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ANTI-MONEY LAUNDERING IN DEVELOPING ECONOMY: A PEST ANALYSIS OF NIGERIAN SITUATION

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Abstract
The objective of this paper is to examine Anti-Money Laundering (AML) regime in developing economy in a holistic manner using Nigeria as a case study by employing Political, Economical, Social and Technological (PEST) approach bearing in mind that an effective AML campaign requires all hands to be on deck. In developing this paper, a case study approach is adopted. It is found that the recommendations of Financial Action Task Force (FATF) are encompassing and capable of achieving required financial integrity in member countries' financial system. Members however need to adopt an enhanced risk-based approach using appropriate information technology to ensure effective monitoring. Regulatory institutions must be strengthened to enforce the law as appropriate. Countries and private sectors should be able to reallocate their limited resources based on perceived risk-based approach in order to minimise cost and achieve flexible and effective AML/CFT system.

Keywords: PEST analysis; Anti-Money Laundering; Financial Action Task Force; Computer Crime; Corruption

Introduction
Money laundering problem has been a genuine concern to all governments in the recent times more especially in the developed economies after the incidence of 9/11 in the United States because of its direct links with financing of terrorism regimes. Concerted efforts have been extended to developing countries through Financial Action Task Force (FATF), a task force established in 1989 by G-7 countries to fight against money laundering and terrorism. Nigeria is listed in group two among non-performing countries such as Cuba, Bolivia, Ethiopia, Ghana,

Indonesia, Kenya, Myanmar, Pakistan, Nigeria, Sao Tome and Principe, Sri Lanka, Syria, Tanzania, Thailand and Turkey (FATF, 2012). Out of these countries, Nigeria has made a number of positive efforts geared towards combating money laundering but seems to yield little result. For instance, Abiola (2013) remarked that Nigeria keeps featuring on the grey list of the Financial Action Task Force

The Financial Services Authority (FSA) website explains the risk-based approach (RBA) to Anti-Money Laundering (AML) as a "focus to outputs. Firms must have in place policies and procedures in relation to customer due diligence and monitoring among others". The risk in this sense is the probability that Money Laundering (ML) will occur undetected. The RBA procedure is not different from traditional auditing. The approach requires the reporting entities to first understand their entities' environment in order to identify risks that may affect the credibility of their report. This may entail considering salient factors such as the sufficiency of internal control and acceptable level of audit evidence.

According to Al-Rashdan (2012) "When studying any country's AML system, it needs to be borne in mind that while ML cannot be entirely eradicated, efforts can be made to regulate it . What Countries should be calling for is the best possible regulation, regulation that is able to enhance the compliance culture and reduce, even minimise money laundering activities" For instance the Financial Action Task Force (FATF) issued 40+9 recommendations for member countries to follow with a measure of flexibility bearing in mind differences in cultural and constitutional framework for effective implementation. One of the main changes to the extended recommendation states:

> *Countries should clearly understand the money laundering and terrorist financing risks which affect them, and adapt their AML/CFT system to the nature of these risks. This approach will allow them to apply enhanced measures where the risks are higher and it will give them the option to apply simplified measures where the risks are lower (FATF, 2012).*

The type and extent of risk based approach to follow depend on resources and political culture of the state. Despite the allowed flexibility many countries are still struggling with effective implementation. Countries listed in second category jurisdictions are those that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies (FATF, 2012).

Ironically, according to Adeseyoju (2012), no country in West Africa has done more than Nigeria to enhance anti-money laundering and combating the financing of terrorism regime. Nigeria has made noticeable progress in form of legislation and enforcement of AML activities. For instance, to ensure documentary trail of all proceeds of money generated from all activities (legal or illegal), the National Drug Law Enforcement Agency (NDLEA) Act was enacted in fulfilment of Vienna Convention as early as 1989 (NDLEA Act, 1989). This was followed by enactment of Money Laundering Decree in 1995 by the Military Government. The ineffectiveness of the previous laws in combating the menace of money laundering was too compelling for the political leadership to ignore. There was political pressure to cooperate with international organisations such as FATF. The Money Laundering Act (Amendment) 2002 was enacted to improve and expand the scope of the 1995 Money Laundering decree. Also in 2002 the Economic and Financial Crimes Commission (EFCC) Establishment Act was enacted and broadly empowered to investigate all cases involving ML. In order to give more scope to the

EFCC function, the Nigerian Financial Intelligence Unit (NFIU) was established in 2004 by the EFCC Establishment Act 2004 and the Money Laundering (Prohibition) Act 2004. Again in June 2011, the Terrorism (Prevention) Act, 2011 which establishes measures for the prevention, prohibition and combating of acts of terrorism and the financing of terrorism in Nigeria was enacted. At the same time the Money Laundering (Prohibition) Act, 2011 was enacted to repeal the Money Laundering Act, 2004 and makes comprehensive provisions to prohibit the financing of terrorism, and the laundering of the proceeds of crimes or illegal acts. (Vanguard Newspaper, 2011). In spite of all these laudable efforts, there are empirical evidence of AML deficiency in Nigeria. The system in Nigeria was not effective enough to detect ML. This deficiency was brought to light by UK and US AML agencies.

Conceptual and Theoretical Framework

Since the leakages in anti-money laundering programmes in developing countries has to do with ineffective internal control problems especially in financial institutions the Technology Effectiveness Planning and Evaluation Model (TEPEM) is suggested to underpin this work. TEPEM is a multi-model consisting of Technology Acceptance model (TAM) and the Three-layered model (encompassing contingency theory, socio-technical system theory and structuration theory). Abiola, (2013) introduced infrastructure readiness as a contingency necessity and suggested TEPEM as a useful model for effective internal control prevention and detection of fraud including money laundering in developing countries. The model postulates that technology effectiveness is a function of TAM variables (perceived benefits, organisational readiness, trust, external pressure), contingent factors (size of organisation, cost, staff training and infrastructure readiness), and optimal mix of human and technological capabilities. The element of proper planning and implementation of infrastructural provision are important for effective anti-money laundering activities in developing countries including Nigeria.

Review of Related Cases

In their write-up on the role of financial intermediaries in elite money laundering practices, Olatunde, Ajibolade and Omolehinwa (2012), commented that "the establishment of money laundering laws and creation of anti-money laundering agencies had not brought about professional transparency and ethical conduct" This perhaps explains why money–laundering activities seems to be on the increase in Nigeria. The phenomenon can also be ascribed to the advent of digital age. Sieber (1986:15) observed that:

> *"........The problems caused by computer crime are bound to intensify in the future. Increasing computerisation, particularly in the administration of deposit money, in the balancing of accounts and stock-keeping, in the field of electronic funds transfer systems, and in the private sector, as well as new computer applications such as electronic home banking, electronic mail systems, and other interactive videotext systems will lead to increase in the number of offences and losses....."*

Siebers' (1986) observation has been proven quite accurate in more than two decades since it was made (Abiola, 2013). Money Laundering no doubt became more prevalent in the last two decades. As noted by Lankhorst and Nelsen 2004, Money laundering is facilitated by banks, financial services companies and network of business advisers as electronic funds transfer (EFT) becomes possible.

The nature of money laundering is such that it has far reaching impact both locally and on international scene. This fact was underlined by the Nigeria former Chairman of EFCC, Malam

Nuhu Ribadu who noted that the amount in various types of corruptions involving transnational economic and financial crimes are large enough to negatively affect the integrity of domestic and global economies (EFCC Website, 2009). To make progress with AML measures involves a lot of interplay of political will and international cooperation. As noted by Aluko and Mahmood (2012) "...the phenomenon of money laundering, amongst other economic and financial crimes have had better success in infiltrating into the economic and political structures of most developing Countries therefore resulting to economic digression and political instability."

Most developing Countries, including Nigeria, that are not on top of the AML implementation have legal and administrative framework in place to curb the ML menace. The relevant question is whether these institutions are strong or weak to perform effectively the assignment constitutionally bestowed on them? In a speech given in Abuja, in August 2012, the Central Bank of Nigeria Governor, Mallam Sanusi Lamido Sanusi narrated his experience thus: "You know there was one chief executive officer that took away from her bank over a billion dollars. And where was this money taken to? Purchase of property. We recovered from one CEO 200 pieces of Real estate in Dubai. Johannesburg, Potomac in Washington apart from shares in over 100 companies. And all of those were purchased with depositors' funds. We got judgment against the first CEO who we were able to convict, we recovered these assets and got a six-month sentence and sorted it out (Sanusi, 2012). We went to the court in UK on the case of another CEO, we got judgment against the CEO for 142 billion naira stolen from the bank, taken to buy shares while manipulating the shares of his own institution and also transferred outside to purchase property (Sanusi, 2012).

The second CEO, we finished our case, established in Nigeria – we had a civil case in the UK, we had a criminal case in Nigeria – established the case… two weeks before the closing statements were made the judge was miraculously promoted to the Federal Court of Appeal. After three years of trial at the very end of trial!" (Sanusi, 2012). The CBN Governor expressed his frustrations with the banking reforms and political environment as following:

We were dealing with chief executives that in 2009 had become invincible. They were in the seat of power. They had economic power and they had bought political protection. They were into political parties, they had financed elections of officers and they believed that nobody could touch them (Sanusi, 2012). And every time I said it was time for us to take action, people said to me you can't touch these people, you'll be sacked. Or you can't touch these people they will kill you. Or you can't touch these people, you can't do that" (Sanusi, 2012). A lot of fraudulent cases occurred in the Nigeria jurisdictions that might have rightly informed the decision of FATF to keep the Country on the grey list. A few of such cases that are already in public domain are cited here.

Failures in the Financial System – A Synthesis of Related Cases

Recently, the United Bank of Africa (UBA), one of the largest commercial bank in Nigeria which was granted the right to operate an office in United States by the US Feds was heavily penalised by the United States of America Department of Treasury Financial Crimes Enforcement Network (FinCEN). The civil penalty was as high as 3.4% of the total asset of the bank at the time. The total amount assessed was 1.785 billion Naira. The penalty stemmed from the UBA's failure to implement effective anti-money program and consequent failure to report suspicious transactions amounting to $197,000.000.00 over time. Operating in US jurisdiction strictly require a financial institution to conform to the rules by implementing a credible AML program. Specifically FinCEN listed the control violations as follows:

i. The branch failed to implement effective procedures for conducting due diligence on the branch's customers.

ii. The bank failed repeatedly over the course of multiple examinations to implement internal controls that are reasonably designed to assess the risks of potential money laundering or other suspicious activities and ensure the detection and timely reporting of suspicious transactions.

iii. Failure by the branch to have effective procedures to obtain critical information to establish risk profiles including obtaining information on customer's business activities, source of funds, financial capacity etc

iv. As of June, the branch did not have procedure for identifying politically exposed persons (PEPs) and any procedures for managing the risks associated with such individuals. This is despite the fact that the branch processed transactions for high-level PEPs, including senior political figures in Nigeria.

v. The branch failed to implement effective procedures to manage the risks associated with:

- **a.** Foreign correspondent bank accounts,
- **b.** Embassy and foreign consulate accounts,
- **c.** Foreign based cash intensive business,
- **d.** Money service business,
- **e.** Import and Export companies,
- **f.** Jewellery and Precious metals dealers,
- **g.** Foreign exchange house, and
- **h.** Off shore corporations

vi. The policies and procedures for investigating suspicious activities were far too general and according to FinCEN did not provide adequate instructions to branch personnel.

vii. The branch lacked effective procedures to detect and respond to suspicious activities involving wire transfers and dollar transactions from other foreign banks.

viii. There were no written procedures specifying the responsibilities of compliance and operations personnel.

ix. Operation personnel had the authority to approve suspicious transactions without compliance department involvement

x. The branch compliance personnel had the authority to REMOVE PERSONS FROM THE WATCH LIST without approval from appropriate level of management at the branch.

xi. Independent testing of the branch was not effective to ensure compliance with the US Bank Secrecy Act (BSA).

xii. The branch failed to report transactions that it either knows, suspects or has reasons to suspect are suspicious. Usually transaction is the one that could involve funds derived from illegal activities, or is "conducted to disguise" the illegal source, or that has no apparent business purpose and the branch has no reasonable explanation for the said transaction. Usually these types of transactions have to be reported no later than 20 days after obtaining facts but under no circumstances would the filing be done later than 60 days after the initial detection.

xiii. Despite this: The UBA branch failed to timely file 140 required suspicious activities reports between 2005 and Feb.1 2008, b. 29 reports were filed at least six (6) months late, c. 5 reports were filed over 3 years late including approximately $120 million suspected proceeds of corruption in Nigeria, and d. It also failed to timely file reports on proceeds of advance fee frauds, also known as 419, structuring or wire transfers to avoid reporting. The delays by the UBA to timely file the suspicious activities report significantly impaired the usefulness of the information because it failed to timely report it for action by US Law enforcement agencies.

Guaranty Trust Bank Case

Another recent case that showed deficiency in AML activities in Nigeria is that of Guaranty Trust Bank PLC (GTB). The UK subsidiary of Nigeria's GTB was penalised to the tune of £525,000.00 ($815000.00) for failing to institute adequate controls for prevention of money laundering. Similar to UBA case, the Financial Conduct Authority (FCA) alleged that GBA failed to:

a. Failed to assess potential money laundering risks, b. Screen customers against sanction lists, c. Establish the purpose of the accounts being opened in their London branch or revise the activity of "high risk" accounts.

GTB is one of the Nigerian banks that deployed technology for their operations right from the inception. The discovery by the FCA is therefore surprising to say the least. Tracey McDermott, the FCA's director of enforcement remarked "GT Bank's failures were serious and systemic and resulted in an unacceptable risk of handling the proceeds of crimes".

Cases of Oil Theft/Illegal Sales

In 2009, the Niger delta was a mess. Relentless attacks on pipelines and the kidnapping of oil workers had cut the country's crude production to 1.5m barrels a day, a 20-year low. When the government launched an amnesty programme, allowing militants to hand over weapons in exchange for vocational training and monthly payments, few people believed it would work. Nonetheless, the unrest stopped and production was soon above 2m b/d. However, after a brief period of stability, oil production has now slipped back to levels last seen during the period of strife. There are several reasons for the decline, including maintenance problems, flooding and sabotage, but the main factor is crude oil theft or bunkering.

The problem has existed on a small scale for some time, with local communities who rarely see any benefits from the petroleum business tapping into pipelines and selling oil to artisanal refineries. However, over the past two years oil theft has become a much bigger enterprise. As a result, stolen oil is being shipped to neighboring countries and even other continents – including Europe and Asia – where it is refined, seemingly with the connivance of powerful Nigerian officials and members of the security services. Oil companies have said the stolen oil amounts to 150,000 b/d – much more than the daily output of Ghana's petroleum industry – but government officials believe the figure is higher. In 2012, finance minister Ngozi Okonjo-Iweala said 400,000 b/d was being stolen, costing the country $1bn a month. Despite frequent protests by the oil companies operating in Nigeria – and Royal Dutch Shell in particular – little appears to have been done to stop the plundering. Output slipped to 1.9m b/d in each month from April to July (Xan, 2012). If there is any further fall, Nigeria could see Angola take its crown as Africa's largest crude producer, a repeat of the situation in 2009. "Oil theft is now a much more significant issue than it has been in the past," says Rolake Akinkugbe, head of oil and gas research at Ecobank. "At the same time, new investment in the industry has almost grounded to a halt." (Xan, 2012).

Methodology

This study adopts Political, Social, Economic and Technological analysis approach. This is because the incidence of money laundering is a highly politicized issue but touches practically on social and economic phenomena. Technology is also incorporated into the analysis because most incidence of money laundering is committed across international borders with the aid of information technology.

Pest Analysis

Political Analysis: In Nigeria, majority of electorates still live on less than one dollar a day. Politicians heavily depend on money politics where electorates are giving as low as five dollars to 'buy' their votes. Apart from this there are proven cases of electoral officers who receive money from politicians in order to declare them winner above their opponents. Despite establishment of relevant laws and enforcement institutions, the institutions are too weak to be effective. The Police, the Judiciary, EFCC, etc all have their own share of ineffectiveness. This is reflected in the frustrations expressed by the Governor of Central Bank of Nigeria, "We were dealing with chief executives that in 2009 had become invincible. They were in the seat of power. They had economic power and they had bought political protection. They were into political parties, they had financed elections of officers and they believed that nobody could touch them."(Sanusi, 2013). In a political state, individual can only become more powerful than institutions where there is corruption and/or dictatorship.

Another negative effect of weak institution is the case of former Executive Governor of Delta State, Chief James Ibori. Ibori was discharged and acquitted for Money Laundering case by Mr. Justice Mercel Awokulehin in a Federal High Court, Asaba division, Nigeria but was eventually arrested in Dubai and deported to London. The London court convicted Chief Ibori for the same Money Laundering offence. As Adebayo (2012) put it "Another point which undermines Justice Awokulehin's discharge of Ibori is the fact that Ibori actually pleaded guilty at the London trial. He spared the prosecution from having to prove the case beyond reasonable doubt; he held up his hands and said- 'yes, I stole billions of Naira from the people of Delta state'. By that singular action, Ibori condemned Justice Awokulehin and the Nigeria's Criminal Justice process that discharged of him on the same facts. Justice must not only be fair, but must be manifestly seen (by the people) to be fair. No matter the legal technicalities involved; no matter the explanation by Justice Awokulehin, it is almost impossible to persuade an average member of the public in Nigeria that something isn't wrong with a judicial process that enabled Ibori to escape justice in Nigeria only for him to plead guilty on the same set of facts overseas" (Adebayo, 2012). If Ibori had chosen to remain in Nigeria, he would be walking free and actively engage in his role as a political gladiator.

Economic Analysis: Nigeria Economy is regarded as the second largest Economy in Africa next to South Africa until recently when it was rebased and over take South Africa to claim the first position. It is therefore an important Anti-Money Laundering Unit in Sub-Sahara Africa. The theft and sale of Nigeria oil in neighboring countries and international markets points to the fact that there are international collaborators including international financial institutions where proceeds of these illegal transactions are being lodged. The only reason for this illegal collaboration is immediate economic benefits. Nigeria Government officials also exhibited lackadaisical attitude towards putting an end or at least take effective measures to reduce incidence of oil bunkering that the Minister of finance said is costing Nigeria an estimated One billion dollar a month. (Okonjo-Iweala, 2012).

Social Analysis: As a result of poverty, many citizens have lost the moral compass to ask questions about the source of individuals' wealth. Individuals who become wealthy overnight irrespective of the job they do are considered lucky. And many people are just waiting for their own 'time' to come. An individual appointed to serve government in a ministerial or executive position is not expected to be poor again on leaving office. For instance, questions are not asked where individuals purchasing and building properties in Lagos and Abuja (costing millions of Naira) get their money without bank loan or mortgage. For effective AML regime there must be social re-orientation and mobilization. It is note-worthy that lot of money are being laundered on daily basis on choice properties even within Nigeria.

Technological Analysis: The effect of technology is ubiquitous but its development may not be even. The deficiencies in AML software in developing countries and especially Nigerian banks were exposed by the cases of UBA and GTB brought to limelight in United State and United Kingdom respectively. The two banks were in forefront of Information Technology deployment in banking industry in Nigeria never the less they do not measure up to the 'best practice'. Apart from this obvious challenge the umpires need to be trained in the use of modern Information Technology to detect AML defects. As Oghojafor, B.E.A; Olayemi, O. O; Okonji, P. S; and Okolie, J. U (2010): observed:

> *....the explosion in the numbers of banks and information technology has not been matched with CBN supervisory employees' skills improvement. Thus, there is the need to urgently intensify the training and retraining of these officials.*

Ogojafor's et al observation is also true of other regulatory bodies. Apart from lack of relevant information technology that are compatible with RBA, the regulatory bodies also lack the manpower and technical knowhow to detect ML activities within Nigeria jurisdiction.

Challenges of Anti-money Laundering Approach in Nigeria

From the preceding analysis some challenges can be identified. For instance from the frustrations expressed by the former Governor of Central Bank of Nigeria it appears that some individuals are above state institutions. There is a season of impunity as shown by some bank's managing directors and ex-Governors who constantly evade prosecution or set free even by some Judges.

The use of Information Technology in our financial institutions has not been satisfactory. Some of Nigerian banks (UBA and GT bank) that are given clean bill locally by supervisory and regulatory agencies are found culpable of inability to prevent and detect huge amount of money laundering in the United Kingdom and United States of America. This put to serious question the effectiveness of Information Technology equipments and human capability being deployed by these institutions.

Findings and Recommendations

From the analysis so far it is established that the 40+9 recommendations of FATF as adopted by many countries may not be effective as indeed other local laws and regulations as well as regulatory institutions in the various implementing jurisdictions are weak. There is a compelling need to strengthen institutions for the framework to be effective. Supervisory institutions must be proactive and stay ahead of the fraudsters on technological innovations. It is suggested that human capacity must be build and maintained by the supervisory and regulatory institutions. Government must ensure that institutions are built on enduring principles. No individual must be seen to be bigger than any institutions. Policing, Supervisory and Regulatory institutions such as EFCC, ICPC, CBN, NDIC must be strengthened in order to promote merit and impartiality. Government must deliberately provide enabling infrastructures such as electricity to improve the effect of AML programmes. Availability of electricity has direct and indirect impact of the cost and provision of IT equipments.

In view of negative effects of ML to the economic well-being of a country, governments must encourage financial institutions to invest on relevant information technology equipments by providing handsome tax incentives on expenses incur on IT related equipments.

The authorities must genuinely fight corruptions in all its ramifications. The law of the land must be sacrosanct and no individual must be perceived to be above it. To effectively achieve this requires authorities to raise the standard of living of the citizenry as money laundering and other crimes are more rampant in economies where citizens live on less than two dollars per day.

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