

Terrorism Financing and Money Laundering in Nigeria: A Perspective of the Boko Haram Insurgency

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Abstract

The concept of terrorism is often times value loaded. The sensitive nature of this bizarre outlook has implicated notions. Part of this strange oddity is connected with the secret mode of source of finance as well as money laundering details, which without doubt, creates the mystery around the terrorist group. Therefore, terrorism financing and modus of covert movement of the realised money otherwise regarded as money laundering, constitutes a potent weapon that has enabled the Boko Haram insurgents to flourish in Nigeria. The authors in the light of the foregoing, examine the covert methods of terrorist financing, the relationship between terrorist financing and money laundering, and the legal and administrative framework for combating terrorism financing. The paper further argued that a key component of the legal framework for combating terrorism financing in Nigeria is the Terrorism (Prevention) Act 2011 as amended by the Terrorism (Prevention) (Amendment) Act, 2013 and the Money laundering (Prohibition) Act 2011 as amended. The authors argued that the Nigerian government has taken steps to tackle terrorist financing by various instruments by engaging a plethora of institutions such as the Central Bank of Nigeria and the Economic and Financial Crimes Commission. The paper therefore maintained that the promulgation of laws and concomitant establishment of regulatory agencies and or institutions are not enough to combat terrorist financing. It is recommended that there must be the necessary political will to fight terrorist financing. Regulatory institutions must be strengthened to implement the laws and extant instruments. Proper investigations, prosecutions and convictions will give the necessary impetus to the war against terrorism financing and consequent money laundering.

Keywords: Terrorism, Terrorism Financing, Money Laundering, Legal, Administrative, Institution and Prosecution.

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1. Introduction

Terrorism is a global phenomenon¹ but it is incapable of a precise definition.² The challenge of definition of Terrorism has always been the subject of controversy among academic writers, apparently due to lack of uniformity in perception and statutory definition.³ According to Geoffrey Levitt,⁴ the search for a legal definition of terrorism in some ways resembles the quest for the Holy grail: Periodically, eager souls set out, full of purpose, energy and self-confidence, to succeed where so many others before having tried and failed.

Cooper, H.H.A⁵ notes that there has never been since the topic began to command serious attention, some golden age in which terrorism was easy to define. It

¹ Jacqueline Ann Carberry, 'Terrorism: A global phenomenon mandating a Unified International Response' (2009) 6 (2) *Indiana Journal of Global Studies* 685

² Ben Golder and George Williams, 'What is Terrorism? Problem of Legal Definition' (2004) 27 (2) *University of New South Wales Law Journal* 270

³ Kent Roach, 'The Case for Defining Terrorism with Restraint and without Reference to Political or Religion Motive' in Andrew Lynch, Edwina Macdonald, George Williams(eds) *Law and Liberty in the War on Terror* eds. (The Federation Press, 2007) 39-49; Don John Omale, 'Terrorism and Counter Terrorism in Nigeria; Theoretical Paradigms and Lessons for Public Policy' (2013) 9 (3) *Canadian Social Science* 96 – 103; Reuven Young, 'Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and its Definitions in Domestic Legislation' (2006) 29 (23) *B.C Int. & Comparative Law Review* 23; Keiran Hardy and George Williams, 'What is Terrorism? Assessing Domestic Legal Definitions' (2011) 16 *UCLA Int. L & For. Aff.* 77, Geoffrey Levitt, 'Is Terrorism" Worth Defining?' (1986) 13 *Ohio. N.U.L. Rev.* 97; Clive Walker, 'The Legal Definition of 'Terrorism' in United Kingdom and Beyond' (2007) *Public Law* 331

⁴ Geoffrey Levitt, 'Is Terrorism" worth Defining?' (1986) 97 *Ohio. N.U.L. Rev.* 97

⁵ H.H.A Cooper, 'Terrorism: The Problem of Definition Revisited' (2001) *American Behavioural Scientist* 881-893

can therefore be said that there is no consensus or a form of generic definition that can serve as a reference for all purposes.

Unfortunately, there has been no universal definition of terrorism due to certain political, religious and national perspectives which differ from one country to another.⁶ The popular cliché has always been: 'One man's terrorist is another man's freedom fighter.' Whatever definition is adopted, the main aim of terrorist act is to instil terror and fear in the populace either for religious, ideological, or political purposes. The horrible images of Al Qaeda terrorist attack in the September 11, 2001 attacks in the United States of America, the September 21, 2013 Al Shabaab attack on the Westgate Mall in Nairobi, Kenya and the kidnap of more than 276 girls from the Government Girls Secondary School in Chibok, Borno State and more recently the abduction of the Dapchi girls in Adamawa State have ignited the global consciousness to the deadly acts of these terrorists. How do the terrorists get the necessary finance to carry out their nefarious activities? Whereas terrorism may be incapable of precise meaning, terrorism financing may be easier to define.

Financing seems to be the most important weapon of war, in this case the war on terrorism.⁷ It is money that enables terrorists to move from one place to another, make

⁶ See Bertram Onyebuchi Agu and Nwankwo Simon and Onuka Ifeayi Onwuka, 'Combating Money Laundering and Terrorist Financing-The Nigerian Experience' (2016) 4 (1) *International Journal of Business & Law Research* 29-38

⁷ Tom C.W Lin, 'Financial Weapons of War' (2016) 100 *Minnesota Law Review* 1377; *Temple University Legal Studies Research Paper* no. 2016-15, available at SSRN:<https://ssrn.com/abstract=2765010>

improvised explosive devices, purchase arms, acquire communication equipment, feed kidnapped victims, pay Special Forces and mercenaries, offer bribes for easy passage and even pay the dependents of suicide bombers. How do these terrorists get their finance? It is postulated that if the source of terrorist financing is blocked, the terrorist or the organization will be suffocated financially. The lack of financial manpower will invariably lead to lack of equipment of war and possible defeat.

2. Conceptualizing Financing of Terrorism

Terrorist Financing is the process, by which terrorists fund their operations. They refer to activities that provide financing or financial support in any form to individual terrorists or non-state actors or organizations to enable them carry out terrorist acts. It is the financial support, in any form, of terrorism or of those who encourage, plan, or engage in terrorism.⁸

Prior to the September 11, 2001 terrorist attack on the United States, the United Nations had made efforts in form of international treaties to fight terrorism and terrorism

⁸ Paul Allan Schott, '*Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*' (The World Bank and IMF 2006) Chapter 1

financing.⁹ In December 1999, the International Convention for the Suppression of the Financing of Terrorism was made by the United Nations.¹⁰

Article 2(1) of the Convention provides:

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
 - (a) An act which constitutes an offence with the scope of and as defined in one of the treaties listed in the annex;¹¹ or
 - (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

⁹ See Andrew I. Chukwuemerie, 'International Legal War on the Financing of Terrorism A Comparison of Nigerian, UK, US and Canadian Laws' (2006) 9 (2) *Journal of Money Laundering Control* 71, Ibrahim Abdu Abubakar, 'An Appraisal of the Legal and Administrative Framework for Combating Terrorist Financing and Money Laundering in Nigeria' (2013) 26 *Journal of Law ,Policy and Globalization* 26, Muhammed Tawfiq Ladan, 'Appraisal of Legal, Regulatory and Institutional Frameworks in Combating Money Laundering and Terrorism Financing in Nigeria' Being an independent study on the recent legal, regulatory and institutional regimes (2011-2013) in combating money laundering and terrorism financing in Nigeria. Available at:<http://ssrn.com/abstract=2336025>, Muhammed Tawfiq Ladan, 'International Legal and Administrative Regimes for Combating Money Laundering and Terrorist Financing' (2013) 6 *NJIL Journal* 168

¹⁰ It was made by the United Nations General Assembly Resolution 54/109, 4th Session of December 9, 1999 signed by 132 nations that month and came into force on April 10, 2002. The preamble states *inter alia* that the State Parties were deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations and considering that the financing of terrorism is a matter of grave concern to the international community as a whole and that the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain and noting that existing multilateral legal instruments do not expressly address such financing.

¹¹ The treaties annexed to the Convention include Convention for the Suppression of Unlawful Seizure of Aircraft (adopted 16 December 1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (adopted 23 September, 1971); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (adopted 14 December 1973); International Convention against the Taking of Hostages (adopted 17 December, 1979); Convention on the Physical Protection of Nuclear Material (adopted 3 March 1980); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 10 March 1988); International Convention for the Suppression of Terrorist Bombings (adopted 15 December 1997). See <www.un.org/en/counterterrorism/legal-instruments-slat> accessed on 31 January 2018.

- (3) For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).

'Funds' is defined as assets of every kind, whether tangible or intangible, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to bank credits, travellers' cheques, bank cheques, money orders, share, securities, bonds, drafts, letters of credit.¹²

An offence of terrorist financing is committed the moment funds are collected or provided, knowing, or intending that they will be used for terrorism whether as an individual or a group. Apparently, the offence will be complete even if the funds were not later used for a terrorist act.¹³

Most countries have adopted the definition in the convention.¹⁴ In the **United Kingdom**, under the Terrorism Act, 2000 terrorism financing is said to have been committed if the person invites another to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

¹² Article 1. See also Money Laundering (Prohibition) Act 2011 (as amended) s 25

¹³ See Innocent Okechukwu Eme, 'Terrorist Financing in Nigeria: A Case of Boko Haram' (2016) 2 (3) *Specialty Journal of Psychology and Management* 41 available online at <www.sciarena.com>

¹⁴ The Prevention of Terrorism Act, 2002 (Tanzania) ss 13, 14; Terrorism Act 2000 (UK) ss 14,15. It is noteworthy that s 15(1) of the UK Act prohibits solicitation for funds for terrorist act by stating: A person commits an offence if he invites another to provide money or other property'. The same provision is stated in the Canadian Criminal Code s 83.03.

On the other hand, if he receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism will have committed the offence of terrorism financing.¹⁵

A person who provides money or other property and knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism will have committed an offence. Remarkably, the fact that the money or other property is provided without consideration is not a defence.¹⁶

Other acts that are criminalized include possession of money intended to be used for terrorism financing or going into an arrangement to that effect.¹⁷

The definition in the United Kingdom is the same as that of the UN Convention. The only difference is that the Act criminalizes ‘invitation’ or solicitation for funds to finance terrorist activities. The clear intention to collect or provide funds run through the provisions. There is the need to refer to definition of ‘terrorism’ in section 1 of the Act for a purposive interpretation. The section defines ‘terrorism’ to include the use or threat of actions involving serious violence against a person, serious damage to property, endangering the life of a person, creating serious health or safety risks or seriously interfering with an electronic system which is aimed at influencing the government or intimidating the public to advance a political, religious or ideological cause. This definition of “terrorism” closely matches that of Article 2(1)(b) of International Convention for the Suppression of Terrorism Financing. Therefore, if the financing is

¹⁵ s 15(1)

¹⁶ s 15(3)(4)

¹⁷ s 16, 17

not related to the named purposes as defined, it will be difficult to enforce. In other words, the scope of terrorism offences is circumscribed by the definition of 'terrorism'.¹⁸

According to the Financial Action Task Force: Third Mutual Evaluation Report,¹⁹

While these provisions would thus cover the financing of the majority of activities referred to in the Conventions and Protocols of the Annex to the TF Convention, there may still be some instances where this would not be the case, in particular in relation to those activities which do not involve violence or the threat of violence, or lacks the purposive elements referred to above.

In relation to such instances, the UK authorities indicated that they would rely on the offences of aiding and abetting, conspiracy and complicity in the principal offences which were created to comply with the various Conventions and Protocols in question. As a result, it can be said that the UK relies on a combination of the fund-raising and other terrorist financing offences under sections 15 to 18 of TACT and aiding and abetting, conspiracy and complicity in the principal offences which were created to comply with the various Conventions and Protocols in question to meet the requirements of Article 2(1)(a) of the TF Convention.

In the United States, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) 2001 was a direct response to the September 11, 2001 terrorist attacks. The purpose is to deter and punish terrorist acts in the United States and around the world, to enhance

¹⁸ See: Financial Action Task Force: Third Mutual Evaluation Report Anti Money Laundering and Combating the Financing of Terrorism. The United Kingdom of Great Britain and Northern Ireland. (29 June 2007) p.42 paras 141-145 accessed at < <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UK%20FULL.pdf>> on 20 July 2018

¹⁹ Ibid 42 para 144

law enforcement investigatory tools, and other purposes, some of which include: to strengthen U.S. measures to prevent, detect and prosecute international money laundering and financing of terrorism;²⁰ to subject to special scrutiny foreign jurisdictions, foreign financial institutions, and classes of international transactions or types of accounts that are susceptible to criminal abuse; to require all appropriate elements of the financial services industry to report potential money laundering;²¹ to strengthen measures to prevent use of the U.S. financial system for personal gain by corrupt foreign officials and facilitate repatriation of stolen assets to the citizens of countries to whom such assets belong.²²

In **Canada**, Sections 83.02-83.04 criminalizes terrorism financing:

- 83.02 Everyone who, directly or indirectly, willfully and without lawful justification or excuse, provides or collects property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out
- (a) an act or omission that constitutes an offence referred to in subparagraphs (a)(i) to (ix) of the definition of terrorist activity in subsection 83.01(1), or
 - (b) any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to intimidate the public, or to compel a government or an international organization to do or refrain from doing any act, is guilty of an indictable

²⁰ s 311

²¹ ss 312-314

²² See US Patriot Act Summary in <http://www.olcu.org/PDFs/USPatriotAct_Summary.pdf> accessed on 20 July 2018 ; Laura K. Donohue, 'Anti-Terrorism Financing in the United Kingdom and United States' (2006) 27 *Michigan Journal of International Law* 303.

offence and is liable to imprisonment for a term of not more than 10 years.

83.03 Everyone who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or other related services

- (a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or
- (b) knowing that, in whole or part, they will be used by or will benefit a terrorist group, is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

83.04 Everyone who -

- (a) uses property, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity, or
- (b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist activity, is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

It will be seen that the provisions of the Canadian Criminal Code also derive from the UN Convention, but it is more expansive and similar to the definition under the UK Terrorism Act as it criminalizes solicitation.²³ Again, like the UK Act, the terrorism financing must be related to ‘terrorist activity’ as defined in section 83.01.

²³ See s 83.03

Terrorist activity is defined inter alia as ‘an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences: ---(x) the offences referred to in subsection 7(3.73) that implement the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on December 9, 1999’. This definition is expansive as it incorporates other laws in criminalizing terrorism financing.

According to Andrew Chukwuemerie,²⁴ this drafting technique creates a double criminality in the existing statute and under the statute incorporated therein. It is surprising that both the UN convention and the laws of the US do not criminalizes solicitation. In its ordinary meaning, solicitation for funds would mean the raising of funds which is part of financing.²⁵ There are no known credible legal or policy reasons for exclusion of solicitation.

Another significant provision in the UK and Canadian laws is the criminalization of the use or possession of property with the intention or knowledge that it will be used for a terrorist purpose²⁶. Terrorists and those who use or possess any property with an intention to hand it over to him for use in terrorism will be liable for terrorism financing. We agree with Andrew Chukwuemerie²⁷ that the philosophy of the law seems to be that once a person gets to know that a property will be used for terrorism and goes ahead to use it for any purpose whatsoever, he is liable to trial and

²⁴ Andrew. I. Chukwuemerie, ‘International Legal War on the Financing of Terrorism’: A comparison of Nigeria, UK, US and Canadian Laws’ (2006) 9 (1) *Journal of Money Laundering Control* 71, 74 and 75.

²⁵ *ibid* 80

²⁶ See UK Terrorism Act s 16 and Canada Criminal Code s 83.04.

²⁷ *Ibid* 80

possible conviction. Therefore, if a person knows that property is to be used for terrorism, he should inform the law enforcement agencies, within his public duty of reporting crimes, or turn it over to them if within his reach.

In **Africa**, the Prevention of Terrorism Act, 2002 of **Tanzania** makes similar provision as that of Canada and UK and broader than the UN International Convention for the Suppression of Financing of Terrorism. Sections 13, 14, 15, 16 and 17 are relevant:

13. Every person who provides, or collects by any means, directly or indirectly, any funds, intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act commits an offence and shall on conviction be liable to imprisonment for a term not less than fifteen years and not more than twenty years.
14. Every person who, directly, collects property or provides, invites a person to provide, or makes available, property or financial or other related services -
 - (a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of, a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of, a terrorist act; or
 - (b) knowing that in whole or part, they will be used by, or will benefit, a terrorist group, commits an offence and shall on conviction, be liable to imprisonment for a term not less than twenty years and not more than twenty-five years.
15. Every person who.
 - (a) uses property, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act; or

- (b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act, commits an offence and shall on conviction, be liable to imprisonment for a term not less than fifteen years and not more twenty years.
16. Every person who knowingly enters into, or becomes concerned in, an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property;
- (a) by concealment,
 - (b) by a removal out of jurisdiction,
 - (c) by transfer to a nominee, or
 - (d) many other ways,
- commits an offence and shall on conviction be liable to imprisonment for a term not less than fifteen years and not more than twenty-five years.

17(1) Every person who knowingly -

- (a) deals, directly or indirectly, in any property that is owned or controlled by or on behalf of a terrorist group;
 - (b) enters into, or facilitates, directly or indirectly, any trans groups action in respect of property referred to in paragraph (a); or
 - (c) provides financial or other services in respect of property referred to in paragraph (a) as the direction of a terrorist group, commits an offence and shall on conviction, be liable to imprisonment for a term not less than twenty years but not more than thirty years.
- (2) A person who acts reasonably in taking or omitting to take measures to comply with subsection (1) shall not be criminally liable for having taken, or omitted to have taken those measures if he proves that he took all reasonable means to satisfy himself that the relevant property was not owned or controlled by or on behalf of a terrorist group.

Section 17(2) of the Tanzanian Act is significant as it provides a statutory defence to the offence of dealing in property owned by a terrorist group or providing financial or other services in respect of property of terrorist group as directed by the group. If the defendant can show that he took all reasonable means to satisfy himself that the relevant property was not owned or controlled by or on behalf of a terrorist group, he will not be criminally liable. Apart from statute, the World Bank and the International Monetary Fund (IMF) also define terrorist financing as 'the financial support, in any form, of terrorism or of those who encourage, plan or engage in it'.²⁸ The Financial Action Task Force (FATF)²⁹ notes that it involves the financing of terrorist acts, and of terrorists and terrorist organizations.³⁰

With respect to Nigeria, Section 15 of the Economic and Financial Crimes Commission (Establishment) Act 2004 provides:

- 15(1) A person who wilfully provides or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used for any act of terrorism, commits an offence under this Act and is liable on conviction' to imprisonment for life.
- (2) Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life.

²⁸ This definition is adopted in Money Laundering (Prohibition) Act 2011 (as amended) s 25

²⁹ The Financial Action Task Force (FATF), which is a 33-member organization with primary responsibility for developing a world-wide standard for anti-money laundering and combating the financing of terrorism. The FATF was established by the G-7 Summit in Paris in 1989 and works in close cooperation with other key international organizations, including the IMF, the World Bank, the United Nations, and FATF-style regional bodies

³⁰ See Okechukwu Eme and Chubuikwe Ugwu, 'Terrorist Financing In Nigeria: A case study of Boko Haram' (2016) 2 (3) *Specialty Journal of Psychology and Management* 41 available online at <www.sciarena.com>

- (3) Any person who, makes funds, financial assets or economic resources or financial or other related services available for use of any other person to commit or attempt to commit, facilitate or participate in the commission of a terrorist act is liable on conviction to imprisonment for life.

Within the context of the provisions of the EFCC Act, money, funds, financial assets or economic resources or ‘other related services’ are wide enough to encompass all forms of resources to finance terrorism. This is like the definition of ‘funds’ as contained in the International Convention for the suppression of the Financing of Terrorism.³¹ Significantly, the Act punishes persons that ‘wilfully’ support terrorist financing. This requires the prosecution to prove mens rea.³² When an act is said to be done ‘wilfully’ and the burden of proof on the prosecution has been interpreted by the courts in Nigeria in various decisions. In the case of *Henry Chukwu v State*³³ the Supreme Court held that ‘the law imputes to a person who wilfully commits a criminal act an intention to do the very thing which is probable consequence of the act which constitutes the corpus delict which actually ensures’.

The appellant in *Ogwu Achem v. Federal Republic of Nigeria*³⁴ was convicted upon a two-count charge of:

³¹ Art 1 of the UN Convention defines ‘funds’ to mean assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit. See also the US Code s 2339A, Money Laundering (Prohibition) Act 2011 (as amended) s 25

³² This means that the offence is not a strict liability offence. See *Adjie v R* (1951)13 WACA 253,

³³ (2012) LPELR 9829 per Muntaka-Coomassie JSC, see also *Ogboka v State* (2016) LPELR 41177. *Oludamilola v The State* (2010) 8 NWLR (pt1197) 565, *Aweto v FRN* (2015) LPELR 41725, *Abdulmumini v FRN* (2017) LPELR 43726

³⁴ (2014) LPELR 23202

1. Wilfully providing money with intent that it be used for an act of terrorism contrary to and punishable under section 15(1) of the Economic and Financial Crimes (Establishment) Act 2004;
2. Providing economic resources in order to facilitate the commission of a terrorist act contrary to and punishable under section 15(1) of the Economic and Financial Crimes (Establishment) Act 2004.

At the end of the trial, the Federal High Court convicted him on the two counts and sentenced him to 6 years imprisonment on each count to run concurrently. The appellant applied for bail pending appeal at the Court of Appeal which application was refused on the ground of national security.

Section 25, Money Laundering (Prohibition) Act, 2011 (as amended) defines 'Terrorism Financing' as financial support, in any form, of terrorism or of those who encourage, plan, or engage in terrorism.

The Terrorism (Prevention) Act 2011 as amended by the Terrorism (Prevention) (Amendment) Act 2013 punishes terrorism financing. Extensive provisions are stated in sections 13 and 14 as follows:

- 13(1) Any person or entity who, in or outside Nigeria -
- (a) solicits, acquires, provides, collects, receives, possesses, or makes available funds, property or other services by any means to
 - (i) terrorists, or
 - (ii) terrorist groups, directly or indirectly with the intention or knowledge or having reasonable grounds to believe that such funds or property will be used in full or

in part in order to commit an offence under this Act or in breach of the provisions of this Act,

- (b) possesses funds intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act by terrorist or terrorist groups, commits an offence under this Act and is liable on conviction to imprisonment for life imprisonment.
- (2) Any person who knowingly enters into, or becomes involved in an arrangement -
- (a) which facilitates the acquisition, retention or control by or on behalf of another person of terrorist fund by concealment, removal out of jurisdiction, transfer to a nominee or in any other way, or
 - (b) as a result of which funds or other property are to be made available for the purposes of terrorism or for the benefit of a specified entity or proscribed organization, commits an offence under this Act and is liable on conviction for life imprisonment.
- (3) For an act to constitute an offence under this section, it is not necessary that the funds or property were actually used to commit any offence of terrorism.

14(1) A person or entity who, knowingly -

- (a) deals, directly or indirectly, in any terrorist funds;
- (b) acquires or possesses terrorist fund,
- (c) enters into, or facilitates, directly or indirectly, any transaction in respect of a terrorist funds,
- (d) converts, conceals, or disguises terrorist funds or property, or
- (e) provides financial or other services in respect of terrorist fund or property at the direction of a terrorist or terrorist group, commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than twenty years.

- (2) It is a defence for a person charged under subsection (1) of this section to prove that he did not know and had no reasonable cause to suspect or believe that the arrangement is related to a terrorist property.

The Nigerian concept of terrorism financing while borrowing from the UN convention, has been extended to include solicitation as in other jurisdictions discussed herein and criminalizes diverse forms of complicity in terrorist financing such as the solicitation, acquisition, collection, receipt, possession or rendering of services by any means to terrorists or terrorist groups, any arrangement relating to terrorist property or dealing in terrorist property. It is submitted that this provision shows a definite legislative attempt to cut out all sources of terrorist financing. The prosecution should be able to bring a defendant within any of these provisions.

3. Money Laundering and Terrorism Financing.

Money Laundering is the process by which proceeds from a criminal activity are disguised to conceal their illicit origin.³⁵ In the case of *Orji Uzor Kalu & Ors v Federal Republic of Nigeria*,³⁶ the court adopted the definition of ‘money laundering’ in the book ‘Money Laundering’³⁷ as the ‘varied means used by criminals to conceal the origin of illicit activities. The term ‘laundering’ is used because these techniques are intended to turn ‘dirty’ money into ‘clean’ money, but laundering is not confined to cash’.

³⁵ See ‘Anti-Money Laundering/Combating the Financing of Terrorism – Topics’ <<https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#moneylaundering>> accessed on 25 July 2018

³⁶ (2014)1 NWLR (pt 1389) 479 at 529 CA

³⁷ Toby Graham and Evan Beil, and Nicholas Elliot, ‘*Money Laundering*’ (Butterworths Lexis- Nexis 2003) 3

According to Schott,³⁸ money laundering is closely related to terrorism financing in that money launderers send illicit funds through legal channels in order to conceal their criminal origins, while those who finance terrorism transfer funds that may be legal or illicit in origin in such a way as to conceal their source and ultimate use, which is the support of terrorism. But the result is the same- reward. This is because when money is laundered, the criminal act that produced the illicit proceed is disguised to appear as legitimate. Similarly, those who finance terrorism are rewarded by concealing the origins of their funding and disguising the financial support to carry out their terrorist acts.³⁹

Most countries have adopted the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) which defines ‘money laundering’ as the conversion or transfer of property, knowing that such property is derived from any [drug trafficking] offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense or offenses to evade the legal consequences of his actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property

³⁸ Paul Allen Schott, ‘*Reference Guide to Anti Money Laundering and Combating the Financing of Terrorism*’ (The World Bank: International Monetary Fund 2006) 1-2

³⁹ *ibid*

is derived from an offense or offenses or from an act of participation in such an offense or offenses.⁴⁰

Although this definition is limited to drug offences (predicate offences),⁴¹ it can be expanded to include other areas as human trafficking, smuggling, stealing, kidnapping etc. In fact, the United Nations Convention against Transnational Organized Crime 2000⁴² requires all participant countries to apply that convention's money laundering offenses to 'the widest range of predicate offences'⁴³. It provides that each state party shall enact domestic laws to criminalize the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.⁴⁴

There is a link between terrorism financing and money laundering. Schott,⁴⁵ stated that the techniques used to launder money are essentially the same as those used to conceal the sources of, and uses for, terrorist financing. Funds used to support

⁴⁰ Article 3. See <https://www.unodc.org/pdf/convention_1988_en.pdf>

⁴¹ "Predicate offence" means any offence whose proceeds may become the subject matter of any money laundering offences. It is an action that provides the underlying resources for another criminal act. See Shuaibu, JCA in *FRN v Yahaya* (2016) 2 NWLR (pt 1496) 252 @ 277

⁴² Otherwise known as the Palermo convention

⁴³ Article 6 (1)

⁴⁴ Ibid.

⁴⁵ Paul Allan Schott, 'Money Laundering and Terrorist Financing: Definitions & Explanations' in *Reference Guide to Anti-Money Laundering and Combating Financing of Terrorism* (2nd ed. Washington, IMF, 2006) chapter 1

terrorism may originate from legitimate sources, criminal activities, or both. Nonetheless, disguising the source of terrorist financing, regardless of whether the source is of legitimate or illicit origin, is important. If the source can be concealed, it remains available for future terrorist financing activities. Similarly, it is important for terrorists to conceal the use of the funds so that the financing activity goes undetected.

According to the IMF⁴⁶ in the case of money laundering, the funds are always of illicit origin, whereas in the case of terrorist financing, funds can stem from both legal and illicit sources. The primary goal of individuals or entities involved in the financing of terrorism is therefore not necessarily to conceal the sources of the money but to conceal both the funding activity and the nature of the funded activity.

Similar methods are used for both money laundering and the financing of terrorism. In both cases, the actor makes an illegitimate use of the financial sector. The techniques used to launder money and to finance terrorist activities/terrorism are remarkably similar and, in many instances, identical. An effective Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) framework must therefore address both risk issues: it must prevent, detect and punish illegal funds entering the financial system and the funding of terrorist individuals, organizations and/or activities.

Money laundering may encompass three distinct, alternative actus reus: (i) the conversion or transfer, knowing that such property is the proceeds of crime (ii) the

⁴⁶ " Anti-Money Laundering/Combating the Financing of Terrorism – Topics'
<<https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#moneylaundering>> accessed on 25 July 2018

concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime; and (iii) the acquisition, possession or use of property, knowing, at the time of the receipt, that such property is the proceeds of crime.⁴⁷

The IMF asserts that the impact of money laundering includes risks to the soundness and stability of financial institutions and financial systems, increased volatility of international capital flows, and a dampening effect on foreign direct investment.⁴⁸

When Anti-Money Laundering/Combating the Financing of Terrorism strategies converge, they aim at attacking the criminal or terrorist organization through its financial activities and use the financial trail to identify the various components of the criminal or terrorist network. This implies to put in place mechanisms to read all financial transactions, and to detect suspicious financial transfers.⁴⁹

In Nigeria, the principal legislation to combat money laundering is the Money Laundering (Prohibition) Act 2011 (as amended). This law makes comprehensive provisions prohibiting the laundering of the proceeds of crime or illegal act. The Act requires financial institutions and designated non-financial institutions to observe due diligence on customers. Cash payments by individuals exceeding ₦5,000,000.00 for

⁴⁷ *ibid*

⁴⁸ *Ibid.* see also Muhammed Tawfiq Ladan, 'Appraisal of the Legal, Regulatory and Institutional Frameworks in Combating Money Laundering and Terrorism Financing' being an independent study on the recent legal, regulatory and institutional regimes (2011-2013) in combating money laundering and terrorism financing in Nigeria. available at < <http://ssrn.com/abstract=2336025>>

⁴⁹ " Anti-Money Laundering/Combating the Financing of Terrorism – Topics' <<https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm#moneylaundering>> accessed on 25 July 2018

individuals or ₦10, 000,000.00 for corporate bodies must pass through a financial institution.

Where a transaction involves a frequency which is unjustifiable or unreasonable, is surrounded by conditions of unusual or unjustified complexity, appears to have no economic justification or lawful objective or in the opinion of the Financial Institution or Designated Non-Financial Institution involves terrorist financing or is inconsistent with the known transaction pattern of the account or business relationship, the transaction shall be deemed suspicious and take necessary steps to report to the Economic and Financial Crimes Commission.⁵⁰ Section 15 of the Act criminalizes various aspects of money laundering by punishing any person or corporate body, in or outside of Nigeria who conceals or disguises the origin of; converts or transfers; removes from the jurisdiction; or acquires, uses, retains or takes possession or control of any fund⁵¹ or property, knowingly or reasonably ought to know that such fund or property is or forms part of the proceeds of an unlawful act. Terrorism Financing is defined in section 25 to mean financial support, in any form, of terrorism or of those who encourage, plan, or engage in terrorism.

The implication of these statutory provisions is to cover all avenues of potential money laundering and terrorism financing.

⁵⁰ s 6

⁵¹ 'Fund' is defined in s 25 of the Act and states that 'Funds' refers to assets of every kind whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including but not limited to bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts or letters of credit

4. Implications of Terrorism Financing

When terrorists move money, they choose methods that consider issues of volume, risk, convenience, simplicity, costs, and speed.⁵² It is within the purview of these issues that the various methods of terrorism financing will be considered. While drawing from a worldwide view of methods of financing terrorism, we shall focus more on the Boko Haram terrorists and its financing methods.

Michael Freeman and Moyara Ruehsen⁵³ have emphasized the need for scholars to investigate the movement of illicit funds not only the raising of the funds for weapons. This is because movement of money is a critical intermediary step in the chain in terrorist financing. Terrorist groups often raise money in places different from where they are located and different from where attacks might take place. For terrorist groups to be effective, they must be able to move money from its origins to the operational areas where it is needed. These transfers of money represent potential weak points which the state can target to disrupt the terrorist organization and its operations more effectively.

⁵² Michael Freeman and Moyara Ruehsen, 'Terrorism Financing Methods: An Overview' (2013) 7 (4) *Perspectives on Terrorism* 5
<<http://www.terrorismanalysts.com/pt/index.php/pot/article/view/279/html>>
accessed on 16 January 2020

⁵³ Ibid, at P. 12

A. Methods of Terrorist Financing

The following methods will be considered:

- (a) Membership dues
- (b) Donations
- (c) Smuggling
- (d) Robbery
- (e) Kidnapping for ransom money
- (f) Extortions
- (g) Cattle rustling
- (h) Protection fee
- (i) Human Trafficking
- (j) Raiding of villages for consumables

These methods can be classified as legitimate and illegitimate methods of terrorism financing.⁵⁴

(a)Membership Dues: These are made up of voluntary contribution and imposed dues. Individual members make periodic financial contributions. In the case of Boko Haram, the payment of membership dues was the basic source of funding for the sect before the death of their leader Ustaz Mohammed Yusuf.⁵⁵ Sometimes compulsory levies are imposed on members from time to time. Defaulters are considered disloyal with dire consequences.⁵⁶

(b)Donations: Some wealthy sympathizers of the Boko Haram sect, politicians, government officials and other individuals and organizations within Nigeria make donations to them. In January 2011, security operatives arrested Alhaji Bunu Walki and 91 others; he was alleged to be the main contractor and financier of the sect.⁵⁷ External

⁵⁴ See generally Report of the Nigerian National Risk Assessment on Money Laundering and Terrorism Financing 2016

⁵⁵ Olanrewaju John Shola, 'Globalization of Terrorism: A Case study of Boko Haram in Nigeria' (2015) 6 (6) *International Journal of Politics and Good Governance* 1 at 13

⁵⁶ Report of the Nigerian National Risk Assessment on Money Laundering and Terrorism Financing (2016), 223

⁵⁷ See Dauda Mbaya, 'Nigeria: Boko Haram Financier Arrested in Maiduguri'

Leadership (Abuja, 5 January 2011), <

<https://allafrica.com/stories/201101050631.html>>Hamza Idris and Yahaya Ibrahim, 'Nigeria: Wakil Gave Six Daughters to Boko Haram Members-Police' *Daily Trust*

assistance in form of material and financial support is also a form of funding for the Boko Haram sect. A lot of financial assistance seems to come from Al -Qaeda.⁵⁸

© Smuggling: The Boko Haram sect is actively engaged in arms smuggling to raise funds for their activities.

(d) Robbery: The Boko Haram sect attack banks, financial institutions, and related facilities (Bullion vans/Automated Teller Machines (ATMs), and others to generated funds. Open markets, super stores, travellers are also targets of such attack. Car snatching for the sect is most lucrative and rewarding. The group robbed hundreds of banks in Borno, Yobe and Adamawa states, and nabbed convoys and extorted from successful businesses. According to Boko Haram terrorist group (Quranic) interpretation, robbery is justified. The group believed that bank robbery is permitted, since the money from the banks is considered 'spoils of war'.⁵⁹ Kabiru Abubakar Dikko Umar, alias Kabiru Sokoto, the suspected mastermind of the 2011 Christmas Day bombing of a church in Madalla, near Abuja in the Federal Capital Territory, Nigeria confessed that Boko Haram raised

(Nigeria, 5 January 2011) < <https://allafrica.com/stories/201101050461.html> > accessed 14 May 2020, Nichola Ryder, *The Financial War on Terrorism: A review of Counter-Terrorist Financing Strategies Since 2001* (Routledge 2015) 164

⁵⁸ After the 9/11 terrorist attack on the United States, Osama Bin Laden is said to have sent an aide to Nigeria with about £1.8m in local currency to dispense among groups that shared Al-Qa'ida's mission to impose Islamic rule. One of the "major beneficiaries", the International Crisis Group said, was Boko Haram. See <<https://www.independent.co.uk/news/world/africa/paying-for-terrorism-where-does-boko-haram-gets-its-money-from-9503948.html>> accessed on 31 July 2018

⁵⁹ Kelly Mua kingsly and Samuel F. Johnson-Rokosu and Rasaan Alabi Olanrewaju, 'Combating Boko Haram Terrorism Financing: Case of Nigeria and Lake-Chad Basin' (2015) 7 (11) *International Journal of Current Research* 22850

their money for its operations through bank robbery. Similarly, in 2011, Sheriff Shetima, confessed that his gang was responsible for some bank robbery in Borno State to raise funds for the Boko Haram sect including the October, 2011 raid on First Bank of Nigeria Plc, Damola branch where they killed a policeman and stole 21 million naira.⁶⁰

(e)Kidnapping for Ransom: Kidnapping for ransom has become a veritable source of raising funds. A French family was said to have been kidnapped and ransom of about ₦500,000,000.00 (Five Hundred Million Naira) was alleged to have been paid to the sect before their release.⁶¹ In April 2014, 276 female students of a secondary school in Chibok were kidnapped. As at May 2017, about 164 of them have either been released or escaped from captivity. It is alleged that millions of euros were paid as ransom to secure the release of the girls.⁶² On February 18, 2018, 110 schoolgirls were abducted from the Government Girls Science and Technical College Dapchi, Yobe State. About a month later (21st March 2018), 104 of them were returned by the sect. Millions of dollars are alleged to have been paid as ransom.⁶³ According to the 22nd Report of the Analytical Support and Sanctions Monitoring Team of the United Nations Security

⁶⁰ Olanrewaju John Shola, 'Globalization of Terrorism: A Case Study of Boko Haram in Nigeria' (n 55) 14

⁶¹ Report of the Nigerian National Risk Assessment on Money Laundering and Terrorism Financing (2016), 224; see also <<https://www.naija.ng/34641.html#23572>>

⁶² See <<http://saharareporters.com/2018/02/22/nigerian-govt-paid-ransom-release-chibok-girls-senators>> accessed on 2 August 2018

⁶³ <www.thisdaylive.com/index.php/2018/03/22/boko-haram-returns-104-dapchi-schoolgirls-raising-concerns-over-ransom-payment/> accessed on 2 August 2018. According to the UN Report released in 2018, the release of the schoolgirls was in exchange for a large payment of ransom. Five of the girls died in captivity and Leah Sharibu remains in captivity for failure to renounce her Christian faith. See <<http://saharareporters.com/2018/08/16/lai-mohammed-lied-%E2%80%94-un-report-reveals-fg-made-%E2%80%98large-ransom-payment%E2%80%99-boko-haram-dapchi>> accessed on 24 August 2018

Council, a large ransom was paid to the terrorists to secure the release of the girls.⁶⁴ From the chronicle of kidnappings, it seems the Boko Haram sect now prefer kidnapping for ransom to bank robberies.

(f) Extortions: Targeted prominent Northern Nigerians, Muslims and Christians have been extorted by threat to their lives and families. The funds generated are moved in cash and/or through financial institutions to the leadership.

(g) Cattle Rustling: Cattle Rustling is the activity where criminals steal cows from their legitimate owners and sell them off at a giveaway price. The sect has raised funds by stealing cows from Fulani herdsmen and from local communities and transported them to other parts of the country and neighbouring countries to raise funds.

(h) Protection Fee: The Boko Haram sect also generates funds from offering protection to willing and unwilling individuals, corporate bodies and even governments.

(i) Human Trafficking: The sect also engages in Human Trafficking. Parents of young persons, especially males, are tricked by recruiters for the sect to allow them to take their children to the big cities to learn the Quran and some forms of trade. However, these kids are smuggled out of the country to the “Sahara” (Northern Mali) to be trained as terrorists with attendant indoctrination.

⁶⁴ The UN Security Council Report was presented before the Council on 27 July 2018.
<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2018/705&referer=/english/&Lang=E>

(j) Raiding of Villages for consumables: The sect embarks on raiding villages and local communities and supermarket/food stores for food. They are also known to have raided trucks conveying food items as well as filling stations to source their fuel.

5. Institutional Framework for Combating Terrorism Financing

On 3rd May, 2013, the Central Bank of Nigeria issued the regulation amending the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) Regulation, 2009 to bring the regulation in line with the Money Laundering (Prohibition) Act 2011 as amended in 2012, the Terrorism (Prevention) (Amendment) Act 2013, and the Revised Financial Action Task Force Recommendations, 2012.⁶⁵ The amended regulation, inter alia, invigorates customer due diligence, suspicious transaction reporting, prohibits numbered, anonymous or fictitious accounts, and shell banks. The amended regulation further enjoins relevant institutions to conduct risk assessment and verification of account holders/customers.

Regulation 10(1) defines terrorism financing offences to extend to any person or entity who solicits, acquires, provides, collects, receives, possesses or makes available funds, property or other services by any means to terrorist or terrorist organizations directly or indirectly with the intention or knowledge or having reasonable grounds to believe that such funds or property shall be used in full or in part to carry out terrorist acts or terrorist organization. By Regulation 10(2), terrorism offence is described as predicate offences for money laundering and shall apply regardless of the territory of

⁶⁵ This is known as the Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Financial Institutions in Nigeria) Regulations 2013

the person or entity alleged to have committed the offence. The financial institution is expected to make a report to the Nigerian Financial Intelligence Unit (NFIU) any assets frozen or actions taken in compliance with the prohibition requirements of the relevant United Nations Security Council Resolution (UNSCR) on terrorism financing.⁶⁶

In the exercise of the powers conferred on the Attorney-General of the Federation and Minister of Justice by Sections 9(6) and 39 of the Terrorism (Prevention) Act 2011, as amended in 2013, Regulations⁶⁷ were made on 29th September, 2011 with the aim of prescribing the procedure for the freezing of funds, financial assets or other economic resources of any suspected terrorist, international terrorist or an international terrorist group, the conditions and procedure for utilization of frozen funds, or economic resources and constituted the Nigeria Sanctions Committee for the purpose of proposing and designating persons and entities as terrorists within the framework of the Nigerian legal regime. In terms of scope of application, the regulations shall apply to any person or entity listed under Regulation 3(1) as follows: -

- ‘(a) designated persons contained in the Consolidated List of the United Nations 1267 and 1988 Sanctions Committee (‘the UN Consolidated List’);
- (b) designated persons contained in the list drawn up by Nigeria pursuant to the provisions of subsection 1(a) and 1(c) or 4(a) and (c) of section 9 of the Terrorism Act (‘the Nigeria List’); and

⁶⁶ Regulation 11

⁶⁷ See the Terrorism (Prevention of International Terrorists Funds and Other Related Measures) Regulations 2011. See Muhammed Tawfiq Ladan, ‘*Appraisal of the Legal, Regulatory and Institutional Frameworks in Combating Money Laundering and Terrorism Financing*’ being an independent study on the recent legal, regulatory and institutional regimes (2011-2013) in combating money laundering and terrorism financing in Nigeria. available at: <<http://ssrn.com/abstract=2336025>> 39

- (c) any dealings or transactions concerning the designated person on UN consolidated List or on the Nigerian List.’’

5. Nigerian Financial Intelligence Agency⁶⁸

Nigeria is a member of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA), a Financial Action Task Force (FATF)-style regional body. In the late 1990s the International Community regarded Nigeria as a pariah state not only because of high level of money laundering but also because of advance fee fraud associated with Nigerians. This situation prompted the blacklisting of Nigeria as a non-cooperative country having limited legal and regulatory framework to tackle Money Laundering and Financing of Terrorism by the Financial Action Task Force (FATF). Nigerian Financial Intelligence Unit (NFIU) is therefore a child of circumstances in fulfilment of the requirement by FATF and was established in June 2004 by the then President Olusegun Obasanjo.

Apart from being the coordinating entity for the receipt and analysis of financial disclosure of Currency Transaction Reports and Suspicious Transaction Reports in line with Nigeria's anti-money laundering and combating the financing terrorism (AML/CFT) regime, NFIU also disseminates intelligence gathered to competent authorities. NFIU draws its responsibilities directly from the Special Recommendations of the Financial Action Task Force (FATF), the global coordinating body for Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) efforts. It

⁶⁸ [Hereafter, NFIA]

also draws its powers from the EFCC (Establishment) Act of 2004 and the Money Laundering (Prohibition) Act, 2011(as amended).⁶⁹ The laws require financial institutions and designated non-financial institutions to submit records of financial transactions to the NFIU.

The NFIU was domiciled at EFCC (now in CBN) being a law enforcement agency⁷⁰ and has three central roles which are receiving, analysis of financial intelligence and dissemination of such intelligence to end-users. Additionally, NFIU engages in the following:

- (a) Monitoring Compliance with AML/CFT Requirements - to ensure compliance by reporting entities
- (b) Training and Research - to enhance the knowledge base of stakeholders and aid AML/CFT policy formulation.
- (c) Enhance Public Awareness on AML/CFT Issues - through publicity in the print and electronic media, publication of newsletters etc.
- (d) Advisory Role- the NFIU provides inputs that help to fine-tune extant AML/CFT policies, regulations and laws based on findings from topology studies on money laundering/terrorism financing.

Generally, NFIU expands the frontier regarding the coordination, implementation and awareness on Anti-Money Laundering and Countering Terrorism Financing as well as partnering government, the legislature and international organizations including other

⁶⁹ See Money Laundering (Prohibition) Act 2011 (as amended) s 25, Regulation 11, Central Bank of Nigeria (Anti-Money Laundering and Combating the Financing of Terrorism in Banks and Financial Institutions in Nigeria) Regulations, 2013.

⁷⁰ By the Nigerian Financial Intelligence Unit Act 2018, the NFIU is now an independent body domiciled in the Central Bank of Nigeria.

FIUs in distillation of financial and non-financial sectors for national and international investments

Presently, NFIU is a member of Egmont Group of Financial Intelligence Units and the coordinating FIU in West African sub-Region as it helps the Intergovernmental Action Group against Money Laundering in West Africa (GIABA), in the enforcement of AML/CFT regime. NFIU is broadly segmented into the Legal/ Research and Cooperation, Strategic Analysis, Monitoring and Analysis, ICT and Administration and is headed by a Director who is the chief accounting officer assisted by heads of Units.⁷¹

On July 11, 2018, the Nigerian Financial Intelligence Agency Bill was signed into law. The Agency which was hitherto domiciled in the EFCC became an autonomous agency domiciled in the Central Bank of Nigeria for ‘purposes of institutional location and logistical support’.⁷² It is a body corporate with perpetual succession. According to section 2 of the Act, the agency shall be the central body in Nigeria responsible for receiving, requesting, analysing and disseminating financial intelligence reports on money laundering, terrorist financing and other relevant information to law enforcement, security and intelligence agencies, and other relevant authorities.

7. Judicial Approach to Terrorism Financing and Money Laundering

⁷¹ See <<https://efccnigeria.org/efcc/nfiu>> accessed on 5 August 2018

⁷² See Nigerian Financial Intelligence Agency Act s 2(3). See also <<https://www.thisdaylive.com/index.php/2018/07/12/buhari-signs-nigerian-financial-intelligence-unit-bill/>> accessed on 5 August 2018

Legal jurisprudence is being developed in Nigeria on interpretation of statutory and administrative instruments or combating terrorist financing and money laundering.

In the case of *Federal Republic of Nigeria v Yahaya*⁷³ the respondent was arraigned on a three-count charge of committing offence under section 14(1) of the Money Laundering (Prohibition) Act, 2004.⁷⁴ He was charged with transferring to Keystone Bank account the sum of ₦25,000,000.00 derived directly from an illegal act with the aim of disguising the illicit origin of the funds; collaborating with another in disguising the genuine origin of the sum of ₦14,700,000.00 deposited into Zenith Bank which was derived from an illegal act ; and collaborating with the same person in disguising the genuine origin of the sum of ₦4,797,000.00 deposited into the same Zenith Bank Plc account which was derived directly from an illegal act.

At the end of the trial, the trial court held that the prosecution failed to prove the charge because it was not able to establish that the money was obtained directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or any other crimes or illegal acts as described by section 14(1)(a) of the Money Laundering (Prohibition) Act 2004. The defendant was discharged and acquitted. On appeal to the Court of Appeal, the court upheld the decision of the trial court that the prosecution was unable to prove that the funds were from illicit traffic in narcotic drugs and psychotropic substances or any crimes or any illegal act which are the predicate offences. The mere transfer of the sums will not constitute an offence of Money Laundering under the Act. In the instant

⁷³ (2016) 2 NWLR (pt.1496) 252

⁷⁴ This provision is similar to section 15(2) of the Money Laundering (Prohibition) Act 2011 (as amended). This provision is however more expansive and defines the predicate offence to include terrorism.

case, the monies the subject matter of the charge were derived from a contract for the supply of fertilizers. According to Awotoye, JCA:

The prosecution had to do more to prove the illegal act which was the vital ingredient of each of the offences in the charge. The prosecution had to prove the commission of the **main and the predicate offence**. Unfortunately, it failed to do this. The impression one has from the proceedings is that it involved a mere failed contractual transaction.

A predicate offence was defined as an offence whose proceeds may become the subject matter of any money laundering offences. It is an action that provides the underlying resources for another criminal act.⁷⁵

It is submitted that this is a correct decision both by the trial court and the court of appeal. It is the duty of the prosecution to link the fund to an illegal or unlawful act within the contemplation of the Act. Under the Money Laundering (Prohibition) Act 2004, the predicate offences were illicit traffic in narcotic drugs and psychotropic substances. This is a narrow definition of predicate offences and would make it impossible for prosecution to successfully prosecute an otherwise clear case of money laundering.⁷⁶

It is commendable that the extant Act of 2011 as amended, has widened the scope of the predicate offences to include: participation in an organized criminal group, racketeering, terrorism, terrorist financing, trafficking in persons, smuggling of migrants, sexual exploitation, sexual exploitation of children, illicit trafficking in narcotic drugs and

⁷⁵ See decision of Shuaibu, JCA at 277

⁷⁶ Remarkably, this definition in Money Laundering (Prohibition) Act, 2004, s 14(1)(a) is derived from the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) Art 3. This provision was also construed in the case of *Federal Republic of Nigeria v Ibori* (2014) 13 NWLR (pt 1423) 168 CA

psychotropic substances, illicit arms trafficking, illicit trafficking in stolen goods, corruption, bribery, fraud, currency counterfeiting, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, hostage taking, robbery or theft, smuggling (including in relation to customs and excise duties and taxes), tax crimes (related to direct taxes and indirect taxes), taxes crimes (related to direct taxes and indirect taxes) extortion, forgery, piracy, insider trading and market manipulation or any other criminal act specified in the Act or any other law in Nigeria.⁷⁷

It has been argued that the use of the words ‘or any other crimes or illegal acts’ in section 14(1)(a) and 14(1)(b) will expand the restriction of the predicate offence.⁷⁸

In the case of *Adeyemi Ikuforiji v Federal Republic of Nigeria*,⁷⁹ the appellant was the Honourable Speaker of the Lagos State House of Assembly. He was charged with another defendant at the Federal High Court for criminal conspiracy, and money laundering contrary to the Money Laundering (Prohibition) Act 2004 and 2011. It was alleged that both defendants accepted various cash payment over and above the threshold set by the Money laundering (Prohibition) Act without going through financial institutions. At the close of the prosecution’s case, the appellant made a no case submission which was upheld. The defendants were discharged and acquitted. The appeal to the Court of Appeal was upheld.

⁷⁷ See s 15(6) which was added by the Money Laundering (Prohibition) (Amendment) Act 2012.

⁷⁸ See *Udeogu v FRN* (2016) LPELR 40102; *Kalu v Federal Republic of Nigeria* (2014) 1 NWLR (pt 1389) 479 CA; *Federal Republic of Nigeria v Ibori* (2014) 13 NWLR (pt 1423) 168

⁷⁹ (2018) 6 NWLR (pt 1614) 142; see also *Atoyebi v Federal Republic of Nigeria* (2017) LPELR 43831

On further appeal to the Supreme Court, the court held that to be liable under section 1 of the Money Laundering (Prohibition) Act, the purpose the cash received or accepted in excess of the prescribed threshold statutorily fixed by the section is immaterial. The payment or acceptance is illegal or unlawful if not done through a financial institution. The purpose for either the payment or receipt of cash in excess of the prescribed threshold is not a mens rea defence.⁸⁰

It is submitted that the interpretation of the provisions of section 1 of the Act by the Supreme Court has expanded the liability for money laundering offences and is not tied to predicate offences as was done in *Federal Republic of Nigeria v Yahaya*. It will obviate the necessity to have recourse to the predicate offences. If large sums of money are withdrawn in cash above the threshold, the court can infer that that it will be used for terrorism financing. It is suggested that the prosecution can have recourse to this provision where it will be impossible to prove the predicate offence under section 15 of the Act.

8. Conclusion

Terrorists need money to carry out their activities, money for weapons, for supplies to make explosives, for travel etc. If the money trail is blocked, and the terrorists are deprived of access to funds and financial systems, terrorists attack will be reduced, or at least prevented.

The terrorists continue to change their methods of raising funds to circumvent the statutory and administrative safeguards. One area is the use of technology. It is reported

⁸⁰ Ibid. 161

that the terrorists in Nigeria now use social media to raise funds.⁸¹ Cattle rustling, robberies and kidnapping are increasing with no discernible solution. Although there have been a few convictions for terrorism and money laundering, there is no report of a ‘high profile’ conviction for terrorism financing.⁸²

There is the challenge with manpower, especially human capital development, in the fight against terrorism and terrorist financing and institutional deficiencies are still with us.

Nigeria has demonstrated a strong and commendable commitment in the fight against terrorism and terrorism financing. The promulgation of the Terrorism (Prevention) Act 2011 as amended, the Money Laundering (Prohibition) Act 2011 as amended, Administration of Criminal Justice Act 2015, Practice Directions by the various courts, the Nigerian Financial Intelligence Agency Act, 2018 are statutory attempts at curbing terrorism financing. Administratively, the Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations, 2011; Central

⁸¹ See FATF’s strategy on Combating Terrorist Financing available at <<http://www.fatf.gafi.org/publications/fatfgeneral/documents/terroristfinancing.html>> accessed on 13 August 2018 see Ebinoluwa Olafusi, ‘Army uncovers Boko Haram recruitment link on social media’ The Cable 14 August 2018 available <<https://web.thecable.ng/army-uncovers-boko-haram-recruitment-link-social-media>> accessed 14 May 2020 Jilian Slutzer, ‘The Online Frontline: Inside Boko Haram’s Social Media and a Movement to Pushback’ *Creative* (10 October 2018) available <<https://www.creativeassociatesinternational.com/stories/the-online-frontline-inside-boko-harams-social-media-and-the-movement-to-push-back/>> accessed 14 May 2020

⁸² On January 24, 2018, two Nigerians, Abdullahi Mustapha Berende and Saidi Adewumi were accused of recruiting new members for an Iran based terrorist organization were convicted by the Federal High Court Abuja. They were alleged to have collected 3000 Euros and \$20,000 from terrorist group to source and train terrorist –minded Nigerians fluent in English language <<https://www.vanguardngr.com/2018/01/court-convicts-two-nigerians-recruiting-terrorists/>> accessed on 14 August 2018. On March 7, 2018, the Federal High Court in Charge No: FHC/CR/186/2010 sentenced Mr. Charles Okah and one another, to life imprisonment for the alleged mastermind of the 2010 Independence Day bomb blast that left 12 persons dead at the Eagle Square in Abuja. <<https://www.vanguardngr.com/2018/03/breaking-oct-1-bombing-court-sentences-charles-okah-nwabueze-life-imprisonment/>> accessed on 14 August 2018

Bank of Nigeria (Anti Money Laundering/Combating the Financing of Terrorism in Banks and other Financial Institutions in Nigeria) Regulations, 2013 were enacted.

Whilst these steps are commendable, there is the need for the Central Bank of Nigeria to ensure proper regulation and supervision of financial institutions like the Bureau De Change (BDCs) with a view to ensuring that they are not exploited because of their weak record keeping process for terrorism financing.

The Federal government must ensure adequate funding and human capacity development to fight terrorism and terrorism financing. Prosecutors, Judges and Law Enforcement agencies must be trained, and capacity enhanced to combat terrorism and terrorism financing. Government should invest in technology to track the movement of money to support terrorism and counter propaganda on social media.