⁸ Article 15

¹⁰⁹ Article 16

¹¹⁰ Article 17

¹¹¹ Article 18

¹¹² Article 19

¹¹³ Article 20

¹¹⁴ Article 21

¹¹⁵ Article 22

¹¹⁶ Article 23

¹¹⁷ Article 24

¹¹⁸ Article 25

¹¹⁹ Hope, R. K et al, *Corruption and Development in Africa: Lessons from Country Case Studies*,

Macmillan Press Ltd, London. Pg.18

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as the utilisation of official position or titles for personal or private gains, either on an individual or collective bases, at the expense of the public good, in violation of established rules and ethical considerations, and through the direct or indirect participation of one or more public or private officials, whether they be politicians or bureaucrats. As such, the choice considered during the deliberation of the United Nations Convention against Corruption, was not to define corruption but to identify and clarify certain conducts that are generally classified as corruption, criminal and fraud, extortion, abuse of discretion, favouritism and nepotism, cheating or exploiting, conflicting interest, and improper political donations¹²⁰.

3.3.1. Corruption and Money Laundering Nexus

There have been are perspectives to the connection between money laundering, and corruption. Some literature has argued for the disconnection between money laundering and corruption. For instance, according to Levi (2001), 'Without money laundering, there would still be corruption..... Not all bribes received have to be laundered: some cash can be redistributed as "grease" payments or simply spent¹²¹'.

¹²⁰ Michel Dion, *What is Corruption corrupting? A philosophical viewpoint*, Vol.13 No.1 Journal of Money Laundering Control, Emerald Group Publishing, 2010. Pg.45

¹²¹ Michael Levi, *Money Laundering and Its Regulation*, Article, July 2002. Available at <https://litigation-essentials.lexisnexis.com/webcd/app>

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However what the argument for the disconnection fails to spot is the close linkage that exists between money laundering and corruption. In other words, Money laundering and corruption habitually occur, with the presence of one underlining the other¹²². In this regard, corruption breeds vast proceeds, the source and ownership of which need to be covered up through the act of money laundering¹²³. Therefore, money laundering offers the platform for those engaged in corrupt activities as it allows money launderers to enjoy their corrupt earnings without fear of exposing the original source of the funds¹²⁴. Confirming this notion, the ESAAMLG in statement stated that 'Country policy makers should be aware that money laundering is the flip side of corruption and other criminal activity. Corruption is one of the predicate offences for money laundering. Cutting off the means to use the proceeds of crime is a major deterrent.....'¹²⁵

As such if corruption can channel the laundering of illicit proceeds from criminal ventures, then, so too can money laundering facilitate corruption¹²⁶. For instance, if a

¹²² Philip Gounev and Tihomir Bezlov O, *Examining the links between Organised Crime and Corruption, Article, 2010*. Available at http://ec.europa.eu/home-affairs/doc_centre/crime/docs/study_on_links_between_organised_crime_and_corruption_en.pdf

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ See http://www.esaamlg.org/documents_storage/STRATEGIC_PLAN_05.pdf

¹²⁶ Op. Cit., David Chaikin and J.C. Sharman

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public officer is given a vast cash bribe in return for selecting a particular foreign investor, the public officer, most often, will hide the illicit origins of the cash bribe, thus, establishing the nexus between money laundering and corruption. This practice is very much common in most developing countries with corrupt public officials.

3.4. What is Organized Crime?

The perception of organised crime covers a broad scope of illicit activities and criminal groups therefore making it difficult to reach a universal definition of the concept¹²⁷. Historically, the United States President's Commission on Law and Enforcement and Administration of Justice, in 1967, after asserting the official position of the Mafia group, also known as 'La Cosa Nostra' described organised crime as 'A society that seeks to operate outside the control of the American people and their government'¹²⁸. It involves thousands of criminals, working within structures as complex as those of ant large corporation subjects to laws more rigidly enforced than those of legitimate governments.....The core of organised crime activity is the supplying of illegal goods and services'.....¹²⁹. The United Nations Convention

¹²⁷ Marie Chene, *Organised Crime and Corruption*, Anti-Corruption Resource Centre Publication, May 28 2008. Available at <http://www.u4.no/helpdesk/helpdesk/query.cfm>

¹²⁸ Op. Cit., Angela V M Leong,

¹²⁹ Ibid

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against Transnational Organised Crime, adopted in November 2000, prefers a broader definition of organised crime, thus, defining organised crime as 'a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one of more serious crimes of offences established in accordance with this Convention, in order to obtain, directly, or indirectly, a financial or other material benefit'¹³⁰. With this definition, the most known forms of organised crime in current dispensation comprise drugs trafficking, arms and human trafficking and terrorist financing¹³¹.

Two of the key elements of organised crime's modus operandi aside corruption, as identified in some of the definitions of the concept of organised crime, are corruption and money laundering. In this regard, the criminal organisations operate with some permanence as a structured group, commit serious crime for profit, using extreme violence and corruption as part of their modus operandi, and launder the illicit proceeds of criminal ventures into the legal economy¹³². In this context, organised crime is described as 'criminal activities for material benefit by groups that engage in extreme violence, corruption of public officials including law enforcement and judicial

¹³⁰ Ibid

¹³¹ See <http://www.unodc.org/unodc/en/organized-crime/index.html>

¹³² Sabrina Adamoli, Andrea Di Nicola, Ernesto U. Savona and Paola Zoffi, '*Organised Crime Around the World*' Helsinki 1998.

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officers, penetration of the legitimate economy by the acts of racketeering and money laundering, and interference in political process¹³³.

3.4.1. Organised Crime and Money Laundering Nexus

Evidently, organised criminal groups frequently obtain their finances through their criminal adventures, even if economic gain is not their motivating goal. As such, the organised criminal groups tend to explore ways to secure and safeguard the illicit proceeds from their criminal activities which are used to acquire power and prestige. Accordingly, it is said that Money Laundering is the life blood of organised crime and money laundering basically allows the illicit ventures of the criminal organised groups and individuals to continue. This notion was reiterated in the case, Bank of Credit and Commerce International (Overseas) Ltd v Akindele¹³⁴. This case up till date is still regarded as one of the greatest money laundering scandal in the banking history. In essence, the criminal activities of the organised criminal groups generate vast proceeds for the groups and since clean money is deemed to worth more than dirty money, the act of money laundering establishes the spur to legalise these illicit proceeds by disguising the sources of the proceeds, changing or transferring the proceeds to environments that are less prone to detection. Thus, with the act of money laundering, organised criminal groups are able to uphold absolute control of

¹³³ Op. Cit., Edgardo Buscaglia and Jan van Dijk

¹³⁴ See case details at <http://www.ucc.ie/law/restitution/archive/englcases/akindele.htm>

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their ill-gotten wealth, thereby, avoiding the detection or confiscation of the wealth by regulatory authorities. Furthermore, the organised criminal groups with their money laundering exploits are able to explore their illicit proceeds from their criminal ventures without attracting the attention of the authorities to their underlying criminal activities and most importantly providing a legit cover for their illicit source of revenue. The ill-gotten wealth is then laundered through the financial institutions and ploughed to finance legal and illegal activities. Thus, the act of money laundering allows the organised criminal groups to draw capital from the legal economy as inputs in their criminal ventures and then aid the diversification of such capital through investments.

3.5. Money Laundering, Organised Crime, Corruption and Politics:

The correlation and impact in political structure and governance in developing countries.

As previously stated, the exploits of money laundering, organised crime and corruption in the political structures and processes of most developing countries have undermined their political stability, democratic structure and process and good governance, therefore instigating social and political unrest within the society. Circumstantial evidence tends to confirm that, in many developing countries, there are deep interdependent links between money laundering, organised crime, politics

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and the public sector, fostering in extreme cases a form of symbiosis between the state and criminal organisations¹³⁵. Criminal organisations need legitimate state structures to sustain and expand their activities¹³⁶. Hence, political corruption and state capture by criminal networks are common characteristics of countries with high levels of organised crime¹³⁷. This is particularly factual in developing countries, where the vast profits accumulated by criminal activities including the drug trade make criminals powerful actors in these countries, thereby, allowing them to gain affluence on political process. Bribery of political office holders may be a relatively direct way to penetrate government structures¹³⁸. But financial donations to political campaigns to strategic aspirants are also one of the means used by organised criminal groups or individuals to gain influence over elected political officials¹³⁹. Such was the case in Columbia when the President of the Country, Ernesto Samper, was accused of funding his campaign during the 1996 elections, with approximately US\$6million which was donated by the Cali Cocaine Cartel.¹⁴⁰

¹³⁵ Op. cit., Marie Chêne,

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ Victor A. O. Adetula, *Money and Politics in Nigeria*, IFES-Nigeria 2008. Also available at <http://www.ifes.org/files/MONEYandPOLITICSinNigeria.pdf>

¹⁴⁰ George Henry Millard, 'Drugs and Organised Crime in Latin America' in the Journal of Money Laundering, Volume 1 November 1997

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Furthermore, money laundering would, short of use of violence infiltrate the political composition within the society. This could be by the penetration of the enforcement agencies or the political parties by the means of immense financing of political process. The Inter-American Development Bank estimates the cost of violence generated by organised crime in Latin America at US\$168 billion - equivalent to 15 per cent of Latin America's gross domestic product (GDP)¹⁴¹. The most extreme cases are El Salvador and Colombia where the cost of violence is calculated at 25 per cent of their GDP for 2007¹⁴².

The West Africa region continues to be vulnerable to the exploits of organised crime and corrupt practices due to persistent economic hardship, government deficiencies coupled with weak governance¹⁴³. Consequently, the region has emerged as a transit point for major international criminal trade such as drugs trafficking, which remains, considerable, the most lucrative transnational criminal activity. Criminal groups have also extended their activities to arms smuggling, human trafficking and

¹⁴¹ Transparency International publication, *Keeping Citizens Safe: An Anti-Corruption Agenda for the Americas*. Available at

http://www.transparency.org/news_room/in_focus/2011/keeping_citizens_safe_americas

¹⁴² Ibid

¹⁴³ Op. Cit., Marie Chêne

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other illicit activities such as advance fee fraud internet fraud, and money laundering¹⁴⁴. As in other regions of the world, criminal groups in the region resort to corruption to obtain protection from public officials, influence political decisions and infiltrate state structures¹⁴⁵.

Also politicians and government officials have been directly or indirectly linked to criminal and corrupt activities¹⁴⁶. There are instances, in some developing countries, where high ranking personalities who are in or close to political power, directly involved in illicit and corrupt practices. For instance, the Nigeria's anti-corruption agency, the Economic and Financial Crime Commission (EFCC), once provided evidence, which estimated the sum of money stolen by past and present Nigerian rulers and laundered mainly in foreign banks at US\$521 billion¹⁴⁷. The sum of Nigeria's funds laundered by the past military rulers alone was estimated at US\$400 billion¹⁴⁸. The consequence of this corrupt practice has been persistent inadequate

¹⁴⁴ Ibid

¹⁴⁵ Ibid

¹⁴⁶ See http://www.unafei.or.jp/english/pdf/PDF_rms/no56/56-43.pdf

¹⁴⁷ Nigeria Economic and Financial Crimes Commission, *Military squanders \$400bn in 40 yrs*, May 18, 2005. Accessed at [http://en.wikinews.org/wiki/Nigeria's_past_rulers_stole_\\$400_billion_in_public_money](http://en.wikinews.org/wiki/Nigeria's_past_rulers_stole_$400_billion_in_public_money)

¹⁴⁸ Ibid

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social amenities. Furthermore, the increasing cases of looting of the public treasury and money laundering by, virtually, all the state governors have been so frightening, such that one of the country's leading news magazines portrayed the state governors as "State Exec-thieves"¹⁴⁹. For instance, the governor of one of the states, Governor Joshua Dariye of Plateau State, was investigated by both the British and the Nigerian authorities for 13 offences, which included money laundering and corruption¹⁵⁰. The investigation was in sequence to, amongst other corrupt activities, a sum of £80,000 found on him whilst checking in to UK¹⁵¹. In another example, an ex-governor of another state, Prince Abubakar Audu of Kogi State, was involved in money laundering activity far away Bahamas Republic in the Caribbean¹⁵². The case became public when the government of the Bahamas Republic alarmed the Nigeria EFCC about the lodging of a sum of US\$5million in one of the banks in the Bahamas by the erring governor¹⁵³

¹⁴⁹see *The Guardian*, Nigerian Daily news magazine, January 1, 2006;

¹⁵⁰ Michael Peel, *Nigerian-Related Financial Crime and its Links with Britain: An African Programme Report*, Nov. 2006. Accessed at <http://www.chathamhouse.org/sites/default/files/public/Research/Africa/nigeria1106.pdf>

¹⁵¹ Ibid

¹⁵² see *This Day*, Nigerian daily news magazine, March 10, 2007

¹⁵³ Ibid

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3.6 Conclusion

Corruption and organized crime are immense impediments to political development and good governance while money laundering is at the heart of all profit-driven crime. The political influence of criminal organizations weakens the social fabric, collective ethical standards, and, ultimately, the democratic institutions of a society¹⁵⁴. This criminal influence can undermine countries undergoing the transition to democratic systems, as in the case of some developing countries.

As of today, the infiltration of money laundering, organised crime and corruption into the political structures of many developing countries continue to shake the foundation of effective governance and also stalls political development. The exploits of the drug cartels in the Latin America continue impact, adversely on the political and democratic process of the region. While in majority of Africa, political corruption continues to impede political development of the continent as a whole.

¹⁵⁴ Accessed at <http://www.fatf->

gafi.org/document/29/0,3746,en_32250379_32235720_33659613_1_1_1_1,00.html

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Chapter 4

Reconciling the conflicting priorities and legislative developments in developing countries: the case of Anti Money Laundering Laws in Nigeria

4.1. Introduction

One of the most persistent economic and financial crimes in Nigeria, as of today, is Money Laundering¹⁵⁵. Although relatively unknown in the country until the late 1980s, Money laundering is now a veritable companion of the corruption virus which has permeated every segment of the Nigerian society¹⁵⁶. So much so, it is often said that the country is the money laundering centre of Africa and that Nigerians around the world are engaged in large scale crime and money laundering.¹⁵⁷

¹⁵⁵ Nlerum S Okogbule, *Combating Money Laundering in Nigeria: An Appraisal of the Money Laundering Prohibition Act 2004*, Oxford Journals Law & Statute^{Law} Review, Volume28, Issue2 (2007) 28(2): slr.oxfordjournals.org/content/28/2/156.full

¹⁵⁶ Ibid

¹⁵⁷ see *Vanguard*, Nigerian daily news magazine, October 25, 2005

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Between the mid-1980s and 1999, Nigeria lost an estimated US\$100billion to the exploits of money laundering¹⁵⁸. In the so celebrated democratic dispensation, between 2001 and 2004, the country also lost an estimated US\$25billion to money laundering.¹⁵⁹ Furthermore, more than 10 ex state governors and political leaders of the country, who were alleged to have misappropriated public funds estimated at USD\$250 billion have been arrested and charged to court¹⁶⁰. Most of these funds are alleged to be stuck away in western banks and offshore centres, while a significant amount have been laundered through the acquisition of real estate, luxury cars and purchase of high net worth shares in blue chip companies. Law enforcement officials also reported that half of Nigeria's \$40 billion annual oil revenue is stolen or wasted¹⁶¹.

By its very characteristic, money laundering is a criminal offence that involves several persons and entities in its conception, planning, and execution. It has the capability to distort and corrupt the economic system, inhibit the economic development efforts of countries and stall political development. It is in recognition of its adverse consequences on the national and international economic and political

¹⁵⁸ Ibid

¹⁵⁹ Ibid

¹⁶⁰ Op. Cit., GIABA,

¹⁶¹ Ibid.

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structures that a number of legislative measures have been taken to combat the menace in Nigeria.

4.2. Development of Anti Money Laundering Laws in Nigeria

On the global stage, the OECD countries facilitated the establishment of Financial Action Task Force (FATF) to confront the menace of the phenomenon of money laundering¹⁶². Since its establishment, FATF has succeeded in instigating proactive measures in combating the menace of money laundering. Furthermore, the organization has persistently made solid suggestions on how national legislations dealing with the menace of money laundering should be constructed. As such, several countries, in response, have enacted national laws precisely constructed to address the crime of money laundering within their jurisdictions. The first significant legislative measure in Nigeria was taken in 1989, with the National Drug Law Enforcement Agency (NDLEA) Act, which brought Nigeria into line with the Vienna Convention.¹⁶³ However, in 1995, whilst under the military rule, Nigeria enacted the Money Laundering Decree¹⁶⁴. At the time, the aims of the Money Laundering Decree

¹⁶² Op. Cit., Nlerum. S Okogbula

¹⁶³ Robert Hull, Jonathan Evans 7 Stephen Davis, *Money Laundering and Nigeria: Niger Delta and Security Strategy Working Papers*, March 2011.

¹⁶⁴ Section 1 1995.

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were, among others, to make certain that a documentary trail is left in all money laundering transactions through banks as well as create closer link between banks and the National Drug Law enforcement Agency (NDLEA) with the goal of preventing and haunting down money launderers.¹⁶⁵ To this extent, the decree, restricted the sum of cash transactions, in the country, to N500, 000.00 in the case of an individual and N2, 000,000.00 in the case of a corporate body.¹⁶⁶

Furthermore, the Decree provided that transactions above the restrictions were to be disclosed to the NDLEA, in writing, within 7 days¹⁶⁷. Also, the NDLEA could, in the quest to identify and locate narcotic drugs and psychotropic substances, proceeds, property, objects or other things related to the commission of a money laundering offence: (a) place any bank account and account comparable to a bank account under surveillance; (b) place under surveillance or tap any telephone line; (c) have access to any computer system; and (d) obtain communication or any authentic instrument or private contract, together with all bank, financial and commercial record, when the account, telephone line, or computer system is used or may be used by any person suspected of performing or taking part in a transaction involving the proceeds, property or things or when the instrument, contract or record concern

¹⁶⁵ Ibid.

¹⁶⁶ Ibid

¹⁶⁷ Section 10.

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or may concern the transaction.¹⁶⁸ Also, the decree set up Military style tribunals under the Special Tribunal (Miscellaneous Offence) Decree 1984, as amended try offences under this decree. Further provisions of the decree created severe penalties for offences relating to money laundering and financial crimes, ranging from long jail sentences, heavy fines and forfeiture of assets.

However, as much as the decree was intended to resolve the menace of money laundering practices, there were apparent loopholes that militated against its effective implementation¹⁶⁹. In the context of Nigeria, this is not unexpected, because the typical pattern of legislation in the country hardly takes perception of all the conditions before a law is enacted. This problem was more apparent during the military rule where decrees were rolled out after meetings of the military-dominated ruling councils without legislative debate¹⁷⁰. The ineffectiveness of the decree in combating money laundering and a presumed conception of the country's political administration's unwillingness or inability to address the menace led to the country being placed on the NCCTs list in June 2001. In response, the succeeding democratic government considerably improved willingness to address the country's anti-money laundering deficiencies and also cooperate more with FAFT. Thus, on 14 December 2002, Nigeria enacted the Money Laundering Act (Amendment) Act 2002.

¹⁶⁸ Section 12

¹⁶⁹ Op. Cit., Nlerum. S Okogbula

¹⁷⁰ Ibid

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In essence, the Act improved the scope of the 1995 Money Laundering Decree by expanding predicate offences for money laundering from drugs to “any crime or illegal act”¹⁷¹. The Act also expanded particular AML obligations to non-bank financial institutions, and extended customer identification requirements to include frequent transactions of USD 5,000 or more. Furthermore, in December 2002, Nigeria enacted the Economic and Financial Crime Commission (EFCC) (Establishment) Act¹⁷². The EFCC was commissioned in April 2003 and was charged to investigate money laundering cases from predicate offences other than drug trafficking and in addition to enforce the money laundering legislation of 1995 (as amended in 2002)¹⁷³.

Flowing from the Implementation Plan prepared by an inter-agency technical committee, set up by the EFCC in 2003, the Nigerian Financial Intelligence Unit (NFIU) was also established. The NFIU draws its power from the *EFCC Establishment Act 2004* and the *Money Laundering (Prohibition) Act 2004*. In shaping its creation and operation, abundant cognition was taken of Recommendation 26 of the FATF, Article 7 (1) (b) of the United Nation Convention against Transnational Organized Crime (Palermo Convention), the statement of

¹⁷¹ Op. Cit., FATF Annual Review of NCCT

¹⁷² Ibid

¹⁷³ Ibid

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Purpose of the Egmont Group of Financial Intelligence Units, and Articles 14 & 58 of the UN Convention against Corruption. All these provisions point to the need for every jurisdiction to create a national central body responsible for the collection and analysis of data for the purpose of referring financial information on suspected money laundering activities to the appropriate law enforcement agency and regulatory / supervisory institution.¹⁷⁴

4.2.1. The Economic and Financial Crimes Commission (EFCC)

The EFCC is a Nigerian law enforcement agency that investigates financial crimes such as advance fee fraud and money laundering¹⁷⁵. The EFCC was established in 2003, partially in response to pressure from the Financial Action Task Force on Money Laundering (FATF), which named Nigeria as one of 23 countries non-cooperative in the international community's efforts to fight money laundering. According to the Economic and Financial Crimes Commission (Establishment) Act, 2004, the EFCC is the designated Financial Intelligence Unit (FIU) in Nigeria, which is charged with the responsibility of co-ordinating the various institutions involved in

¹⁷⁴ *Money Laundering in Nigeria and Ongoing Efforts to Tackle the Problem*, Paper by Gulf of Guinea Energy Security Group, Washington, November 2005

¹⁷⁵ "The Establishment Act" Economic and Financial Crimes Commission. See

http://www.efccnigeria.org/index.php?option=com_content&task=view&id=12&Itemid=30

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the fight against money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria¹⁷⁶.

So far, the Commission has been able to and still recording successes in several areas of its mandate. Among others, it has recorded several convictions on corruption, money laundering, oil pipeline vandalism and related offences¹⁷⁷. Assets and money worth over \$11 billion have been recovered from corrupt officials and their cohorts. The Commission is tenacious with over 65 high profile cases at advanced stages of prosecution in several courts in Nigeria and over 1500 other cases in court and secured over 600 convictions¹⁷⁸. The Commission successfully prosecuted one of the biggest fraud cases in the world involving about \$242 million arising from a bank fraud in Brazil¹⁷⁹. It has increased the revenue profile of the nation due to its collaboration with the Federal Inland Revenue Service and the

¹⁷⁶ Ibid

¹⁷⁷ A paper presented by Dr. (Mrs.) Farida Waziri AIG (rtd), FWC, OFR. Executive Chairman The Economic & Financial Crimes Commission, at the United Nations Conference on Least Developed Countries (LDC – IV), Istanbul, Turkey

¹⁷⁸ Ibid

¹⁷⁹ Ibid

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Seaports and has recovered revenue in excess of N75 billion,(over \$500million US Dollars) for government¹⁸⁰.

4.2.2. The Money Laundering (Prohibition) Acts

On 29 March 2004, Nigerian national assembly enacted the Money Laundering (Prohibition) Act 2004¹⁸¹. The Act essentially superseded and improved upon the previous versions of the Act. The Act created the framework for a wider STR and customer identification system¹⁸², AML obligations for a wider range of financial and non-financial institutions¹⁸³, and a framework for the Nigerian Financial Intelligent Unit (NFIU) within the EFCC¹⁸⁴. The NFIU became operational in January 2005. Furthermore, the Money Laundering (Prohibition) Act, 2004 makes different provisions prohibiting the laundering of the proceeds criminal activity¹⁸⁵, and provides for appropriate penalties for money laundering infringements¹⁸⁶. Precisely,

¹⁸⁰ Ibid

¹⁸¹ See http://www.nassnig.org/nass/acts.php?pageNum_bill=4&totalRows_bill=151

¹⁸² Section 3

¹⁸³ Section7

¹⁸⁴ Section 25

¹⁸⁵ Section 14

¹⁸⁶ Section 16

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the Act provides that any person or corporation or organisation is allowed to make or accept cash payments of a sum an excess of N500, 000.00 or its equivalent in the case of an individual, and N2, 000,000.00 or its equivalent in the case of a corporation, unless such cash payment or acceptance is undertaken through a financial institution¹⁸⁷. Also, a transfer of funds or securities to or from a foreign country in excess of US\$10,000 or its naira equivalent must be reported to the central Bank of Nigeria (CBN) or the Securities and Exchange Commission (SEC) in the case of a public corporation¹⁸⁸.

The provisions of the Act, further, stipulates the mandatory reporting of all monetary transfers to and from outside the country and must indicate the nature of the transfer, the amount of the transfer, the names and addresses of the sender and the receiver of the funds or securities that were transferred, and the ultimate beneficiary of the transfer if different from the latter persons¹⁸⁹. The federal High Court has the exclusive jurisdiction to try offences under the Money Laundering (Prohibition) Act, 2004. In the trial of offences under this Act, the Federal high Court is authorise to admit collaborating evidence establishing that an accused person is on possession of property for which he or she cannot satisfactorily provide an account and which

¹⁸⁷ Section 1

¹⁸⁸ Section 2

¹⁸⁹ Section 2 (2)

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property is disproportionate to his or her known sources of income¹⁹⁰.

However the Act has been repealed by the Money Laundering (Prohibition) Act 2011. The Act 2011 was signed by the current Nigerian president, Jonathan Good luck in June 2011¹⁹¹. The Act makes comprehensive provisions to prohibit the financing of terrorism, and the laundering of the proceeds of crime or illegal acts¹⁹². It expands the scope of supervisory and regulatory authorities so as to address the challenges faced in the implementation of the anti-money laundering regime in Nigeria¹⁹³. It also makes provision for appropriate penalties for offenders. The Act places a duty on bankers and other financial institutions to report international transfers of funds exceeding \$10,000 to the Central Bank from where the records can be accessed by security operatives¹⁹⁴.

¹⁹⁰ Section 19

¹⁹¹ See <http://www.vanguardngr.com/2011/06/jonathan-signs-terrorism-money-laundering-bills-into-law/>

¹⁹² See <http://news2.onlinenigeria.com/latest-addition/98547-president-goodluck-jonathan-signs-terrorism-money-laundering-bills-into-law.html>

¹⁹³ Ibid

¹⁹⁴ Amos Dunia, *Senate passes money laundering bill* Wednesday, The Sun (Nigerian) online news magazine March 2, 2011. Accessed at <http://64.182.81.172/webpages/news/national/2011/mar/02/national-2-03-2011-08.htm>

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4.2.3. Other Legislative Measures

Another important Nigerian body in the fight against money laundering is the Independent Corrupt Practices Commission (ICPC), established in 2000. Its main tasks are to investigate reports of corrupt practices, to eradicate corruption in public bodies and to educate the public against corruption.¹⁹⁵ The ICPC also lists amongst its duties the prevention of corruption through studies of systems, practices and procedure.¹⁹⁶ Whilst the EFCC is an investigation and prosecution body focused on financial crime, the ICPC has a broader mandate to tackle corruption in all forms both by investigation and education¹⁹⁷.

The amendments made to legislation in 2002 gave greater responsibility to the Central Bank of Nigeria (CBN) in dealing with money laundering. In particular, they allow the governor greater power to intervene in the banking sector in order to safeguard confidence in the financial system as a whole. The CBN has also been given a greater role in financial sector surveillance, identifying trends and patterns of

¹⁹⁵ ICPC website, <http://www.icpcnigeria.com/>

¹⁹⁶ Ibid

¹⁹⁷ Dr David U Enweremadu, 'Anti-Corruption Policies in Nigeria; A discussion paper, No 1, Nov 2010.

Accessed at <http://library.fes.de/pdf-files/bueros/nigeria/07813.pdf>

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corruption in banks and other monetary institutions.¹⁹⁸ The CBN has directed all commercial banks in Nigeria to report any transaction of a sum over half a million naira (US \$5,000). The CBN then transmits all such reports to the National Economic Intelligence Committee (NEIC). This system is set up to monitor money sources and uses, track spending patterns and generally forestall terrorist activity. Anyone who cannot satisfactorily explain a transaction over a half million naira may be charged under the Exchange Control (Anti-Sabotage) Act, which carries a minimum penalty of five years in prison for individuals, and a fine of N 100,000 (US \$1000) for corporate enterprises. Legal persons can also be charged with money laundering under the National Drug Law Enforcement Agency (NDLEA) Act, which carries a penalty of ten years to life in prison, and forfeiture of assets. If a bank fails to report transactions for amounts over a half million naira, it may carry a penalty of imprisonment, fines, or both. Corporations convicted of such an offense may be forced to forfeit its property and assets.¹⁹⁹

The CBN also has a responsibility to coordinate efforts among financial organisations to increase efficiency in regulatory oversight. This is done through the

¹⁹⁸ This has been through a variety of ways, including the distribution of a booklet, "Know Your Customer," to banks throughout Nigeria, as well as convening seminars and conferences on this issue. The CBN is also working closely with the EFCC to introduce technologically advanced computer systems that can identify trends in untoward financial transactions.

¹⁹⁹ <http://www.interpol.int/Public/BioTerrorism/NationalLaws/Nigeria.pdf>

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Financial Services Regulation Coordinating Committee (FSRCC),²⁰⁰ representing a framework for coordination of regulatory and supervisory activities in the Nigerian financial sector.

Alongside the work of the CBN to monitor the banking sector the Nigerian Stock Exchange has a number of structures and measures in place to check money laundering in Nigeria. These include a Central Securities Clearing System (CSCS) aimed at making transactions more transparent, Administrative Guidelines to ensure the proper documentation of legitimate capital importation through Nigerian banks, a Know Your Client Requirement and membership of the International Federation of Stock Exchanges, which subjects them to international standards and code of best practice.²⁰¹

The National Drug Law Enforcement Agency Act, the Foreign Exchange (Monitoring and Miscellaneous Provisions) Decree (previously the now repealed Exchange Control (Anti-Sabotage) Act) and the Money Laundering Act all authorize the

²⁰⁰ The FRSCC's members are the Central Bank of Nigeria (as chairman), the Securities and Exchange Commission, National Insurance Commission, Corporate Affairs Commission and the Federal Ministry of Finance. Observers are the National Board for Community Banks, the Nigerian Stock Exchange and the Nigeria Deposit Insurance Corporation.

²⁰¹ Dr (Mrs.) Ndi Onyiuke-Okereke, "The Role Of The Nigerian Stock Exchange In Combating Money Laundering In Nigeria", Paper Presented At The Fourth National Seminar On Economic Crimes Organised By Economic And Financial Crime Commission

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freezing of assets. Freezing accounts may be administrative or judicial, coming from the Central Bank of Nigeria, or as the result of a judgment handed by an authorized court or tribunal. Assets can be frozen at the request of another government in cases where both governments share mutual legal treaties in cases of criminal or civil matters.²⁰²

Other legislative measures that Nigeria has taken in response to combating money laundering and other financial crimes include 1991 Banks and Other Financial Institutions Act (BOFIA), amended in 2002, 1993 Advanced Fee Fraud and Other Related Offences Decree, 1994 Failed Banks (Recovery of Debt and Financial Malpractice in Banks) Act, 1995 Advance Fee Fraud and Other Related Offences Decree (creating “419” offences), 2000 Corrupt Practices and Other Related Offences Act (establishing the Independent Corrupt Practices Commission), 2002 Electoral Act (replaced 2001 Electoral Act)

4.3. Conflicting Priorities

Undoubtedly, Nigeria has made significant progress over the last decade, particularly since the democratic dispensation, in implementing its AML regimes. The country was placed on the FATF NCCT list in 2002, as well as the US Financial Advisory list in 2004, due to the presumption of the country’s administration’s incapability of

²⁰² See <http://www.interpol.int/Public/BioTerrorism/NationalLaws/Nigeria.pdf>

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dealing with the exploits of money laundering and other financial crimes²⁰³. However, over the years, efforts, in forms of legislation and enforcement, have been made to tackle, particularly, the phenomenon of money laundering. There have been successes in the prosecution and conviction of highly placed individuals and even politicians involved in money laundering and corrupt practices. Thus, in acknowledging the progress made by the Nigerian government in combating money laundering, as well as other financial crimes, the FAFT in 2006 delisted the country²⁰⁴. Also, the country was also delisted from the US Financial Advisory list in 2007 and was admitted into the Egmont Group of Financial Intelligence Units, also in 2007.²⁰⁵

As much success as the country has achieved in tackling money laundering, there are still fundamental problems in Nigeria's AML regime. Predominantly, the lax of the country's political ruling class towards addressing the menace of money laundering has always been a course for concern. In this regard, the government has been criticised for its lack of willingness to adequately the menace of money laundering in

²⁰³ See [http://www.fatf-](http://www.fatf-gafi.org/document/54/0,3746,en_32250379_32236992_33919542_1_1_1_1,00.html)

[gafi.org/document/54/0,3746,en_32250379_32236992_33919542_1_1_1_1,00.html](http://www.fatf-gafi.org/document/54/0,3746,en_32250379_32236992_33919542_1_1_1_1,00.html)

²⁰⁴ <http://www.fatf-gafi.org/dataoecd/14/11/39552632.pdf>

²⁰⁵ GIABA, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism7 May 2008. Accessed at

http://www.giaba.org/media/M_evalu/Mutual%20Evaluation%20Report%20of%20Nigeria.pdf

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the country. This manifests itself in various ways, not least with regard to inadequate funding of the EFCC and ICPC. For example, in 2003 the ICPC received only half the funds it was expecting from the Federal Government, causing its Chairman, Justice Mustapha Akanbi, to declare that little work was possible outside Abuja.²⁰⁶ In comparison to a country like Hong Kong, which spends \$12.5 dollars per head each year for corruption investigation, the N500 million funding received by the ICPC each year represents 3 to 4 US cents per head each year.²⁰⁷ Whilst the higher government funding promised to the EFCC, a figure in the region of N1.1 billion, remains a frustration for the former chairman of the ICPC, the EFCC has pointed out that its biggest financial supporters are overseas organisations such as the European Union and World Bank.²⁰⁸

Furthermore, the lack of commitment has also manifested itself, ironically, through anti-money laundering measures. A good example was the 2003 Corrupt Practices and Other Related Offences Commission Act, passed by the Senate but later blocked by the High Court.²⁰⁹ This law appeared to reflect a resolve to tackle money laundering, but in fact would have taken away most of the ICPC's powers of investigation and loosened regulation on public officials who grant contracts. Another

²⁰⁶ TI report and ThisDay, 23 January 2003

²⁰⁷ Shola Oshunkeye, "Five Years of Nightmares", in *Tell*, (43) October 2005

²⁰⁸ Dayo Aieyan, "How the EFCC works", in *Tell*, (24) June 2005

²⁰⁹ Robert Hull, Jonathan Evans & Steven Davis, op cit.

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example is the 2002 Electoral Act, which empowered the Independent National Electoral Commission (INEC) to limit donations to political parties by individuals or corporate bodies. Despite this provision, INEC did not make proceedings against any party or candidate in the 2003 elections, despite widespread allegations of corruption²¹⁰. In another instance, the Money Laundering (Prohibition) Act 2011 that was signed into law in June 2011 was in rapid response to the threat by the FAFT to re-enlist the country in to NNC list. It took up over two years for the national law makers to agree to the provisions of the Act.

This concern was highlighted by the FAFT when the organization expressed dissatisfaction on Nigeria's handling of its Anti-Money Laundering (AML) policies. Subsequently, Nigeria was classified as a high risk to the world's financial system. The FATF position on Nigeria's anti-money laundering campaign was contained in a publication where it said Nigeria, amongst other countries, was posing risk, because of the way they have been handling issues relating to money laundering. Although Nigeria has put in place a high-level political commitment to work with the FATF and to address its strategic Anti Money Laundering and combating financing of Terrorism (IFT) deficiencies, the FATF is not yet satisfied that Nigeria has made sufficient progress in the implementation of its action plan and that certain deficiencies remain.

²¹⁰ Ibid

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4.4 Platform for effective implementation of AML Measures

On evidence, uncurbed money laundering, along with other financial crimes, destruct the process of effective governance as well as political process, along with economic distortion. Hence, it is vital to effectively implement AML measures in combating the scourge. As such, the following recommendations are made in ensuring an effective implementation of AML measures:

- Allocation of more budgetary resources for effective implementation of the enacted AML laws.
- Creation of Special Economic Crime Courts and develop their own stand-alone infrastructure and statutes.
- Prioritise implementation of AML/CFT measures when allocating budgetary resources to law enforcement agencies, prosecutorial authorities, and other competent authorities.
- Development of the capacity of existing institutions dealing with AML/CFT matters in terms of additional financial, human, technical resources

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- Strengthen and improve national coordination and close cooperation among law enforcement agencies, prosecutors and other competent authorities.
- Development and promotion of mechanisms for effective Cooperation and exchange of information on AML/CFT matters.
- Consulting and engaging with stakeholders in the private sector when reviewing the national implementation plan.
- Allocation necessary budgetary resources to key stakeholders at national level to promote the integration of AML issues into national development programmes.
- Enactment of legislation that will allow for the prosecution of Nigerians in diaspora for crimes committed outside the country that breach national and international laws.
- Creation of an independent body to supervise the work of the enforcement agencies such as EFCC, so as to attain a high level of transparency.

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4.5 Conclusion

The roots of money laundering and other financial crimes are deeply embedded in the Nigerian society; therefore uprooting them will require the application of all the available mechanisms of the constitution, good governance and international support. Combating and preventing money laundering, has become a *sine qua non* for Nigeria's development, otherwise the Constitution and the government will become meaningless to the existence of the Nigerian citizenry. On the whole, economic and financial crimes have become a cancerous growth that has gone from being benign to malignant in the Nigerian society, it is therefore necessary for the country to rethink the boundary of constitutional and governmental practices to evolve means to effectively contain, curtail and control financial crimes, so that they do not terminate the development and existence of the Nigerian nation state.

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CHAPTER 5

Concluding remarks

Indeed, the phenomenon of money laundering is a menace to every nation irrespective of economic and political status. In essence, uncurbed money laundering spreads across the economic and socio – political spheres of a nation. Consequently, over the last two decades, in particular, measures to combat the exploits of money laundering have become the focus of an intense international effort. Right at the international stage, the UN initiated the legal framework to combat the scourge. Subsequently, major international and regional organisations followed on the initiative of the UN. In this regard the FAFT remains today the principal agency, internationally, for the fight against the phenomenon. In other words, the FAFT initiates the regulatory measures in combating money laundering and these measures serve as the platforms for subsequent national regulatory measures implemented nationally in most countries across the globe.

Developing countries, particularly, have been more vulnerable to the exploits of money laundering, amongst other economic and financial crimes. In other words, the phenomenon of money laundering, amongst other economic and financial crimes

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have had better success in infiltrating into the economic and political structures of most developing countries therefore resulting to economic digression and political instability. Although, developing countries have responded and continue to respond, through legislative measures, to the menace of money laundering, at national level, however, money launders, with other criminals, have exploited the lax regulatory environment, vulnerable financial systems along with persistence civil and political unrest of most the developing countries, Thus, these criminals have found these countries as havens for their criminal activities. Therefore it is paramount for the developing countries restructure, as a priority, their economic and socio political mechanisms of their nations in their quest to fight the phenomenon of money laundering. Furthermore, these countries need to be more assertive and coordinative in the implementation and enforcement of their national AML measures. Also, the developing countries need to adhere efficiently to the international AML measures and establish a solid working relationship with international AML agencies.

Fundamentally, it will continue to require international effort in combating the phenomenon of money laundering. The fact that, over the last decade, developing countries have been more exposed and vulnerable to the exploits of money laundering does not mean the crime is more of a menace in developing countries. For one thing, vast of the money laundered across the globe comes from developed countries. Also the increasing disproportion in the financial and political systems as

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well as law enforcements between developed and developing countries will continue to cajole the diversion of laundered money to developing countries. Therefore, it is paramount to address the structurally imbalances in the fight against money laundering amongst other economic and financial crimes.

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