

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY NIGERIA**

ARTICLE 14 UNCAC

PREVENTION OF MONEY-LAUNDERING

NIGERIA (SIXTH MEETING)

**ARTICLE 14- MEASURES TO PREVENT MONEY LAUNDERING IN NIGERIA
PURSUANT TO ARTICLE 14 UNCAC**

Between 2001 and 2006 Nigeria was on the FATF's list of countries and territories that were Non-Cooperative in the international community's efforts to combat Money Laundering and Financing of Terrorism. In June 2006, Nigeria was delisted from the list of Non-Cooperative Countries and Territories [NCCTs] with the condition that the country implements a comprehensive AML/CFT regime. Nigeria was considered, among other indicators, to possess plausible structures to deal with existing deficiencies in its AML/CFT regime in collaboration with the FATF Styled-Regional Body (FSRBs) in the region.

Having been removed from the NCCTs, Nigeria still needed to enrich its National Strategic Plans with a more practical action Plan that would meet its AML/CFT existing deficiencies. Consequently, the Federal Government of Nigeria commenced series of strategic initiatives culminating in its present AML/CFT successes. Compliance with UNCAC initiatives was part of Nigeria's focus in the implementation of its National Strategic Initiatives.

Nigeria's AML/CFT national strategic initiative is three pronged: prevention, detection and prosecution.

Summary of Legal and Policy Framework for AML/CFT in Nigeria

1. Independent Corrupt Practices Commission. Established by the Independent Corrupt Practices and Other Related Offences Act 2000 (ICPC Act). Focuses on corrupt activities and prevention in the public sector.
2. The Economic and Financial Crimes Commission (EFCC) established by the Economic and Financial Crimes (Establishment) Act, 2004. Focuses on financial and economic crimes, with extensive powers to implement and enforce existing penal laws on related economic crime offences. Existing laws enforceable by the EFCC include;
 - i. The Money Laundering Act
 - ii. The Advance Fee Fraud and Other Related Offences Act
 - iii. The Failed Banks (Recovery of Debt and Financial Malpractices in Banks) Act, as amended;
 - iv. The Banks and Other Financial Institutions Act 1991, as amended
 - v. Miscellaneous Offences Act;
 - vi. The Criminal Code
 - vii. Penal Code.
 - viii. Any other law or regulation relating to economic and financial crimes.

3. Nigeria Financial Intelligence Unit (NFIU) established pursuant to Section 1(2) (c) of the EFCC (Establishment) Act, 2004. The NFIU is a member of the EGMONT Group of Financial Intelligence Units (FIUs).

4. The Nigeria Extractive Industries Transparency Initiative (NEITI) established by the NEITI Act 2007 created the National Stakeholder Working Group (NSWG).

5. The Technical Unit on Governance and Anti-Corruption Reforms (TUGAR). Primary function is to generate and maintain empirical data and a veritable resource databank for anti-corruption and good governance in Nigeria.

6. Special Control Unit against Money Laundering (SCUML) regulates operations of Designated Non-Financial Institutions and Designated Non-Financial Businesses and Professions (DNFIs/DNFBPs).

7. As part of Nigeria's national strategic initiatives to combat Money Laundering/Terrorist Financing, ML/TF, the country initiated the Inter- Agency Task Team on Anti- Corruption (IATT), a working group of anti-graft agencies. It is saddled with the responsibility of improving the coordination and partnership amongst participating agencies in the areas of investigation and prosecution and also serves as a platform for sharing opinions, ideas, information and SWOT analysis of the current strategies. The agencies/Institutions working on antimoney laundering include:

- i. Economic and Financial Crimes Commission (EFCC)
- ii. Independent Corrupt Practices Commission (ICPC)
- iii. Nigerian Financial Intelligence Unit (NFIU)
- iv. Special Control Unit Against Money Laundering (SCUML)
- v. Federal Ministry of Justice
- vi. The Nigeria Police Force (NPF)
- vii. Department of State Security Service (DSS)
- viii. The Nigeria Customs Service (NCS)
- ix. National Drug Law Enforcement Agency (NDLEA)
- x. National Agency for the Prohibition of Trafficking in Persons (NAPTIP)
- xi. Federal Inland Revenue Service (FIRS)
- xii. The Central Bank of Nigeria (CBN)
- xiii. Securities and Exchange Commission (SEC)
- xiv. Code of Conduct Bureau (CCB)
- xv. Code of Conduct tribunal (CCT)
- xvi. Bureau of Public Procurement (BPP)
- xvii. National Insurance Commission (NAICOM)
- xviii. Corporate Affairs Commission (CAC)
- xix. Public Complaints Commission(PCC)
- xx. Technical Unit on Governance and Anti-Corruption Reforms (TUGAR)

8. Further to the Federal Government of Nigeria's investment in building transparent institutions and promotion of active interagency coordination in the implementation of AML/CFT, the Inter-Ministerial Committee (IMC) on AML/CFT was created and inaugurated in 2008. The IMC is part of Nigeria's national initiative to ingrain countryspecific strategies to monitor and evaluate anti-corruption, AML/CFT regime and other governance initiatives, and to implement remedial actions when needed. The Committee comprises the Federal Ministries of Justice, Finance, Interior and selected Ministries, Departments and Agencies (MDAs) which are also members of the IATT.

The underlying principle and goals of the AML/CFT IMC include chiefly to ensure an effective national AML/CFT regime. It carries out national self- evaluation of existing framework and makes recommendations to appropriate legislative, policy and legal authorities for action.

9. Presidential Inter-Agency Committee to the Financial Action Task Force (FATF), the TUGAR, IATT and the IMC on AML/CFT are central players in the review of performance activities of AML/CFT legal and institutional frame work vis-a-vis Nigeria's compliance with international standards.

10. Between 2011 and 2015, there have been significant changes in the legal and policy framework of the AML/CFT regime in Nigeria:

i. The Money Laundering Prohibition Act, 2011 was amended in 2012 to *inter alia*, expand the scope of Money Laundering offences and enhance customer due diligence measures, make comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of crime, or other illegal act; and provide appropriate penalties as well as expand the scope of supervisory and regulatory authorities to effectively address the challenges faced in the implementation of the anti-money laundering regime in Nigeria.

ii. Examples of the Expanded Scope Include:

(a) S.2 (5) – forfeiture of the entire undeclared funds or negotiable instrument or imprisonment of not less than 2 years or to both instead of 25% of undeclared fund in the principal Act.

(b) S.3 – Customer Due Diligence (CDD) and expanded scope of Customer Identification by use of independent data, identification of beneficial owner by DNFI.

(c) S.6 - Suspicious Transactions Reports (STRs) to be made immediately after transaction and not within 7 days; NFIU may place Stop Order on a suspicious account or transaction for a period of 72 hours; failure to carry out CDD and or report STRs attracts a fine of N1, 000,000 (5026.3900 US Dollars) for each day during which the offence continues.

(d) S.9 - places responsibility on FIs and DNFI to establish Internal Procedures, Policies and Controls to combat the laundering of the proceeds of a crime or other illegal act; failure to comply may attract N1, 000,000 for capital brokerage and other financial institutions and N5, 000,000 in the case of a Bank.

(e) S.10 - Currency Transaction Reports (CTRs) to be made within seven days (instead of between 7 and 30 days) to the NFIU

(f) S.11 - prohibition of numbered or anonymous accounts, and opening or maintenance of accounts in fictitious names

(g) S.12 - criminalizes conspiracy by directors/ employees of Financial Institutions, Designated Non-Financial Institutions, Financial Intelligence Unit, Regulators, and LEAs, etc.

(h) S.15 - prohibits Money Laundering and defines exhaustively what constitutes ML in Nigeria. The mental element of the offence could be inferred from objective factual circumstances. (See also Section 19 (5) of the EFCC Act which enjoins a legal presumption of crime where a defendant is in possession of pecuniary resources or property for which he/she cannot satisfactorily account and which is disproportionate to his known sources of income). Section 15 (7) extends ML offence in Nigeria to

acts where the proceeds of crime are derived from a conduct that occurred in a country where that act is not an offence.

(i) S.16 - Penalizes Tipping off. Section 16 (1) & (2) and S.19 (1) of the MLP Act imposes criminal liabilities on directors and other officials of a corporate entity.

(j) S.17 - criminalizes ML on behalf of another person to be proved only by showing that the Defendant had knowledge of another person's proceeds of a criminal conduct.

(k) Section 18 of the MLP Act criminalizes inchoate offences to money laundering such as conspiracy, attempt, aiding and abetting, facilitating and counseling the commission of ML.

iii. Terrorism Prevention Act, 2013

iv. The Fiscal Responsibility Act (FRA) 2007 and the Public Procurement Act

v. The Evidence Act 2011. The enactment of the Evidence Act, 2011 has attempted to largely correct some of the difficulties which the admissibility of electronically generated evidence used to encounter in Nigerian Courts.

vi. AML/CFT Regulations:

a. National Insurance Commission (Anti-Money Laundering and Countering the Financing of Terrorism) Regulations, 2013

b. Federal Ministry of Industry, Trade and Investment (Designation of Non-Financial Institutions and Other Related Matters) Regulations, 2013

c. Terrorism Prevention (Freezing of International Terrorist Funds and Other Related Measures) Regulations, 2013. These Regulations created the Nigeria Sanctions Committee (NSC) comprising eight members. It is chaired by the Attorney General of the Federation and Minister of Justice and the Secretary is the incumbent Director, NFIU.

d. Securities and Exchange Commission (Capital Market Operators Anti-Money laundering and Combating the Financing of Terrorism) Regulations 2013

e. Central bank of Nigeria (Anti-Money laundering and Combating the Financing of Terrorism in Banks and Other Financial Institutions in Nigeria) Regulations 2013

NEW LEGISLATIONS THAT WILL HELP AML/CFT MEASURES

On the 3rd of June 2015, the 7th Assembly of the Nigeria National Assembly passed the last batches of their Bills before the end of that assembly. The Bills are pending presidential assent. Some of the Bills which relate to adding impetus to existing AML/CFT laws are:

- 1) Office of the Nigerian Financial Ombudsman Bill;
- 2) National Convicts and Criminal Records (Registry) Bill, 2015;
- 3) Electronic Transactions Bill, 2015;
- 4) Nigerian International Financial Centre (Establishment, etc.) Bill,
- 5) Investment and Securities (Amendment) Bill
- 6) Whistle-blower Protection Bill,

EFCC Strategy Document 2013– 2018

A. In order to make the Federal Government of Nigeria's initiatives more forceful in the implementation of AML/CFT measures, the EFCC has put in place a Statement of Strategy 2013 - 2018 with the support of Justice for All/Department for International development (J4A/DFID). It has five principal strategic objectives for the period in question:

- i. Increased citizens' engagement in the fight against economic and financial crimes
- ii. Improved prevention of economic and financial crimes.
- iii. Improved intelligence driven investigation, prosecution and asset recovery.
- iv. Improved law enforcement coordination and collaboration with relevant stakeholders.
- v. Improved organizational structure and human capacity.

B. *The Strategy Document of the Network of National Anti-Corruption Institutions in West Africa (NACIWA) 2015 – 2017*. This is intended to *inter alia* designate and strengthen the Economic and Financial Crimes Commission (EFCC) Academy in Abuja, Nigeria, to serve as a regional center of excellence for capacity building and knowledge sharing for anti-corruption authorities within the region. The action plan includes:

- i. Signing a legal agreement between NACIWA and EFCC for the establishment of a NACIWA anti-corruption academy at the EFCC Academy.
- ii. Making a pool of experts available through an advisory board to advice and support the EFCC academy in the development of its curriculum based on an assessment and analysis of identified capacity needs, constraints and gaps.
- iii. Working with the EFCC academy, through the advisory board, to have in place required academic expertise to oversee and manage the NACIWA anti-corruption academy. This includes bilingual (and francophone) academics and staff to implement the capacity building programmes and trainings to be delivered at the academy.

EFCC/NFIU/SCUML Anti-Money Laundering Achievements (2012—2015)

A. Enhanced professionalism through capacity building in partnership with international organizations and experts. In 2012 the EFCC prosecuted and secured the conviction of 87 persons for various offences of Advance Fee Fraud, ML, Bank Fraud, Illegal Bunkering and other economic crimes; 117 were convicted in 2013 and 126 in 2014 aggregating an 88% increase between 2011 and 2014.

B. Drastic reduction of cash smuggling: This was enabled through the implementation efforts of the EFCC applying the stringent measures in the amended ML Act. The new measure accounted for the drop in currency outflow from Nigeria in 2013, as currency declaration dropped from Nine Billion, Nine Hundred and Twenty-Six Million, Seven hundred and Thirty Nine Thousand Six Hundred and Forty- Eight Dollars(\$9, 926, 739, 648.00) to One Billion, Three Hundred and Twenty-Four Million, Forty-Five Thousand, Six Hundred and Seventeen Dollars (\$1,324,045,617.00) in 2013. There was a further drop of 91.8 % in 2014 as currency outflows recorded an all-time low of \$807,585,061.70.

C. Asset Recovery: The sums of N65,320,669,350.35 (Sixty-Five Billion, Three Hundred and Twenty Million, Six Hundred and Sixty-Nine Thousand, Three Hundred and Fifty Naira, Thirty Five Kobo); \$245,952,030.13 (Two Hundred and Forty-Five Million, Nine Hundred and Fifty-two Thousand, Thirty Dollars and Thirteen Cents); £693,399.00 (Six Hundred and Ninety-Three Thousand, Three Hundred and ninety-Nine Pound Sterling; and €62,600.00 (Sixty-Two Thousand, Six Hundred Euro) were recovered from persons convicted of economic crimes, within the period.

D. In its approach to prevention of Money Laundering within the DNFBPs in Nigeria, Special Control Unit against Money Laundering (SCUML) has developed a multi-dimensional strategic focus which includes; Sensitization, Public enlightenment/Training,

Engagement with Self-Regulatory Organization (SROs) and Collaboration with LEAs and other relevant Government agencies.

i. Sensitization, Public Enlightenment and Training

The novelty of Anti-Money Laundering supervision within the Non-Financial sector in Nigeria necessitates an extensive and carefully targeted awareness creation and public enlightenment programme. To achieve this, SCUML has continuously developed and conducted sensitization seminars at sector, state and regional levels. Sensitization and training exercises have been conducted for the designated non – financial sectors such as the Non-Profit Organizations, Hotel and Casino, Real Estate, Car Dealership and Professionals. At regional levels, SCUML has been holding sensitization seminars in all the six geo-political zones of Nigeria. In a similar vein SCUML has also posted advertisement in newspapers, television and on social media through the Economic and Financial Crimes Commission (EFCC). SCUML offices are located in all the six geo-political zones, sensitization sessions are held every month of the year for newly registered DNFI's.

ii. Engagement with Self-Regulatory Organization (SROs) and Business Associations

To achieve a balanced and comprehensive supervision of the DNFI sector, SCUML has been engaging and collaborating with relevant Self-Regulatory Organizations (SROs) such as the Nigerian Bar Association, Institute of Chartered Accountants of Nigeria, Association of National Accountants of Nigeria, Chartered Institute of Taxation of Nigeria, Hotel Owners Association of Nigeria, NGO networks and coalitions etc., The engagement with SROs has been mainly focused on training and compliance education. SCUML in the recent past established the National Advisory Council DNFI's; which comprise representatives of all relevant professional bodies in Nigeria.

iii. Engagement and Collaboration with Relevant Government Agencies

To achieve its mandate within the overall Anti-Money Laundering and Anti-Corruption agenda of Nigeria, SCUML has been collaborating with relevant government agencies such as the Economic and Financial Crimes Commission (EFCC), Central Bank of Nigeria (CBN), Federal Inland Revenue Service (FIRS), Code of Conduct Bureau, etc. A particular success story of this collaboration is the CBN circular to all commercial banks mandating DNFI's to register with SCUML as precondition for opening bank accounts and as part of customers due diligence. SCUML is currently negotiating signing of memoranda of understanding (MOUs) with several other government agencies, which will cover information sharing, sensitization and public enlightenment, compliance and enforcement.

iv. Designation/classification of Additional Businesses and Professions as DNFBPs

For purpose of AML regulations, the designation of a DNFI is guided by National/Industry AML Risk Assessment Reports revealing that such businesses and professions are vulnerable to money laundering risks. Consequent upon the conduct of the risk and vulnerability assessment of Nigerian non-financial sector and reliable AML/CFT typology studies, additional sectors have been added such as, Non-Profit organizations, construction companies, mechanized farming, etc.

v. Maintenance of a Database on DNFI's Profile and their Financial Transactions

SCUML maintains a database of DNFI's Profile and reportable transactions. This database has helped to provide technical and operational support to criminal

investigations and serves as a viable input into developing strategic policy options in the prevention of money laundering.

vi. Customer/client Identification and Due Diligence

SCUML compliance enforcement strategy has placed emphasis on proper and adequate internal policies and procedures for conducting customer identification and due diligence. As a measure to prevent money laundering, DNFIs are mandated to obtain and verify the identity of clients, including where necessary, information on their business, profession and source of funds and wealth.

vii. Record-Keeping Requirements

Maintaining records of customers' identity and transactions for a minimum of five years is an important requirement for the prevention and detection of money laundering.

viii. Conduct AML supervision on risk based approach

This includes on-site and off-site inspection/examination of DNFIs to ascertain level of AML compliance. Where gaps are identified from onsite or offsite inspection, measures are taken to remedy the gaps and such remedies are used to guide policy development before the gaps becomes a systemic issue.

E. Civil Society Collaboration Programmes

The EFCC has been collaborating with the civil society community to engage the populace in the fight against graft. In September 2014 EFCC signed MoUs with a coalition of Civil Society Organizations (CSOs) to create the Anti-corruption and Economic Crimes Support Network (ACE Network) as a new platform to foster citizen's participation in the fight against corruption and money laundering.

Part of the Civil Society Engagement include: Mobilizing a youth vanguard Against Cybercrime and Fraud; publication and launch of the Faith Based Anti- Corruption Manuals involving the two major religions in Nigeria, Islam and Christianity in 2014.

F. Carrying out anti -corruption awareness programmes in other organizations and offices including law enforcement agencies, banks, the media and educational institutions.

G. Extraditions

In collaboration with foreign partners, the EFCC ensures that criminals cannot commit offences outside jurisdiction and escape to hide in Nigeria:

I. One Emmanuel Ekhatore who defrauded a top American Lawyer of over Thirty Million US Dollars (\$30,000,000) was successfully extradited on the order of a Federal High Court.

II. Rasheed Abayomi Mustapha who took refuge in Nigeria after defrauding an American company of Eight Hundred Thousand US Dollars (\$800,000) was extradited on the order of a Federal High Court. There are other pending cases of extradition on which the EFCC is working with the office of the Attorney General of the Federation and Minister of Justice to effect.

Challenges

In spite of successes recorded by the country generally, two recent judgments given by the Federal High Court and the Supreme Court of Nigeria prove that there is still much work to do.

In the judgment of the Federal High Court on the 17th day of December, 2014 in a civil case between REGISTERED TRUSTEES OF NIGERIAN BAR ASSOCIATION Vs ATTORNEY GENERAL AND CENTRAL BANK OF NIGERIA. The substance of the

judgment is the Court order declaring Section 5 of the MLPA, 2011 as amended, invalid, null and void insofar as it purports to apply to legal practitioners in Nigeria; and Section 25 of the MLPA held not to apply to legal Practitioners. The anti-corruption agencies are still studying and consulting on the impact of the judgment and the relevant Sections.

The Second Judgment was by the Supreme Court in January 2015 in which the apex court set free Tahal Roda a Lebanese sentenced to life imprisonment by a Federal High Court on terrorism charges.

The Independent Corrupt Practices and Other Related Offences Commission - ICPC plays a complementary role in the enforcement and prevention of Money Laundering (ML) by virtue of section 6(a) of The Corrupt Practices Act -the enabling law. Presently, the Commission is prosecuting five cases of ML in the Federal High Court.

In 2009, the Commission set up Financial Intelligence Unit (FIU) to enable it deal effectively with ML issues arising from cases being investigated. FIU collaborates and shares information directly with the Nigerian Financial Intelligence Unit (NFIU) domiciled in the EFCC.

The Code of Conduct Bureau (CCB) also plays a role in the prevention of Money Laundering. The 3rd Code of Conduct for Public Officers states as follows:- *“The President, Vice -President, Governor, Deputy Governor, Ministers of the Government of the Federation and Commissioners of the Governments of the States, members of the National Assembly and of the Houses of Assembly of the States, and such other public officers or persons as the National Assembly may by law prescribe shall not maintain or operate a bank account in any country outside Nigeria.”* CCB has evolved a comprehensive anti- money laundering strategy through a process of working in collaboration with the Nigerian Financial Intelligence Unit (NFIU).