

IMPACT OF INTERNATIONAL AND DOMESTIC LAWS ON MONEY LAUNDERING ACTIVITIES IN THE ECOWAS: A LEGAL PERSPECTIVE

Introduction

In the past few years there has been an increased awareness, in Africa and the countries of the ECOWAS region in particular, of the crime of money laundering. This increase in awareness has arisen because of the step-up in the activities of agencies and governments involved in the monitoring, prevention and punishment of money laundering activities. This in turn increased for two main reasons: first is the realisation by ECOWAS countries that money laundering has debilitating consequences on the economy and society. The second reason is that the countries of the ECOWAS, like other developing countries, have come under increased pressure by the developed world to plug the holes in their systems that allow money laundering. And this increased pressure has been tied amongst other things to aid, technical assistance and the channelling of foreign direct investment.

Money laundering activities have thrived in the region because of weak or poor controls, the increasing use of electronic and instant money transfer methods, & the carrying on of most of the transactions outside the formal economy. Other reasons include the deceptive attraction of money laundering to a developing country. According to this picture, money laundering is desirable because it brings needed foreign exchange that can be used for development. And since the gored ox belongs to other (usually) more developed countries, it is welcomed. The painters of this picture take refuge under Article 2 of the Convention against Illicit Traffic in Narcotics and Psychotropic Substances 1988. That Article provides that the State parties to it are equal and shall respect the sovereignty of one another. The unfortunate thing is that these artists have jaundiced views because they fail to consider three important factors. The first is that access to laundered or 'dirty' money is inversely proportional to access to legitimate financing. The second factor is that experience has shown that invariably more capital flows outside the developing country as a result of money laundering than does come in because of it. This is due to corrupt officials stowing money abroad and criminals seeking other secret havens and seeking to avoid erosion of value as a result of weak currencies. The third factor is that with globalisation the effects of a crime like money laundering has rapid consequences in other states. Thus the International law principle of sovereignty of states with regard to their internal affairs is increasingly more difficult to uphold. Therefore countries that pursue this line of reasoning lay themselves open to sanctions and sometimes corrective military action by those states which stand to suffer from their actions. The recent trend against condoning coup d'etat and the US/UK military action in Iraq are good examples of this kind of reaction.

In tackling this topic, I have divided the discussion into segments as follows:

- a) International and domestic Money Laundering laws and regulations applicable in the ECOWAS States,
- b) Some key provisions of the laws,
- c) Matters arising from the provisions or related to their enforcement
- d) The impact of the laws on money laundering activities in ECOWAS States
- e) Recommendations
- f) Conclusion

A. International And Domestic Money Laundering Laws And Regulations Applicable To Or Adopted By ECOWAS States

D) The International Legal Regime

International interest in and action regarding money laundering arose primarily in answer to the menace of drug trafficking. By the nineties attempts to stem money laundering evolved into an important foreign policy and financial management priority in the financial centres of the world.¹

The major international pieces of legislation on Money Laundering are a) United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, b) The International Convention for the Suppression of the Financing of Terrorism 1999 and c) The United Nations Convention on Transnational Crimes 2000, which seeks to provide a more encompassing umbrella for the fight against money laundering and transnational crimes. This treaty was ratified by several ECOWAS² countries and came into force on 29th September 2003.

Other international practices and policy papers on money laundering and predicate offences adopted by members of ECOWAS include the 40 recommendations by the Financial Action Task Force (FATF) the eight special recommendations of the FATF on financing and laundering of money for acts of terrorism made in the aftermath of the September 11 bombing in the United States; the Statutes of the Inter-Governmental Action Task Force against Money Laundering in Africa (GIABA) passed by the First Ministerial meeting on the Inter-Governmental Action Task Force against Money Laundering in Africa in Dakar Senegal on November 3 2000 & the Basic declaration on the prevention of criminal use of the Banking system for the purpose of Money Laundering.

II) The Domestic Laws

Following the trend in the international arena, ECOWAS countries have enacted legislation to curb or control money laundering in their jurisdictions. Some of these laws are: NARCOTIC DRUGS (CONTROL, ENFORCEMENT AND SANCTIONS) LAW, 1990, Ghana; LOI N° 87-009 DU 21 SEPTEMBRE 1987 RELATIVE A LA REPRESSION DES INFRACTIONS EN MATIERE D'USAGE, DE COMMERCE, DE DETENTION ET D'EMPLOI DE SUBSTANCES VENENEUSES of the Republic of Benin; LOI NO. 98.008 PORTANT CONTRÔLE DES DROGUES, DU 18 MARS 1998 of Togo; CODE DES DROGUES DU 11 NOVEMBRE 1997. (LOI N°18/97) of Senegal; Décret Loi No1/76 of Guinea-Bissau; MONEY LAUNDERING (PROHIBITION) ACT 2003, ADVANCED FEE FRAUD AND OTHER FRAUD RELATED OFFENCES ACT 1995 and the ECONOMIC & FINANCIAL CRIMES COMMISSION ACT 2002 of Nigeria and the LOI NO. 93-37 RELATIVE A LA REPRESSION DE LA PRODUCTION, DU TRAFIC ET DE L'USAGE ILLICITE DES STUPEFIANTS ET SUBSTANCES PSYCHOTROPES of Mauritania.

B. Key Provisions of the Laws and Conventions

¹ Angela Itzikowitz, Combating Money Laundering: The South African Solution, published in International Financial Sector Reform Standard Setting and Infrastructure Development (eds) Goo, Arner and Zhou

² As at 19th August 2005 the following ECOWAS countries had ratified the treaty: Benin, Burkina Faso, Cape Verde, Gambia, Guinea, Mali, Niger, Nigeria, Senegal and Togo.

The Conventions and domestic laws listed above contain a number of provisions dealing with matters like the definition of money laundering, prescription of offences and penalties for infraction of the laws, confiscation and forfeiture of property, relaxation of bank- customer confidentiality, record keeping, know-your-customer provisions etc. To appreciate the impact of International and domestic laws on Money laundering activities, it will be helpful to examine these provisions briefly.

Definition of Money Laundering: According to the laws in force in the ECOWAS countries³, money laundering involves the intentional conversion, transfer concealing or disguising of the source of funds obtained from the commission of a specified predicate offence (like illegal sale, cultivation or other illegal dealing in narcotic drugs and psychotropic substances) knowing that the funds were obtained in that manner . Consequently Money laundering is committed in the jurisdiction of ECOWAS countries only when

- a) A money laundering predicate offence has been committed⁴
- b) The person in question knows that the funds were obtained from the commission of the offence and
- c) Intentionally seeks to disguise the source of the funds

The principal question here is ‘what exactly do these pieces of international and national legislation seek to prohibit?’ The thing to notice here is that hitherto the offence of money laundering was tied to specific predicate offences such as illicit traffic in narcotic drugs and psychotropes, terrorism, Advanced Fee Fraud etc. But the current trend internationally is to legislate against the laundering of the proceeds of crime generally. This is because money laundering is as harmful whether the offence is illicit traffic in drugs or prostitution or bribery and corruption. The second reason is that hitting at the laundering of the proceeds of any crime aims principally at crippling its financing and logistic support. This is the reason for such Conventions as the United Nations Convention of Transnational Crimes and the United Kingdom Proceeds of Crimes Act 2002 and similar Acts in Canada and South Africa. These laws have made it an offence to launder money obtained from any criminal act whatsoever.

The current trend arose partly due to the action of FATF and the acceptance of its 40 recommendations as the blue print for international best practices in combating money laundering on the one hand and the experience of law enforcement agents on the other. In Nigeria, for example, the Nigerian Drug Law Enforcement Agency

³ S.12: NARCOTIC DRUGS (CONTROL, ENFORCEMENT AND SANCTIONS) LAW, 1990 (Ghana); Article 104 of the LOI NO. 98.008 PORTANT CONTRÔLE DES DROGUES, DU 18 MARS 1998 of Togo; Article 102 CODE DES DROGUES DU 11 NOVEMBRE 1997. (LOI N°18/97) of Senegal and Section 14 MONEY LAUNDERING (PROHIBITION) ACT 2003 of Nigeria.

⁴ A ‘money laundering predicate offence’ means an act which has been made an offence under a law in force in an ECOWAS Country and in respect of which the disguising or concealment of the source of the proceeds has also been criminalized, e.g. illicit traffic in Narcotic drugs and psychotropic substances. It also could be any crime at all in those jurisdictions that, like Nigeria, have made laundering the proceeds of any crime or illegal act an offence.

(NDLEA) has found that though laundering drug money is big business, laundering 419 (Advanced Fee Fraud) proceeds is equally significant.

Other crimes the proceeds of which are disguised include, embezzlement of public funds, bribery, illegal arms deals, oil bunkering, theft of diamonds and precious stones, smuggling, prostitution, dumping of toxic wastes and prohibited goods, foreign exchange malpractices, tax evasion, art theft, human trafficking and proceeds of child labour.

For ECOWAS countries that have not caught up with the international trend, the definition of money laundering is circumscribed by the context of the local legislation, most of which proscribe money laundering only in relation to drugs. Nigeria for example, used to define money laundering only in the context of illicit traffic in drugs and Advanced Fee Fraud. But with the recent signing of the Money Laundering (Prohibition) Act 2003, she is moving in tandem with the international trend.

It is commendable that the countries of the ECOWAS are taking steps on their own and through GIABA to conform to the international practice. As we know one of the activities of GIABA as provided for in its Statutes is to combat the laundering of the proceeds of crime. We hope that this is translated into the domestic laws of all the ECOWAS countries soon.

Know-Your Customer Provisions: As part of the mechanisms to control money laundering, the FATF recommended that Banks and Financial Institutions should know their customers reasonably well. These recommendations also require that Banks and other financial institutions (including Bureaux de Change and insurance companies) seek to know the true identity of their customers even when they are represented by third parties e.g. lawyers. The Basle Committee on Banking has stipulated principles to be observed by Banks in satisfaction of this requirement. While most Banks in the ECOWAS countries have adopted the recommendations on the Know-your-Customer requirements, many other Financial Institutions including Insurance companies, are yet to begin it. Similar provisions are contained in Article 18 of the International Convention For The Suppression of the Financing of Terrorism 1999.

The domestic legislation in force in the ECOWAS countries has enacted these provisions and so they apply in the jurisdictions; for instance such a provision is contained in Nigeria's S.5 (1) of the Money Laundering (Prohibition) Act 2003.

Record Keeping: Another recommendation of the FATF is that Banks and Financial institutions maintain records of their transactions for up to 5 years. They are also required to keep records of customer identification material up to 5 years after the account is closed. The aim is to enable the reconstruction of individual transactions (including the volumes and currencies involved) in case of prosecution. The recommendations are based on Article 5 of the Convention on Narcotic drugs and Psychotropic Substances 1988.⁵

⁵ See also Article 18 of the International Convention For the Suppression of the Financing of Terrorism 1999

In Nigeria records of transactions and customer identity are to be kept for 10 years.⁶ Any banker or person engaged in financial activities, who destroys records before the end of the prescribed statutory period is guilty of an offence under the various legislations.⁷

Confidentiality of Banker-Customer or Professional-Client/Customer Relationship:

The UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Narcotic Convention 1988), provides in its Article 5(3) that parties should ensure that its Courts and competent authorities have power to order seizure of records of commercial transactions etc. It further provides that this power should not be defeated by a plea of bank secrecy. The FATF has in furtherance of these provisions recommended that Financial institutions and other professionals engaged in financial activities as a commercial undertaking be required to disclose information relating to their clients.⁸ These Financial institutions, their directors, employees and the professionals mentioned above are to be protected if the information is given to the authorities in good faith though no offence of money laundering was actually committed and they did not know precisely the nature of the underlying criminal activity.

These provisions are enacted in the local laws in force in the ECOWAS states. In Cape Verde, by Article 32 of her Law 78/IV/93 dated 12th July 1993, Banking, financing and similar institutions, and other registration and fiscal bodies may not refuse a request for information made by the Office of the Public Prosecutor provided that (a) the request is authorized by a judge (b) relates to a specific individual case (c) indicates adequate grounds and (d) quotes the reference data of the case in question.

In Ghana, a Police officer may not seize bankers' books even if he has reasonable cause to suspect that it directly or indirectly relates to or is connected with any dealing or intended dealing in property used for or in the illicit traffic of drugs.⁹ However the Attorney General may for the purposes of investigation or any proceedings under the Narcotic Drug (Control Enforcement and Sanctions) Law 1988, request information from an employee, official or person in charge of a bank or financial institution.¹⁰ Such a request is however predicate on the existence of a prior request for information made in writing by the Attorney General to the suspect or person being investigated.¹¹ The bank, or its employee shall provide the information notwithstanding any oath, contractual obligation, agreement or arrangement. Neither the financial institution nor its employee will be liable to prosecution or civil action¹² for any disclosures made.

⁶ Section 7 Money Laundering (Prohibition) Act 2003 (Nigeria)

⁷ E.g. Section 15(1)(b) Money Laundering (Prohibition) Act 2003 of Nigeria

⁸ Recommendations 15, 16 and 9 of the FATF

⁹ Section 24 (3) Narcotic drugs (control Enforcement and Sanctions) Law 1988

¹⁰ *ibid*, Section 29 (1) ©

¹¹ *ibid*

¹² *ibid*, section 29(4)

Countries like Nigeria¹³, Senegal¹⁴ and Togo¹⁵ have also enacted similar provisions in their jurisdictions.

Reporting of Suspicious Transactions: As a necessary corollary of the requirement for information by Banks and Financial Institutions, the countries engaged in the fight against money laundering are required to ensure that their Banks and other financial institutions report transactions they suspect to be or to involve the laundering of drug money.¹⁶ Banks and other financial institutions are expected therefore to be vigilant and report all unusual and complex transactions that have no apparent economic or lawful purpose. The banks and financial institutions are to be protected from civil and criminal liability for these reports. ECOWAS countries like Senegal¹⁷, Togo¹⁸ and Nigeria¹⁹ already put these recommendations into effect through their local legislation.

One of the provisions that will interest bankers and other persons carrying out financial activities is that they are liable to be prosecuted if they warn or inform the owner of funds that he /she is being investigated or that a report has being required of his transactions.²⁰

Mutual Assistance and Co-operation Amongst Countries: Recognising the effects of globalisation and the dependence of countries on one another for effective control of money laundering, the Conventions on Narcotic drugs 1988 and Financing of Terrorism 1999 provide for mutual assistance by countries.²¹

Mutual assistance shall be in respect of such matters as the investigation, prevention or prosecution of money laundering. Developing countries in need of assistance and support can also receive aid through programmes of technical co-operation with respect to interdiction and other related activities.

These are some of the key provisions on the regulation and control of money laundering activities in force in the ECOWAS countries.

C. Matters arising from the enforcement of the international and domestic legal regimes

¹³ Section 12 Money Laundering (Prohibition) Act 2003 of Nigeria

¹⁴ Articles 132, 133 and 136 Code Des Drogues du 11 Novembre 1997

¹⁵ Articles 135, 136 & 139 Loi no 98.008 Portant Controle Des Drogues

¹⁶ See the FATF 40 recommendations and Article 18 (1)(b) International Convention for the Suppression of the Financing of Terrorism 1999

¹⁷ Article 134, Code Des Drogues du 11 Novembre 1997

¹⁸ Article 137 Loi no 98.008 Portant Controle Des Drogues

¹⁹ Section 6 Money Laundering Act 1995

²⁰ See for e.g. Section 15 (1)(a) Money Laundering (Prohibition) Act 2003

²¹ Articles 7, 8 9, 10 Convention on Narcotic Drugs and Psychotropic Substances 1988; Article 12 Convention for the Suppression of the Financing of Terrorism 1999

Against the background of these international conventions and domestic legislation, certain questions arise, either from their interpretation or in the course of their enforcement. A few of those questions are highlighted

The Issue of Definition: From the discussion above it is evident that the offence of Money laundering in the ECOWAS countries can crystallise only when one of the offences specified (predicate offences) has been, is being or will be committed. So in plain terms, money laundering in ECOWAS countries will only occur when the following predicate offences are involved: Illicit traffic in Narcotic drugs and Psychotropes and related offences and any other offence the laundering of proceeds of which is specifically prohibited.

The situation therefore is that there is currently no common definition of Money Laundering in the ECOWAS region as each country decides what it will make a Money Laundering predicate offence. The effect is that what is a crime in one jurisdiction may not be so in the other, thus impairing the economic unity and stable development which ECOWAS, as an organisation, was designed to promote.

The Political Will to Enforce the Legislation: Sound laws are not enough to win the fight against money laundering in ECOWAS. The governments of the ECOWAS countries and the ECOWAS Secretariat must ensure the existence of a strong political will to uproot and punish the vice of money laundering. This is more so now that it has become clear that the laundering of the proceeds of bribery, corruption, embezzlement of public funds, stealing of diamonds and other natural resources, are as detrimental to development & society as the laundering of drug money.

Related to this issue is the degree of government involvement in crime or the involvement of government officials and political office holders. According to a typology developed by Prof Williams, Director of the Matthew B. Ridgway Center for International Security Studies at the University of Pittsburgh,²² there can be four levels of government contact with crime. The first level is occupied by some states that are generally strong and are willing to confront organized crime. They are often the exception. On the second level, which is seen more frequently, are weak states that acquiesce in organized crime. They lack the capacity to do anything about it. These are states in which there is some corruption in government so there are some beneficiaries. A third level going up the chain is where a crime corruption relationship goes beyond individual corruption to collusion between members of government operators and the criminals. Finally, at the top are criminal states, where members of the government themselves are leaders of criminal enterprises. As a government ascends the ladder, it becomes more difficult to fight crime in the state. Each of the ECOWAS countries can therefore be judged on the basis of these classifications and a decision made as to the magnitude of the problems posed by the absence or existence of a political will.

The Existence of Weak Enforcement and Monitoring Institutions: Closely related to the need for the political will in the campaign against Money laundering is the requirement of strong enforcement and monitoring institutions. Experience has shown that launderers choose the venue for their actions based on their assessment of the laws coupled with the enforcement and monitoring capacity of the target

²² See Testimony before the House of Representative Sub-Committee on Africa (Committee On International Relations) July 15 1998

country. They will exploit any loopholes in the criminal justice system and take advantage of such situations like inadequate training of officials of enforcement agencies, their poor remuneration, lack of adequate equipment and communication facilities, immobility and transportation problems, poor social infrastructure etc.

An effective enforcement and monitoring unit typically will monitor and study the trends of financial transactions in a country, gather and keep data on the levels and incidence of financial crime and carry out any other function assigned by law. Until recently most ECOWAS countries have been fighting the war against money laundering in the dark. They do not have accurate records of the incidence, level volume and trends of money laundering crimes. Nor do they accurately determine the extent of involvement of their financial institutions etc.

Nigeria is one country that has established such a body. It is called the Economic & Financial Crimes Commission and was established under the Economic and Financial Crimes Enforcement Commission Act 2002. Some of the functions of that body are as follows:

- a) The co-ordination and enforcement of all economic and financial crimes, laws and enforcement functions conferred on any other person or authority;
- b) The adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from financial crime related offences or the properties the value of which corresponds to such proceeds;
- c) The adoption of measures which includes co-ordinated preventive and repressive actions, introduction and maintenance of investigative and control techniques on the prevention of economic and financial crimes
- d) The facilitation of rapid exchange of scientific and technical information and the conduct of joint operations geared towards the eradication of economic and financial crimes;
- e) The examination and investigation of all reported cases of economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;
- f) The establishment and maintenance of a system for monitoring international economic and financial crimes in order to identify suspicious transactions and persons involved;
- g) Maintaining data, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets involved in economic and financial crimes;
- h) Undertaking research and similar works with a view to determining the manifestation, extent, magnitude and effects of economic and financial crimes and advising government on appropriate intervention measures for combating it.

The Commission has power to conduct investigation as to whether any person has committed an economic or financial crime. It also has power to conduct

investigations into the properties of any person if it appears to it that the extent of the properties and life style of the person are not justified by his income. In the exercise of these powers the Commission is under the control of the Attorney General of the Federation who may from time to time give directions to the Commission.

The Act²³ makes it mandatory for any officer of a bank or other financial institution to take reasonable care to secure compliance with the provisions of the Act or to take all reasonable care to secure the authenticity of any statement submitted pursuant to its provisions. Failure to do either of these is an offence punishable by imprisonment.

Enforcement and monitoring is an important area that the ECOWAS initiative on Money Laundering (GIABA) needs to address and harmonise urgently.

The Restriction of Suspicious Transaction Reports, Proscription of Bank Secrecy and Professional/Client Confidentiality to Specifically Outlawed Offences: As a consequence of the narrow definition of money laundering in the ECOWAS region, such requirements like the requirement of suspicious transaction reports also are circumscribed. That is to say, the obligation to generate those reports only arise if the offence suspected is a Money Laundering predicate offence. The same applies to the proscription of bank secrecy rules and lawyer/client confidentiality. The rules only fall away if a Money laundering predicate offence is involved.

However, countries like Nigeria which have adopted a wider view of money laundering to cover laundering of proceeds of all crimes, have consequently widened the horizon of matters to be reported. In Nigeria every transaction²⁴ must be reported regardless of whether it involves laundering of proceeds of a crime or not.

Constitutional and other Domestic Laws Versus the Requirements of the Conventions and Domestic Legislation on Money Laundering: The prescription of the various laws with regard to matters like suspicious transaction reporting, obligation to give information to the authorities and proscription of secrecy rules pertaining to banks and certain professionals, appear opposed to constitutional or other provisions in force in the ECOWAS States. Examples of the provisions referred to are the provision against self-incrimination²⁵ and the fundamental rights guaranteed by the constitutions of the various countries. In Nigeria, most of the resistance to the actions of the National Drug Law Enforcement Agency (NDLEA) is offered by recourse to the Fundamental rights provisions in the Constitution and the African Charter on Human and Peoples Rights. It is expected that the same trend will be adopted in answer to the actions of the newly established Commission for the Enforcement of Economic and Financial Crimes.

²³ Economic and Financial Crimes Enforcement Commission Act 2002

²⁴ S.25 of the Money Laundering (Prohibition) Act 2003 defines transactions as acceptance of deposits and other repayable funds from the public; lending; financial leasing; money transmission services; issuing and management of means of payment; financial guarantees and commitments; trading for account of customers; participation in capital market activities and the provision of financial services in connection therewith; individual and collective portfolio management; safekeeping and administration of cash or liquid securities on behalf of clients; life insurance and all other insurance matters; money changing.

²⁵ See Section 35(2) & 36(11) Constitution of Federal Rep of Nigeria 1999.

It is however to be noted that the International Conventions, e.g. the Convention against Illicit traffic in Narcotic Drugs and Psychotropic substances 1988, provide that its Parties are to ensure the promulgation of the provisions subject to the i.e. local legislation. According to Article 2, 'In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.' Thus the efficacy of the laws and campaign against money laundering is dependent on the strength or weakness of the fundamental provisions of each country's legal system. Each country must also decide which is the greater evil for its society: infringement of Fundamental Rights or prevention and detection of Money Laundering. Experience has however shown that both are not always exclusive.

D. Impact of the laws on Money Laundering Activities in ECOWAS

It is difficult to assess the effect of the legal regime on money laundering activities in ECOWAS. This difficulty is not unrelated to the difficulty in assessing the incidence and magnitude of money laundering activities in any part of the world. Reason is partly due to the fact that crime of its very nature is a secret affair. The laundering of proceeds of crime for its financing or otherwise is even more so. The United Nations Office for Drug Crimes quotes estimates saying that the amount of proceeds of crime laundered is between \$ 500 billion and \$ 1trillion dollars per annum. Given the paucity of accurate data on laundering and indeed crime in the ECOWAS region, one cannot arrive at a reliable estimate of the impact of Money Laundering activities in the region. Consequently it is difficult, if not impossible, to estimate the effect on money laundering activities in terms of worth of cash and property involved or number of crimes.

But that is not to say that there are no signs of the effect of the laws albeit minimal. Law is a tool made to help man regulate his life, harness and enjoy his resources in an orderly manner. As such one of its aims, particularly in a developing region like the ECOWAS region, is the promotion of economic growth and social well being.²⁶ Therefore one way of measuring the impact of the money laundering legislation is to see how much it has contributed to harnessing or attracting resources for economic development; how much they have led to a better society with strong values; how much the laws have contributed to security of lives and property. Another way of measuring the impact is to consider the perception or acceptance of money laundering efforts of ECOWAS countries by the internationally recognized bodies like FATF, the IMF and United Nations Office for Drug Crimes. These perceptions can be gleaned from their imposition or withdrawal of sanctions as result of perceived inaction on money laundering. Another way to measure the impact is to look at the criminal justice systems to determine how effective they have been in apprehending and punishing launderers. But these are really indirect methods of assessing the effect of money laundering legislation. I propose to tackle this problem by referring also to such matters as the effect of the laws on public awareness and increase or decrease in apprehensions and convictions.

²⁶ T.O. Elias, *Law in a Developing Society* (1973) p.133
²⁷ Merchants of Death Target Africa by Ronald V. Neal extract From *Africa Recovery United Nations*, Vol.12#1 (August 1998), page 7

But first what was the background before the introduction of money laundering legislation? According to one writer, the situation in the early days of the drug legislation was bad. He wrote, 'Illicit drug cultivation, processing, trafficking and abuse are on the rise in Africa...A study carried out by the UN International Drug Control Programme (UNDCP) indicates that African countries are being used as springboards for international trafficking by criminal syndicates. The continent is also increasingly being used by the drug cartels for production and consumption of illicit drugs, as well as money laundering. A consequence of stepped-up drug activity has been a rise in violent crimes, corruption, bank fraud and social decay.'²⁷

In assessing the impact of money laundering laws, I have chosen to focus primarily on Nigeria. The reason is that it is no doubt the country with the biggest money-laundering problem in the region. Due to its strategic position, size and efforts in prevention and control of money laundering schemes, Nigeria can be said to be a good representation of ECOWAS in its efforts to curb the menace.

The first clear effect of money laundering legislation is that it has increased public awareness of the problem of money laundering. It has also increased awareness of the fact that laundering is not only to be associated with drugs but can and indeed is also carried out in relation to other crimes. No doubt this has made it more difficult for perpetrators of the crime by raising the risk involved. It has also driven them more under ground as they seek other channels and insidious ways of carrying out their activities.

Another way in which the laws impact on money laundering activities is through the prosecution of persons who commit money laundering predicate offences and forfeiture of their assets. Several people have been tried and convicted for predicate offences like drug trafficking and Advanced Fee Fraud. Assets and cash worth over fifty million Naira were forfeited to the Federal Government of Nigeria between 1995 and 2001. Already the new Economic and Financial Crimes Commission has swung into action by going after 419 con men and other money launderers. They are reported to have begun by charging a prominent Nigerian of Advanced Fee Fraud last Friday. ²⁸ Such actions serve as a big warning to other perpetrators of economic and financial crimes.

Being the primary medium for the laundering of proceeds of crime, banks and other financial institutions involved in money laundering have also felt the effect of the laws. 5 banks were prosecuted for money laundering offences between 1996 and 1999. Recently other banks like Devcom, Manny Bank, & Trust Bank have been charged for non-compliance with money laundering provisions.

Also these money laundering provisions have been relied on to close some car dealers. Amongst the most celebrated were Carlink and Lanre Shittu Motors. Other dealerships closed include Globe Motors, Universal Motors, Alpha Motors and Today Automobiles.

²⁸ See back page of The Guardian of Friday 30th June 2003

Nigeria's efforts have not gone unnoticed. As early as 1998, Ms Christiane D'Almeida, the then African Regional Representative of the UNDCP acknowledged Nigeria's efforts at curbing drugs and money laundering. She said "Nigerian authorities are doing a lot to strengthen their capacity to deal with this issue."²⁹ But the FATF, which is the principal standard setting body for Money Laundering enforcement programs, has not been impressed with Nigeria's efforts. Nigeria is still listed as a Non Co-operative Country or Territory (NCCT). Consequently the member countries of the FATF are advised to update their advisories requesting that their financial institutions give special attention to businesses and transactions with persons, including companies and financial institutions, in Nigeria.

In its 2001 report titled 'Money laundering and financial Crimes', the US State Department published a classification developed by the International Narcotics Control Strategy Report (INCSR) 2000³⁰. The classification sought to segment countries on the basis, inter alia, of their money laundering control efforts. Countries were divided into countries of Primary concern, countries of concern and other countries monitored. Countries of primary concern are those countries who required the priority of the US State Department. According to the report, in such jurisdictions, the volume of money laundering is likely to be substantial, necessitating quick, continuous, and effective anti-money-laundering efforts by the government. While the threat from jurisdictions classified under "Concern" is not as acute, they too must undertake efforts to develop or enhance their anti-money-laundering regimes. Finally, while jurisdictions in the "Other" category do not pose an immediate concern, it will nevertheless be important to monitor their money laundering situations because, under the right circumstances, virtually any jurisdiction of any size can develop into a significant money laundering centre.

Of the ECOWAS countries only Nigeria was classified as a country of primary concern, while countries like Benin, Cameroon, Cote d'Ivoire, Ghana, Liberia, Mali, Niger, Senegal, Togo were classified as 'other countries monitored.' No ECOWAS country was classified as a country of concern.

These reports by the FATF and the INCSR show that Nigeria's legal provisions and law enforcement machinery were not, adequately addressing the money laundering problem. They equally show that the countries mentioned need to work hard to monitor the Money Laundering situation in their jurisdictions.

E. RECOMMENDATIONS

I recommend the following measures in order to make the International Money Laundering Conventions and domestic legislation effective in the countries of the ECOWAS:

²⁹ Quoted from Merchants of Death Target Africa Africa Recovery United Nations, Vol.12#1 (August 1998), page 7

³⁰ At the time of reviewing this paper, I was unable to lay my hands on the current issue of the Part 2 of the INCSR report for 2003 which was released in March 2004 or the reports for 2004. I however, believe that the classification is still adopted and that the rankings will be more or less the same as in 2001.

- a) Regular public awareness programs to inform & educate the public on the incidence, effects, ingredients and variety of money laundering and predicate offences. The public also need to be educated on the need to report any money laundering activity promptly and without fear of sanction or intimidation by the enforcement agents.
- b) Money laundering enforcement agencies in each country should be trained to respect the rights of suspected persons. They should be trained to appreciate the role of the public as suppliers of information and partners in crime detection and prevention. Consequently they should be expected to encourage the public to come forward with relevant information and guarantee them courteous treatment when and if they do.
- c) The Establishment of adequate data collection and processing centres on money laundering and predicate offences
- d) The Equipment & maintenance of a sound financial intelligence unit to gather collate process and disseminate information on money laundering and predicate offences.
- e) The equipment and maintenance of law enforcement agencies in each country to curb and prevent money laundering predicate offences.
- f) There should be more rigorous and penetrating inspection & supervision of banks and financial institutions to ensure prevention and early detection of money laundering.
- g) Banks and financial institutions should be made to run money laundering education and compliance programs for staff. Furthermore, banks and financial institutions and their staff should be appraised and rewarded or sanctioned based on their attention to and compliance with money laundering provisions.
- h) The education and training of judicial officers on the effects incidence and efforts made at curbing money laundering, the role of technology in the perpetuation of the crime and the trends in money laundering and control.
- i) Each ECOWAS country should ensure that its judiciary is independent, free and adequately funded. Money laundering is a crime directly involving huge volumes of cash and near cash instruments and persons involved in its investigation and adjudication should not be left open to be tempted by bribery and other undue influences.
- j) The governments of the ECOWAS countries should give full support and commitment to GIABA. They should ensure that it takes off in full within a short time.
- k) The money laundering legislation in force within the ECOWAS states should be brought in line with current international trends and best practices. These will include the expansion of the definition of the offence of money laundering to cover proceeds of all crimes & the harmonisation of the domestic legislation in force in the ECOWAS states etc.

- l) Encouragement of mutual assistance and co-operation amongst the ECOWAS countries in the fight against money laundering. This is important because money laundering is increasingly involving transnational transactions and transfers.

A. Conclusion

ECOWAS countries have joined the international fight against money laundering. They are signatories to the International Conventions dealing with money laundering. They have enacted legislation prohibiting the act and in some cases sought to enforce the laws. But their efforts have not yielded the desired results.

ECOWAS countries need to go beyond the enactment of legislation or signing of international agreements on money laundering. They should constantly review the extant legislation in line with the trends in money laundering activities. More importantly, they should emphasise compliance and prevention. These measures and other recommendations made above will significantly improve the impact of laws on money laundering activities in the ECOWAS countries.

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