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The adequacy of the legal framework for combating money laundering and terrorist financing in Nigeria

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Abstract

Purpose – Banditry and terrorism constitute serious security risks in Nigeria. This follows the fact that Nigeria is rated as one of the leading states in the world that is plagued by terrorism. Terrorists and bandits usually embark on predicate crimes such as kidnapping, smuggling, narcotics trade, and similar trades to finance their terrorist enterprises in Nigeria. The funds realized by criminals from nefarious sources such as sales of narcotics and ransom from kidnapping are usually laundered to make their criminal enterprises self-sustaining. Thus, all "dirty" money is laundered so as not to attract the attention of law enforcement agents. The funds realized through receipt of ransom from kidnapping, smuggling or funds from sponsors are laundered through channels such as bureau de change, which are difficult to monitor by the Nigerian authorities due, in part, to flaws and loopholes in the current anti-money laundering and anti-terrorist laws. This paper aims to adopt a doctrinal and qualitative desktop research methodology. In this regard, the current anti-money laundering and anti-terrorist laws are discussed to explore possible measures that could be adopted to remedy the flaws and loopholes in such laws and combat money laundering and financing of terrorism in Nigeria.

Design/methodology/approach – The article analyses the regulation and combating of money laundering and terrorist financing activities in Nigeria. In this regard, a doctrinal and qualitative research method is used to explore the flaws in the Nigerian anti-money laundering laws so as to recommend possible remedies in respect thereof.

Findings – It is hoped that policymakers and other relevant persons will use the recommendations provided in this article to enhance the curbing of money laundering and terrorist financing activities in Nigeria.

Research limitations/implications – The article is not based on empirical research.

Practical implications – This study is important and vital to all policymakers, lawyers, law students and regulatory bodies in Nigeria and other countries globally.

Social implications – The study seeks to curb money laundering and terrorist financing activities in Nigeria.

Originality/value – The study is based on original research which is focused on the regulation and combating of money laundering and terrorist financing activities in Nigeria.

Keywords Money laundering, Legal framework, Flaws, Terrorist financing, Banditry

Paper type Research paper

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1. Introductory remarks

In recent times, Nigeria has been enmeshed in manifold security challenges such as Boko Haram terrorism, Fulani-herdsmen militancy and widespread banditry [Onuh *et al.* (2021), Sambo and Sule (2021), Ojo (2020), Ajala (2020), Chukwuma (2020), Lenshie *et al.* (2020), Olaniyan and Yahaya (2016)]. For instance, the Global Terrorism Index for Nigeria was 8.6 points out of the maximum 10 points in 2019, which means that Nigeria was ranked number three in the list of countries with the highest impact of terrorism behind Afghanistan and Iraq (Cusack and Abiakalam, 2020). Boko Haram is a radical Islamic terrorist group that is involved in unending guerrilla warfare with the Nigerian state. The word Boko Haram is derived from the Hausa language, which translates literally to "western education is a sin or forbidden". Money laundering is a process where the true origin and ownership of the proceeds from illegal activities are concealed and disguised but processed through an intricate financial web into a legitimate fund so as to infuse it into the formal economy [Chitimira (2020), Eboibi and Mac-Barango (2019), Enofe *et al.* (2018), Reuter and Truman (2007)]. It is the act of giving dirty money a legitimate appearance, and it may facilitate further crime by enabling the criminal networks to divert the laundered money into legitimate ventures so that such networks are financially self-sustaining (Levi, 2002). Terrorist financing generally refers to the processing of funds to finance and facilitate terrorist activities. It is a framework with three levels, namely, activities done to obtain money, techniques and methods used to move the money and storing such funds until they are required (Tofangsaz, 2012).

It is submitted that bandits and terrorists commit various crimes to fund for their nefarious activities in Nigeria. The collection of ransom from Nigerian governments, the families and principals of kidnapped victims is a new way by which terrorists and bandits finance their criminal activities. For instance, on 23 April 2021, students of Greenfield University in Kaduna State were abducted by bandits and a ransom of US$438,000 was paid for their release by their parents [Mohammed (2021), Lenshie *et al.* (2020), Ibrahim and Ahmad (2020)]. Similarly, from 2014 to date, Boko Haram abducted numerous victims, including foreign nationals and young Nigerian school children, who were eventually released in batches upon the payment of undisclosed ransom by the Nigerian governments, foreign companies and/or the relatives of the victims [Zenn (2021), Ajakaiye *et al.* (2021), Okoli and Ugwu (2019), Ibrahim and Mukhtar (2017), Attah (2019), Caulderwood (2014), Guitta and Simcox (2014)]. In 2020, it was reported that a United Arab Emirates (UAE) Federal Court of Appeal affirmed the conviction of six Nigerians over their alleged funding of Boko Haram terrorists [1]. The vast sums of cash that are paid as ransom to terrorist groups are laundered and used to sustain their criminal enterprises. Moreover, terrorism and banditry are predicate crimes to money laundering. Terrorists and bandits demand, collect and launder all their ransom money, and this creates insecurity and financial integrity challenges for the Nigerian state and the Nigerian financial markets (Osasona, 2021; Ani and Nweke, 2014). Apart from kidnapping for ransom, terrorists and bandits in Nigeria commit other predicate crimes to money laundering, such as smuggling of goods, drug trafficking, bank robberies and the collection of tax and/or "protection fees" from Nigerian residents (Tiwari *et al.*, 2020; Attah, 2019). The revenue derived from these predicate crimes is then laundered and used to finance terrorism, banditry and other crimes [2]. Accordingly, there is a huge need to strengthen the Nigerian anti-money laundering and counter terrorist financing (AML/CFT) regulatory regime (Onuh *et al.*, 2021; Tiwari *et al.*, 2020). To this end, the paper explores the statutory regulatory efforts that were used in Nigeria to combat money laundering. It also analyses the adequacy of such efforts in relation to the effective

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combating of money laundering, banditry and terrorist financing activities in the Nigerian financial markets and financial institutions.

2. The nexus between terrorism and money laundering

Financial crimes, such as tax evasion, money laundering and terrorist financing, pose serious threats to national security and financial integrity of any country [Umar and Mohammed (2021); Organisation for Economic Co-operation and Development (OECD), 2019]. Criminals who benefit financially from money laundering and related crimes will attempt to prevent their illicit actions from being noticed by the relevant law enforcement authorities of any country, including Nigeria. In case of an eventual arrest or taxation of the proceeds of the crime, the criminals will endeavour to prevent tracing the illicit money to the origin of the crime in question to avoid its confiscation. Likewise, criminals face a dilemma on how to spend or invest their laundered funds without drawing the attention of tax authorities (OECD, 2019). Thus, tax authorities have a crucial role in identifying and reporting money laundering and terrorist financing activities in any country, including Nigeria (OECD, 2019).

Money laundering is shrouded in mystery, its scope is difficult to measure (Grujić and Šikman, 2020; Alldridge, 2003), and it is an economic crime which affects all countries in the world, including Nigeria [Chitimira and Ncube (2021); Grujić and Šikman (2020); Stanley and Buckley (2016), Hopton (2016), Buchanan (2004)]. Money laundering is growing at a phenomenal rate in Nigeria, and it presents challenges of a global dimension to policymakers, especially with regards to terrorist financing activities and the integrity of the financial markets and financial institutions [Chitimira and Munedzi (2021), OECD (2019); Haigner *et al.* (2012), Kama (2005)]. The process of money laundering occurs in three stages, namely, placement, layering and integration [Chitimira and Ncube (2021), Ryder (2012); Lacey and George (2002/03)]. The placement stage of money laundering introduces the funds gained from criminal activities into the formal financial system [Chitimira and Ncube (2021), OECD (2019), Lastra (2012)]. Cryptocurrencies are conveniently used for money laundering as transactions are done anonymously from anywhere using the Internet (OECD, 2019). The second stage of layering involves the concealment of the criminal origin of the proceeds to mislead potential investigators and give the illicit funds an appearance as if they have a legal origin (Chitimira and Ncube, 2021). At this stage, money launderers may use offshore mechanisms or other devices to mislead investigators regarding the origin of the money (OECD, 2019; Tofangsaz, 2012). As earlier stated, a UAE Court of Appeal affirmed the conviction of six Nigerians who were operators of a bureau de change for money laundering for Boko Haram terrorists (Ayitogo, 2020). This also occurred in part due to the laxity in the supervision of bureau de changes by the Central Bank of Nigeria (CBN) because most of them have no record of their customers' identities (Nelson, 2019; World Bank, 2017; Munyoro, 2006). The third stage of integration enables criminals to integrate their proceeds of crime into the formal economy. This is usually done through the purchase of movable and immovable property as well as other luxury items.

Funding is required for specific terrorist operations and to meet the broader organizational costs of developing, maintaining and creating an enabling environment necessary to sustain terrorist activities (Attah, 2019; OECD, 2019). Terrorists finance their activities in various ways. For instance, terrorism is financed through trade and other lucrative activities. It is also financed through non-government organizations (NGOs), consulting firms and charity organizations (FMJ Teichmann, 2019). Terrorism is further financed through various crimes, such as money laundering, smuggling, kidnapping for ransom, drug trafficking and other related crimes (Okoli, 2019). In Nigeria, it is reported that

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terrorism is financed by politically exposed persons such as Ali Modu Sherrif, the governor and senator of Borno State, who was regarded as a financier of Boko Haram (Thurston, 2016). The terrorist financing methods and techniques enumerated above are mostly used through tax evasion, money laundering and cross-border cash smuggling via bureau de change and other cash couriers in Nigeria (Maza *et al.*, 2020; Nelson, 2019; FATF and GIABA, 2013). Notably, security officers seized large sums of money from Boko Haram couriers in Burkina Faso, Chad and along the Nigeria-Niger border (FATF and GIABA, 2013). The aforesaid funds that were seized by security officers from Boko Haram operatives could have been proceeds from money laundering and ransom payments. In this regard, detecting and cutting off terrorists' sources of funding are critical steps in destroying their illicit activities (Attah, 2019). Apprehending, investigating and prosecuting the financiers of terrorism as well as confiscating and seizing of terrorists' assets will have a deterring effect on the perpetrators of money laundering and terrorism (FATF and GIABA, 2013).

The techniques used to launder money are essentially the same as those used to conceal the funding sources used for terrorist financing (Schott, 2006). Nonetheless, it must be noted that the funds used to support terrorism may originate from legitimate sources, criminal activities or both (FATF and GIABA, 2013). If the source of funds is concealed, they remain available for future terrorist financing activities. Thus, it is important for terrorists to conceal the origin and use of funds so that the terrorist financing activities go undetected (Schott, 2006).

Pol (2020) argues that modern money laundering laws, policies and enforcement are ineffective in dealing with terrorism financing, drug, human, arms and wildlife trafficking, corruption and tax evasion (Pol, 2020; Isa *et al.*, 2015). The cost of compliance with AML regime is sometimes high, exceeding the amounts recovered from criminals. This could imply that AML laws have limited capacity to prevent profit-motivated crimes such as money laundering and terrorism (Pol, 2020; Mugarura, 2020). Moreover, the amount realized from criminals, including financiers of terrorism, is sometimes negligible (Pol, 2020). The trivial confiscation of criminal funds potentially overstates the policy impact of money laundering laws, rules and regulations (Pol, 2020). Despite this, it is submitted that countries with robust statutory regulatory frameworks are able to combat money laundering and its predicate crimes, such as terrorist financing, more effectively than those which do not. Thus, notwithstanding the cost implication of AML/CFT laws, these laws are crucially important for the combating of money laundering and terrorist financial crimes in Nigeria and several other countries. We authors concur with de Koker (2006) and Chitimira and Munedzi (2021) on the importance of customer due diligence to curb money laundering and terrorist financing activities in the global financial markets and financial institutions [3].

Terrorism is usually linked to money laundering, and it is a premeditated, illicit and indiscriminate use of violence by non-state actors against non-combatant and innocent civilians, public or private property to generate an atmosphere of terror, or achieve religious, ideological or political objectives [4]. On the other hand, banditry refers to the incidences of armed robbery or allied violent crimes, such as kidnapping, cattle rustling and market raids, which are motivated solely by economic reasons (Okoli and Ugwu, 2019). Terrorism is fundamentally driven by an ideological belief in regime change or similar reasons, while banditry is generally considered an organized crime with a focus on economic gains (Ojo, 2020). Thus, the act of terrorism can be differentiated from banditry in the following ways. Firstly, the motivation behind terrorism is shaped by ideological inspiration, while banditry is driven by economic gains. Secondly, the terrorists' objective is confined within the context of socio-political change, while bandits are apolitical. Notwithstanding these distinctions, the actions of both bandits and terrorists have detrimental implications for security for the

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Nigerian people (Ojo, 2020). Some persons argue that there is no difference between bandits and terrorists in Nigeria, and that the bandits are just the financial wing of Boko Haram (Daily Trust, 2021; Inwalomhe, 2021). Similarly, under sections 1(2)(c)(ii) and 11 of the Terrorism (Prevention) Act 2011 (TPA), anyone who engages in kidnapping is deemed to engage in an act of terrorism. Thus, kidnappers are deemed terrorists in Nigeria (Imhonopi and Urim, 2016).

The formal name of Boko Haram is *Jama'atu Ahlus-Sunnah Lidda Awati wal Jihad,* which means the "association of people committed to the propagation of the Prophet's teaching and Jihad' (Inyang and Hanson, 2019; Ike, 2018). The Boko Haram group intends to create an Islamic state in north-east Nigeria which is based on Sharia law or the Muslim law (Ojo, 2020). Boko Haram and the bandit groups kidnap for a ransom, and they launder the money derived from such activities to continue their criminal enterprise (Daily Trust, 2021; Inwalomhe, 2021; Ayitogo, 2020; Tofangsaz, 2012). These terrorist organizations need funding for their personal, operational and organizational needs (FATF and GIABA, 2013). It is submitted that the timely detection and severing of these terrorist groups from their source of funding are critical measures that could destabilize and destroy their organizations. The bankers and financiers of Boko Haram and several bandit groups should be timely investigated, apprehended and prosecuted to cut off their lifelines and serve as a deterrent to their potential backers (Alldridge, 2003). More importantly, understanding and addressing the issue of terrorist financing is critical because of the destructive effects of terrorism on peace, security and development in Nigeria (FATF and GIABA, 2013; Attah, 2019).

3. Historical overview of the anti-money laundering regime and the combating of terrorism in Nigeria

The National Drug Law Enforcement Agency (NDLEA) Decree 48 of 1989 was enacted by the Nigerian military government, and it prohibits trading and trafficking in narcotics and psychotropic substances and profiting from the proceeds [5]. NDLEA was created essentially as the authority to enforce the anti-drug trafficking mandate, but its AML provisions could be inferred from sections 3(1)(d), 26, 27 and 33 of the NDLEA. Notwithstanding the NDLEA, corruption and money laundering were rampant, and nobody was convicted for money laundering in Nigeria before 2004 (Haruna, 2019; Obot, 2004). Between 2001 and 2006, Nigeria was placed on the Financial Action Task Force (FATF)'s [6] grey list, which comprises non-cooperative countries and territories in the international community's efforts to combat money laundering and terrorist financing (GIABA, 2008). This means that Nigeria faced economic sanctions from the International Monetary Fund (IMF), World Bank and African Development Bank, blocking it from obtaining international financial assistance (Kida and Paetzold, 2021; Business Standard, 2020; Collin *et al.*, 2016; Unger *et al.*, 2006; McDowell and Novis, 2001; Ghoshray, 2015; Hopton, 2016). International investors were cautious of doing business with and in Nigeria because it was deemed a high-risk jurisdiction with low financial integrity (Jayasekara, 2020; Morse, 2019; Ghoshray, 2015; Gabriel, 2012; Unger and den Hertog, 2012). Nigeria was, however, removed from the grey list in 2016 when it indicated that it was ready to enact and implement AML laws.

The provisions of the NDLEA were exposed as not being robust enough to curb money laundering, and this led to the enactment of Money Laundering Decree 3 of 1995 ("Money Laundering Decree, 1995"; Osimiri, 1997). Although the Money Laundering Decree, 1995, made specific provisions criminalizing money laundering, the predicate crime was still restricted to drug trafficking proceeds. It is submitted that the Money Laundering Decree, 1995, was poorly drafted by a few individuals without proper consultation in respect thereof.

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In addition, between 1989 and 2000 most of the decisions of the Nigerian policymakers were based on the pervasive global orientation, in line with the Vienna Convention's scope of money laundering as a narcotic-related crime [7]. The Money Laundering Decree, 1995, contained various flaws which negatively affected its effectiveness. The main defect was the ambiguity in the definition of money-laundering [8]. Moreover, the Money Laundering Prohibition Act, 2004 is also imbedded with similar ambiguity in the definition of money laundering. Section 14 of the Money Laundering Prohibition Act, 2004 defines money laundering as the process of laundering the proceeds of transactions from "illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act". For instance, in *FRN v James Ibori and 5 others* (*Ibori's* case) [9], it was held "any other crime or illegal act" provided for in section 14 of the Money Laundering Prohibition Act, 2004 must not be read in isolation of other wordings in the same section. The judge applying the *ejusdem generis* rule of interpretation of statutes [10] decided that since the funds for which the defendants were accused of money laundering were not traceable to narcotics and psychotropic substances; the case of money laundering against the defendants must fail. Accordingly, the accused were acquitted. Perhaps the judge should have used another rule of interpretation, such as the mischief rule [11], and treated the case on its merits. Moreover, it is not clear whether the judge could have adopted the same reasoning if the *Ibori's* case involved terrorism financing instead of political corruption. Notably, the same accused persons were charged with money laundering based on similar facts in England and convicted [12]. The Nigeria Court of Appeal granted the appeal in *Ibori's case* and decided that the case be referred to the High Court and heard on merit [13].

Probably, the embarrassment of *Ibori's* case and the United Nations Convention Against Transnational Organized Crimes (Resolution 55/25 of 15 November 2000) changed the narratives of AML legislation in Nigeria. Consequently, Money Laundering (Prohibition) Act, 2011 was enacted, and it provides a more comprehensive definition of money laundering, which includes terrorist financing, in relation to the FATF's list of predicate offences. Similarly, the Terrorism (Prevention) Act 10 of 2011 (TPA 2011), as amended by Terrorism (Prevention) (Amendment) Act, 2013, were enacted to prohibit acts of terrorism and terrorist funding [14].

4. The legal framework for combating money laundering and terrorist financing in Nigeria

There are several AML/CFT statutes in Nigeria. The major statutes are Money Laundering (Prohibition) Act 14 of 2022, the TPA 2011, as amended and the Economic and Financial Crimes Establishment Act, 2004 (EFCC Act). The Money Laundering (Prevention and Prohibition) Act 14 of 2022 (Money Laundering Act 2022) was recently enacted to repeal the Money Laundering (Prohibition) Act 2011. We shall examine the adequacy of these AML/CTF Acts in combating money laundering and terrorist financing in Nigeria below.

4.1 The TPA 2011

Section 1(1) of the *TPA 2011* expressly prohibits the funding of terrorism to discourage the activities of terror groups such as Boko Haram and the bandits in Nigeria (Attah, 2019). Section 13 of the TPA 2011 specifically criminalizes the provision of funds for terror groups in or outside Nigeria. Section 1(3) of the TPA 2011 defines an "act of terrorism" as the one which is deliberately done with malice, and which may seriously harm or damage or is intended to unduly compel a country or an international organization to act otherwise from its original intent. The TPA 2011 still adopts the common law concept of "malice

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aforethought" even though the Supreme Court of Nigeria in *Nworie Nwali v the State* [15] decided that it was no longer part of Nigerian law (Omolaye-Ajileye, 2015).

The TPA 2011 provides no definition of terrorist funding. However, the definition provided in the Proceeds of Crimes Act of the United Kingdom, namely, "providing or collecting funds, by any means, directly or indirectly, with the intention or knowledge that they will be used to carry out an act of terrorism", suffices for the purposes of this article [16]. A distinction should always be made between terrorist funding and money laundering. Money laundering is normally committed through a practice or crime which generates proceeds that are disguised in order to conceal their illicit source, while terrorist financing occurs through the money used for terrorism that could be derived from either legitimate or illegal sources (Omolaye-Ajileye, 2015; Mwazighe, 2012). It is submitted that terrorists in Nigeria are still engaged in money laundering schemes and terrorist activities in Nigeria [17]. Thus, the Nigerian AML/CTF laws should be revamped to enact adequate provisions so as to effectively combat money laundering and terrorist financing activities. We concur with Unger *et al.* (2006), that terrorist financing has similar characteristics with money laundering.

Section 174 of the Constitution of the Federal Republic of Nigeria 1999, Chapter C23 LFN 2004, empowers the Attorney General of the Federation (AGF) to prosecute all criminal cases in Nigeria [18]. Ulmer *et al.* (2007) submit that there is a need for the AGF to exercise proper control and discretion when conducting his or her duties in Nigeria (Oshipitan and Odusote, 2014). Nonetheless, the current AGF refused to prosecute about 400 sponsors and financiers of terrorism that were apprehended by the security agents in Nigeria on political-related grounds (Daniel, 2021; Ojielu, 2021). This suggests that the discretionary powers of the AGF are too wide and capable of abuse in Nigeria. For instance, the current AGF and the president are reportedly members of the same political party. Moreover, in the exercise of his or her discretion, the prosecutor may decide to charge a person who used the proceeds of oil pipeline vandalization to sponsor terrorism under the TPA 2011 or section 1(7) of the Miscellaneous Offences Act, Chapter M17 LFN 2004. Similarly, a kidnapper may be tried under the TPA 2011 or sections 364, 272 and 273 of the Criminal Code (CC) or the Penal Code (PC) Law or the Anti-Kidnapping Law of the various states such as section 3 of the Ebonyi Internal Security Enforcement and Related Matters Law, Chapter 55 of 2009. Prosecutorial discretion could be exercised indiscreetly for political reasons. For instance, a suspect with affiliation to the ruling political party may be arraigned for pipeline vandalism or acts likely to cause breach of the peace under the criminal code, while a suspect affiliated to opposition party may be charged under the TPA 2011. The prescribed punishment under the criminal code is lighter than that prescribed under the TPA 2011.

In addition, section 28 of TPA 2011 provides that where an accused person is granted bail by a court within the 90 days, he or she may, on the approval of the head of the relevant law enforcement agency be placed under house arrest and shall be deprived of access to phones or communication gadgets and speak only to his or her lawyers until the conclusion of the investigation. Nevertheless, keeping anyone in detention at the pleasure of the head of a law enforcement agency without a valid court order is illegal and a violation of the fundamental human rights of the affected person in terms of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999.

4.2 Economic and Financial Crimes Commission Act

The Economic and Financial Crimes Commission (EFCC Act) was created by virtue of the EFCC Act as a financial intelligence unit, charged with the responsibility of coordinating the various institutions involved in the fight against money laundering and terrorist financing in Nigeria [19]. Section 14 of the TPA 2011 imposes an obligation on financial institutions or

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designated non-financial institutions to report suspicious transactions relating to terrorism to the EFCC. The EFCC also prohibits terrorism in terms of sections 1(e) and 17 of the Money Laundering (Prohibition) Act 2022. Section 14(1) of the EFCC Act states that anyone who provides and collects goods or money with the knowledge that the money is meant for the execution of an act of terrorism is liable for terrorism financing. In this regard, *mens rea* is required to determine that the accused had the knowledge that the money supplied is to finance terrorism. The EFCC may impose a life imprisonment penalty on the offenders [20].

Section 15 of the EFCC Act provides some offences relating to terrorism, terrorist funding and the attempting to commit a terrorist act, while section 46 of the same Act defines terrorism. However, the definition of terrorism under section 46 of the EFCC Act is vague and overly broad. For instance, acts of terrorism refer to a violation of the CC or the PC which may endanger the life of any person. Similarly, under section 46(a)(i), (ii) and (iii) of the EFFC Act, all acts calculated or intended to intimidate, put fear, force or coerce any government body or institution to do any act, adopt or abandon a particular standpoint, or disrupt any public service or any essential service amounts to terrorism. It appears that in terms of the definition of terrorism under section 46 of the EFCC Act, a strike by petroleum tanker drivers, health professionals or others who provide essential services could be taken as terrorism. Thus, financiers of such strikes could be regarded as financing terrorism. This broad definition may open doors to abuse and can be used by oppressive regimes for political purposes. However, the EFCC blamed its bad conviction records on factors such as the poor justice system that permits the use of technicalities to delay the attainment of justice (Anaedozie, 2016). On the other hand, Attah (2019) argues that the creation of specialized courts that are devoted solely to the adjudication of terrorism and financial-related crimes should be considered by the relevant authorities to increase the timely prosecution and settlement of such crimes. If properly enforced, this approach could improve the combating of financial crimes in Nigeria. The Supreme Court of Nigeria held that sections 1(1)(b) and 2(a) of the Supreme Court Practice Direction 2013 provide that terrorism and offences such as rape, kidnapping, money laundering and human trafficking cases take precedent over other cases [21]. Thus, financial crimes and terrorist-related cases are prioritized in Nigerian courts [22]. In *FRN v Mustapha Fawaz & Ors*[22], it was held that although the accused admitted to being members and financiers of Hizballah, that membership was not a crime in Nigeria. Therefore, the first and second accused were acquitted. We argue that the Nigerian government and policymakers should consider designating foreign groups such as Al-Qa'ida and Hizballah as terrorist organizations so that their financiers will be penalized accordingly. In *AGF v Indigenous People of Biafra (IPOB)* [23] and *FRN v Jama'atu Ahlus-Sunnah Lidda Awati wal Jihad (Boko Haram) and Jama'tu Ansarul Musulumina Fi Biladis Sudan* [24], the federal high court declared the IPOB and Boko Haram as terrorist organizations. Consequently, these organizations were banned in compliance with sections 9(4) and (7) of the TPA 2011 and gazetted in the Federal Republic of Nigeria Official Gazette No. 34, Volume 100.

4.3 Money Laundering Act 2022

Section 18 of the Money Laundering Act 2022 prohibits numerous offences, such as the concealing or disguising the illicit origin of resources or properties derived from illicit traffic in narcotics, terrorism, terrorist financing, smuggling, tax evasion and illicit arms. An offence committed under this section attracts a penalty of a fine not less than five times the value of the proceeds of the crime or imprisonment for a period between four and 14 years or both. Notably, sections 3, 5 and 24 of Money Laundering (Prohibition) Act 2011 made provisions for designated non-financial institutions, which include dealers in jewelleries,

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cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing companies and legal practitioners. Other designated non-financial institutions include hotels, casinos, supermarkets and other businesses designated by the appropriate regulatory authorities. However, *NBA v FGN & CBN* (*NBA case*) [25] held that lawyers could not contravene the provisions in the Rules of Professional Conduct 2007 (RPC) and the Legal Practitioners Act, 1975 (LPA) by disregarding duty of confidentiality between a client and a lawyer. Thus, sections 3, 5 and 24 of the Money Laundering (Prohibition) Act 2011 and section 24 of the EFCC Act were declared inconsistent with the provisions of section 37 Constitution of the Federal Republic of Nigeria 1999, provisions of the LPA and section 192 of the Evidence Act, 2011 (Ahiauzu and Inko-Tariah, 2016). However, section 11(4) of the Money Laundering Act 2022 provides that attorney–client privileges are limited and will not apply to the purchase or sale of property or businesses, managing client money, securities or assets, opening or managing accounts, creating or managing trust companies or similar transactions. Thus, the attorney–client's confidentiality is not covered in the circumstances listed above.

It is submitted that Nigerian legal practitioners should not be part of designated non-financial institutions as their activities are regulated by the strict rules in RPC, 2007, the LPA and the confidentiality rule between lawyers and clients. However, the application by car dealers for their removal from the designated non-financial institutions list was rejected by the court in *Yakubu Lekjo and others v EFCC* [26]. In this case, the court held that the EFCC correctly applied its powers under section 24 of the Money Laundering (Prohibition) Act 2011 by demanding information from car dealers regarding their financial activities.

Similarly, sections 3(1) and (2) of the Money Laundering (Prohibition) Act 2022 impose a duty to report any international transfer of funds and securities exceeding US $10,000.00 or its equivalent to the CBN, the Securities and Exchange Commission or the EFCC within one day from the date of the affected transaction. However, the Money Laundering Act 2022 does not expressly indicate the person who is statutorily obliged to report such transactions. As a result, it remains unclear whether the duty to report excessive transactions is imposed on the sender, the receiver and/or the relevant financial institution. This lacuna may be exploited by those that want to evade the mandatory disclosure requirements while hiding under the cover that they had expected the other parties to make the report. However, sections 3(3) and (4) of the Money Laundering Act 2022 specifically provide that the Nigerian Customs Service must report the transportation of cash or negotiable instruments worth more than US$10,000.00 or its equivalent by individuals in or out of the country to the CBN and the EFCC [27]. Similarly, section 13(1) of the Money Laundering Act 2022 provides that financial institutions, designated non-financial institutions and related professions shall identify and assess the money laundering and terrorism financing risks that may arise in relation to the adoption and use of new products and new business practices. This duty should be shared between the stated persons and regulatory authorities to effectively combat money laundering and terrorist financing activities.

Nevertheless, the Money Laundering Act 2022 makes no provision for the protection of whistle-blowers who disclose information which could lead to the detection and prosecution of money laundering and terrorism offenders. Section 12(4)(b)(ii) of the Money Laundering Act 2022 provides that upon conviction, the penalty for a corporate body shall be winding up and prohibition of its constitution and incorporation under any form in Nigeria. This provision is welcome, and it could be a good deterrent if properly

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enforced to curb and discourage money laundering and terrorist financing-related crimes in Nigeria.

5. Recommendations

The definition of terrorism under section 46 of EFCC Act should be carefully streamlined to exclude some CC and PC offences. This follows the fact that terrorism was broadly defined as "any act which is a violation of the CC or the PC and which may endanger the life, physical integrity or freedom of, or cause serious injury or death. . ." and this could give rise to a mere misdemeanour under the CC or PC being treated as terrorism. Moreover, international organizations such as Al-Qa'ida and Hizballah should be statutorily treated as terrorist organizations in Nigeria to curb terrorist financing and related financial crimes such as money laundering. In addition, the Fulani-herdsmen and bandits who commit mayhem daily should be treated as terrorist organizations under sections 9(4) and (7) of the TPA 2011. The penalty under section 12(4)(b)(ii) of the Money Laundering Act 2022, which provides for the winding up of corporate bodies and prohibition of such companies to constitute and incorporate under any form in Nigeria, should be carefully enforced to increase deterrence and curb money laundering and terrorist financing-related crimes in the Nigerian financial markets and financial institutions.

All provisions of the Money Laundering Act 2022 should be carefully and consistently enforced in accordance with the Constitution of the Federal Republic of Nigeria 1999 to avoid any possible arbitrary violation of the accused persons and/or offenders' rights. In addition, the Nigerian policymakers should consider amending the Money Laundering Act 2022 to enact adequate provisions for bounty rewards and whistle-blowers' immunity to effectively protect them against victimization and encourage all persons to report money laundering and terrorist financing activities to the relevant authorities. This approach could discourage reprisals and unfair labour practices by employers against their employees who are whistle-blowers. The Money Laundering Act 2022 should be amended to clearly provide persons who are obliged to report suspicious transactions to the CBN, enforcement authorities and/or regulatory bodies in Nigeria. Furthermore, section 150 of the Constitution of the Federal Republic of Nigeria 1999 should be amended to restrict the appointment of the AGF to legal practitioners duly called to the bar for a minimum of 10 years and who are not members of any political party to avoid bias and/or partisan activities affecting the prosecution of money laundering and terrorist financing cases in Nigeria.

6. Concluding remarks

As discussed above, terrorist groups such as the bandits, Fulani-herdsmen and Boko Haram have, to date, wrecked incalculable havoc on Nigeria and its citizens. Kidnapping for ransom, armed robbery, smuggling and drug trafficking are some of the crimes committed by bandits and terrorists to make their terrorism and money laundering activities self-sustaining. It was further stated that terrorist financing activities that use bureau de changes and cash couriers are rife in Nigeria. Consequently, various AML/CTF statutes such as the TPA 2011, the EFCC Act, the Money Laundering (Prohibition) Act 2011 and the Money Laundering Act 2022 were enacted in a bid to discourage and combat money laundering and terrorist financing activities in Nigeria. Nonetheless, various flaws are found in these statutes, and this has negatively affected the combating of money laundering and terrorist financing activities in the Nigerian financial markets and financial institutions. For instance, some local terrorist groups are not statutorily treated as such, giving rise to a number of terrorist activities being committed by the Fulani-herdsmen, Hizballah, the IPOB and Boko Haram with impunity. In this regard, it was recommended that all illicit activities

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of these organizations be expressly and statutorily outlawed in Nigeria. It is submitted that this and other recommendations provided in paragraph 5 above should be considered seriously by policymakers, regulatory bodies, enforcement authorities and all relevant stakeholders in Nigeria to effectively combat money laundering and terrorist financial activities in the Nigerian financial markets and financial institutions.

Notes

1. Ayitogo (2020), see also *USA v Ramon Olorunwa Abbas*, US District Court Case No. 2:20-mj-02992.
2. GIABA (2020), Obi (2015), Guitta and Simcox (2014), GIABA is the acronym for "Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest", which is the Inter-Governmental Action Group against Money Laundering in West Africa. It was established by the Economic Community of West African States Heads of State and Government in 2000.
3. A person may be classified as a freedom fighter and a terrorist by different groups. For instance, Nelson Mandela was classified as a terrorist by the South Africa apartheid regime but regarded as a freedom fighter by the African Union and others. See also Meserole and Byman (2019), Chuku *et al.* (2017), Sorel (2003).
4. Sorel (2003), Meserole and Byman (2019), Imhonopi and Urim (2016), Bruce (2013), Onuoha (2013) see also s 1(3) of Terrorism (Prevention) Act 2011.
5. See s 3 (1)(m), NDLEA Decree, 1989.
6. The Financial Action Task Force (FATF) is an intergovernmental organisation founded in 1989 on the initiative of the G7 to develop policies aimed at combating money laundering and terrorist financing.
7. Art 3(1)(b) Vienna Convention, 1988; Mugarura (2020), Ashin (2012), Collin *et al.* (2015), Stessens (2000).
8. S 14 Money Laundering Decree, 1995; see also similar provisions in s 14 of Money Laundering (Prohibition) Act 7 of 2003.
9. *FRN v James Ibori and others* (unreported charge no: FHC/ASB/IC/09).
10. A rule of interpretation whereby general words expressed in a statute are construed to mean things of the same kind as those specifically mentioned.
11. Under the mischief rule, the court's role is to suppress the mischief the statute is aimed at and provide an appropriate remedy in respect thereof.
12. *Regina v James Ibori and others* [2018] EWCA 2291 (Crim).
13. *FRN v James Onanefe Ibori & Ors* (CA/B/61C/2010 (2)-(2014) LPELR023214 (CA)).
14. Ss 1, 12 and 13 TPA.
15. *Nworie Nwali v the State* (1991) 3 NWLR (Pt. 182) 663.
16. Art. 1(4) of the U.K. Proceeds of Crimes Act.
17. *FRN v Mustapha Fawaz & Ors*., (unreported appeal no: CA/A/197C/2014); Akinkuotu *et al.* (2021), Ayitogo (2020); *State v Okah* (2018) (4) BCLR 456 (CC).
18. *State v Ilor*i (1983) All NLR p. 84; see ss 160 and 174 of the Constitution of the Federal Republic of Nigeria, 1979 and 1999, respectively.
19. Ss 1, 6(b) and (d) EFCC Act.
20. S 14 of the EFCC Act, 2014; Attah, *supra n* 7; *Ogwu Achem v FRN* (2014), LPELR 23202 (CA).

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21. *Charles Ododo v Peoples Democratic Party* (2015) LPELER 24738.
22. *FRN v Mustapha Fawaz & Ors.* (unreported charge no. FHC/ABJ/CR/112/2013) and *FRN v Mustapha Fawaz & Ors.* (unreported appeal no. CA/A/197C/2014).
23. *AGF v IPOB* (unreported charge no. FHC/ABJ/CS/871/2017).
24. *FRN v Boko Haram & another* (unreported charge no. FHC/ABJ/CS/368/2013 on 24/05/2013).
25. *NBA v FGN & CBN* (unreported suit no: FHC/ABJ/CS/173/2013).
26. *Yakubu Lekjo and others v EFCC* (unreported suit no: FHC/KD/CS/117/2209).
27. see *FRN v Bashir Abdu* (unreported FHC/KN/CR/210/2012); *FRN v Umar Musa Kibiya* (unreported FHC/KN/CR/193/2012) and *FRN v Idris Hamza* (unreported FHC/KN/CR/196/2012).

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