

IMPACT OF INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) ON FINANCIAL CRIMES: A CRITIQUE*

Abstract

Information and Communication Technology (ICT) has a great impact on financial crimes in Nigeria and all over the globe. The different forms of unified communications and integration of telecommunications (telephone lines and wireless signals), computers as well as necessary enterprise software, middleware, storage and audio-visual systems, which enable users to access, store, transmit and manipulate information has resulted in the emergence of new species of financial crimes, especially cybercrimes. The various forms of cybercrimes are the direct byproducts of the deployment of ICT in the delivery of financial services, including FinTech. The law has thus developed rapidly by way of law review, repeal and re-enactment in order to catch up with the pace of evolution of finance crimes in Nigeria and in other jurisdiction, such as Britain. The problems posed by the deployment of mobile and Internet payment systems through the use of computers, tablets, or smartphones through web-based software or applications, arising from the advent of Internet of Things (IoT), Artificial Intelligence (AI) and other fast evolving creations of the ICT era are being tackled head on by changing legislation and institutions.

Introduction

The advent of Information and Communication Technology (ICT) in the financial services sector and in modern business transactions carries huge challenges for the delivery of goods and services and the payment for same. Cybercrimes and other Internet and ICT based crimes pose huge dangers to modern society. The deployment of commercial services on mobile devices and over the Internet in the era of Artificial Intelligence (AI) and easy identity theft present very challenging difficulties. The law must rapidly evolve with the emerging trends in ICT usage in every sphere of human endeavour where criminal elements have engaged ICT for the criminal enterprises. No doubt, the ease of executing financial transactions, especially money transfers on ICT backbones is associated with the fast-pace of financial crimes on mobile and Internet banking and other financial services platforms. The law must respond frequently to the new forms of crimes arising from such technologies such as blockchain and crypto-currencies as well as other areas of digital assets transactions.

Meaning of Information and Communication Technology (ICT)

The term ‘technology’ lacks a simple and simplistic definition. It is conceived as the deployment of art or skill to create something from nature.¹ Technology is concerned with the

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¹ La Shun L Carroll, “A Comprehensive Definition of Technology from an Ethological Perspective” (2017) 6 (4)

Social Sciences, 6 – 20.

relationship between humans and their environment. Among its many definitions, ‘technology’ is said to be the information necessary to achieve a certain production outcome from a particular means of combining or processing selected inputs which include production processes, intra-firm organizational structure, management techniques, and means of finance, marketing methods or any of its combinations.²

Etymologically, ‘technology’ has its roots in the Indo-European word ‘tek’ which referred to ‘the building of wooden houses by wattling’, that is, by the weaving of sticks together.³ The Greek word ‘techne’ from which the modern term ‘technology’ is derived refers to ‘know how’ or the knowledge of how to make things that would otherwise not exist.⁴ Technology therefore refers to the creative ability of humans to produce tangible and intangible realities from nature or the environment.

Information and Communication Technology (ICT) refers to the merging or convergence of audio-visual and telephone networks with computer networks through a single cabling or link system.⁵ ICT has become one of the building blocks of modern society.⁶ ICT stresses the role of unified communications and integration of telecommunications (telephone lines and wireless signals), computers as well as necessary enterprise software, middleware, storage and audio-visual systems, which enable users to access, store, transmit and manipulate information.⁷

Advancement in communication capability is a major distinguishing feature between humans and other animals and the ability to discuss and interact with people through the Internet without physically meeting them is one of man’s greatest inventions.⁸ ICT, as computer-based technology, facilitates the sharing of ideas, thoughts and information by leveraging virtual networks and communities, via computers, tablets, or smartphones through web-based software or applications. The advent of Internet of Things (IoT), Artificial Intelligence (AI) and other fast evolving creations of the telecommunication era are made possible by ICT.⁹ ICT as a technology that helps people to collaborate, continues to evolve.¹⁰ One major evolution of ICT is FinTech, which is the use of technology to automate processes in financial services.¹¹

² Sazali Abdul Wahab, et al, “Defining the Concept of Technology and Technology Transfer: A Literature Analysis” (2012) 5 (1) International Business Research, 61 – 62.

³ Eric Schatzberg, *Technology: Critical History of a Concept* (University of Chicago Press 2018) 19 – 22.

⁴ *Ibid.*

⁵ Jeremiah Chukwu and Agwu Joy Nneka, “Information and Communication Technology (ICT) and Its Application in Telecommunication” (2012) 1 [3] Journal of Environmental Science, Computer Science and Engineering Technology, 250 – 261.

⁶ *Ibid.*

⁷ Yekini Nureni Asafe, *Information and Communication Technology (ICT): Concepts and Application* (Vol. 1, Hasfem Publication Center 2014) 1.

⁸ Jonathan Ekperusi, “Social Media and New Trends in the Law of Defamation: Exploring Some Aspects of Legal Interventions in Cyberspace” (2021) 2 Imo State University Journal of Private and Property Law, 175 – 193.

⁹ *Ibid.*

¹⁰ Jonathan Ekperusi, “Law and Layering in the ICT Age: Transitioning from Analogue to Digital Law Practice” Paper presented at the Nigerian Bar Association (NBA) Ughelli Branch 20th Anniversary Celebration/2021 Law Week on 21 December, 2021.

¹¹ K Thomas Liaw (ed.), *The Routledge Handbook of FinTech* (Routledge Taylor & Francis Group 2021) 3

Another major evolution of ICT is cybercrimes, which refers to computer-related crimes and crimes related to the Internet.¹² Cybercrime is perpetuated by a citizen using the Internet.¹³

Understanding Financial Crimes

Financial crimes refer to non-violent criminal and illicit activities committed with the intention of generating income or earning wealth either by an individual or a group which violates the existing laws governing economic and business activities of government and its administration. Financial crimes include any form of fraud, narcotic drug trafficking, kidnapping for ransom, terrorism and money-laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, foreign exchange malpractice including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.¹⁴

The laws dealing with financial crimes differ from one jurisdiction to another. For instance, what constitutes financial crimes in Nigeria is different from Britain. In Britain, financial crime is defined as any offence involving fraud or dishonesty; misconduct in, or misuse of information relating to, a financial market; or handling the proceeds of crime.¹⁵ In Britain, there is a more simplistic definition of financial crime as any offence involving money and includes a long list of designated criminal conduct.¹⁶ Financial crimes in Britain also include unfair computation of commission in secured credit transactions¹⁷ and obtaining of property through unlawful conduct.¹⁸

In Nigeria on the other hand, financial crimes are defined to include business crimes and economic crimes.¹⁹ In Britain, financial crimes have involved corporate money laundering, financial misappropriation and terrorism financing.²⁰ Financial crimes manifest as fraud, money laundering, terrorism funding, insider dealing, market abuse, bribery and corruption as well as tax avoidance and evasion.²¹ The fight against financial crimes tackles the intricate interrelationship between financial crimes, international drug trade and terrorism financing.²² There is the argument that money laundering and terrorism financing are the more prevalent cross-border financial crimes.²³

¹² Ifeoma E Nwafor, *Cybercrime and the Law: Issues & Developments in Nigeria* (CLDS Publishing 2022) 19 – 26.

¹³ Jorge C Nkwoh and Nkechinyere T A Onyekwere, “Debates on Globalization: For and Against” (2021) 2 Imo State University Journal of Private and Property Law, 114.

¹⁴ Economic and Financial Crimes Commission (Establishment) Act 2004, s 46; *Dr. Joseph Nwobike, SAN v Federal Republic of Nigeria* (2021) LPELR - 56670 (SC).

¹⁵ Financial Services Market Act 2000, s 6(3).

¹⁶ Paul Eisenberg, ‘Financial crimes – is there any way out of the theoretical deadlock?’ (2017) 24 [4] *Journal of Financial Crimes* 529.

¹⁷ *Plevin v Paragon Personal Finance Limited* (2014) UKSC 61.

¹⁸ *Perry and others v Serious Organised Crimes Agency* (2012) UKSC 35.

¹⁹ Osaretin Aigbovo, ‘Trend and pattern of economic and financial crimes statutes in Nigeria’ (2019) 26 (4) *Journal of Financial Crimes* 969.

²⁰ *HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd and Another* (2014) UKSC 64.

²¹ Karen Harrison and Nicholas Ryder, *The Law Relating to Financial Crime in the United Kingdom* (Routledge 2022).

²² Rohan D. Clarke, *Illicit Finance and the Law in the Commonwealth Caribbean: The Myth of Paradise* (Routledge 2022).

²³ NkechikwuAzinge-Egbiri, *Regulating and Combating Money Laundering and Terrorist Financing:*

Money laundering refers to the process by which the actual origin and ownership of the proceeds from illegal activities are concealed and disguised but processed through an intricate financial web into legitimate funds with the aim of infusing same into the formal economy.²⁴ Money laundering involves converting or transferring resources or property derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substances or any illegal act, with the aim of either concealing or disguising the illicit origin of the resources or property, or aiding any person involved in the illicit traffic in same.²⁵ In Nigeria, engaging in certain financial transactions beyond an approved threshold without going through a financial institution also amounts to money laundering.²⁶ For instance, certain categories of people with reporting obligations under the money laundering control legislation in Nigeria have sought to be excluded for various reasons. In *Central Bank of Nigeria v Registered Trustees of the Nigerian Bar Association & Anor*,²⁷ it was held that the Money Laundering (Prohibition) Act 2011 did not apply to legal practitioners in Nigeria as to make them part of the categories of designated non-financial institutions. Thus, the role played by legal professionals in the laundering of criminal proceeds generated by others has become a matter of serious concern for relevant authorities at national and international levels.²⁸

Corruption is another major species of financial crimes. It includes bribery, fraud and other related offences,²⁹ such as concealment or retention of the proceeds of crime and abuse of office.³⁰ It includes payment of bribes to secure work and to secure the outcome of cases by a firm of solicitors.³¹ Corruption affects both the public and private sectors in developed and developing economies.³² The prevention of terrorism financing, the proliferation of nuclear weapons and the improvement of international security are matters tackled by efforts at combating financial crimes.³³

ICT and Financial Crimes

The advancements in ICT have created the problems of cybercrimes, many of which are financial crimes.³⁴ The advent of cashless economies globally carries with it serious concerns in the field of cybercrimes and cyber security. Mobile/Internet banking and electronic money transfers are rapidly changing the face of commercial activities worldwide.³⁵ In Nigeria, the

The Law in Emerging Economies (Routledge 2022).

²⁴ Howard Chitimira and Oyesola Animashaun, 'The adequacy of the legal framework for combating money laundering financing in Nigeria' [2023] *Journal of Money Laundering Control* 110.

²⁵ *Gabriel Daudu v Federal Republic of Nigeria* (2018) LPELR - 43637(SC).

²⁶ *Oyebode Alade Atoyebi v Federal Republic of Nigeria* (2017) LPELR - 43831(SC).

²⁷ Appeal No. CA/A/202/2015: *Central Bank of Nigeria v Registered Trustees of the Nigerian Bar Association & Anor* (Court of Appeal, 14 June 2017).

²⁸ Katie Benson, *Lawyers and the Proceeds of Crime: The Facilitation of Money Laundering and its Control* (Routledge 2020).

²⁹ Corrupt Practices and Other Related Offences Act, 2000 s 2.

³⁰ *Orji Uzor Kalu v Federal Republic of Nigeria* (2016) LPELR - 40108 (SC).

³¹ *Clyde & Co LLP and Another v Bates Van Winklehof* (2014) UKSC 32.

³² Eghosa O. Ekhaton, 'Public sector ethics in the United Kingdom: An Overview' (2012) 4 (2) *Journal of Human & Social Sciences* 91 – 100.

³³ *Bank Mellat v Her Majesty's Treasury* (2013) UKSC 38.

³⁴ *Lukaszewski v The District Court in Torun, Poland and others* (2012) UKSC 20.

³⁵ Uche Val Obi SAN, 'An Evaluation of the Impact of Central Bank of Nigeria's Cashless Policy: Purpose, Value and Challenges' in Fabian Ajogwu, SAN (ed), *Footprints in the Path of Law: Essays in Honour of Dr Michael Ajogwu, SAN* (CLDS Publishing 2022) 13 – 27.

cybercriminals, generally referred to as “Yahoo Boys” have constituted serious threat to the economy, especially by the scare they create for foreign investors and online stock exchange transactions. There are also crimes involving the creation of false bank credit and debit alerts on electronic account statements. Counterfeit financial instruments used in international commercial transactions thrive in cyberspace. In 2011, the Norton Cyber-Crime Report revealed that 431 million adults in 24 countries had been victims of cybercrime with financial losses totaling \$388 billion.³⁶

Cybercrimes may be grouped into two, namely, cyber-dependent crimes and cyber-enabled crimes. Cyber-dependent crimes occur through hacking, denial of service (DoS) attack, distributed denial of service (DDoS) attack, and malware such as viruses, worms, Trojans, spyware and Bots. Cyber-enabled crimes include online fraud, advance fee fraud (Nigerian Scam), identity fraud, among others.³⁷ In Britain, a number of anti-money laundering issues in online gambling have been highlighted.³⁸ The newer threats from cybercriminals are posed by blockchain technology³⁹ and its associated crypto-currencies.⁴⁰ Crypto pseudonyms may require the use of *Norwich Pharmacal Orders*⁴¹ to unravel suspects behind certain financial crimes. The challenges around crypto transaction may be argued to concern privacy and data protection.⁴² The advent of Internet of Things (IoT), Artificial Intelligence (AI) and other fast evolving creations of telecommunication era is posing bigger challenges in combating financial crimes.⁴³

The apparent insufficiency of legal framework for combating financial crimes together with other factors, such as lack of political will, cultural factors conducive to corruption and other financial crimes are responsible for the failure of the efforts at frontally tackling the malaise in Nigeria.⁴⁴ Despite the enactment of the Money Laundering (Prevention and Prohibition) Act 2022, the Terrorism (Prevention and Prohibition) Act 2022 and the Proceeds of Crime (Recovery and Management) Act 2022 in Nigeria, there is still a void in combating financial crimes that must be addressed.⁴⁵ There is an urgent need for a more robust institutional

³⁶Eric Kelechi Igwe, *A Juridical Analysis of Cybercrime: Nigeria and Beyond* (Law Pavilion 2017) vi.

³⁷Ifeoma E. Nwafor, *Cybercrime and the Law: Issues & Developments in Nigeria* (CLDS Publishing 2022) 19 – 26.

³⁸Slobodan Tomic, ‘Regulatory Approach to Anti-Money Laundering in Online Gambling in the UK’ in Doron Goldbarsht and Louis de Koker (eds), *Financial Technology and the Law: Combating Financial Crime* (Springer 2022) 53 – 71.

³⁹Paul Michael Gilmour, ‘Decentralized Blockchain Technology: Towards a Trusted and Transparent Beneficial Ownership Regime’ in Doron Goldbarsht and Louis de Koker (eds), *Financial Technology and the Law: Combating Financial Crime* (Springer 2022) 185-209.

⁴⁰IlariaZavoli, ‘Cryptocurrencies Transactions in the UK Real Estate Market: Threat or Opportunity for Anti-Money Laundering?’ in Doron Goldbarsht and Louis de Koker (eds), *Financial Technology and the Law: Combating Financial Crime* (Springer 2022) 67-91.

⁴¹See *Norwich Pharmacal Co. and others v Customs and Excise Commissioners* (1974) AC 133.

⁴²Olumide Babalola, ‘An Analysis of the Legal and Institutional Framework for Data Protection in Nigeria’ (2021) 11 [1] *Nigerian Bar Journal* 1, 3.

⁴³Jonathan Ekperusi, ‘Social Media and New Trends in the Law of Defamation: Exploring Some Aspects of Legal Interventions in Cyberspace’ (2021) 2 *Imo State University Journal of Private and Property Law*, 175, 193.

⁴⁴Osaretin Aigbovo and Lawrence Atsegbua, ‘Nigerian anti-corruption statutes: an impact assessment’ (2013) 16 (1) *Journal of Money Laundering Control* 62 – 78.

⁴⁵Olusola Joshua Olujobi and Ebenezer Tunde Yebisi, ‘Combating the crimes of money laundering and

restructuring and decentralization of money laundering governance in Nigeria.⁴⁶ The prevalence of economic and financial crimes in Nigeria has disastrous implications for the economic security, sociopolitical security, social wellbeing and a negative image of Nigeria in the international financial system.

In Britain, the use of a hybrid mechanisms of Deferred Prosecution Agreements (DPAs) and the imposition of fines on offending institutions in order to tackle the new challenges posed in the aftermath of the LIBOR and FX crises in the UK are being advocated.⁴⁷ That approach entails the use of both civil regulatory powers to impose fines and the activation of criminal cartel sanctions against individuals in cases of market manipulation and strong enforcement mechanism against affected banks.⁴⁸ Evidence suggests that although some people will never act corruptly on moral grounds, and others will act corruptly out of habit, a majority of people will weigh the costs and benefits of so acting (are opportunistic). Corruption, like supplier collusion, therefore needs to be combated through changing incentives and by ensuring that the cost of acting unlawfully exceeds its benefits; expected punishment, must exceed its likely benefits taking into account the probability of the conduct being uncovered and prohibited. A major challenge is that although the probability of detection has a significant impact on the commission of offences, there is a picture of limited enforcement in both the bid rigging and domestic bribery spheres.⁴⁹

Legal Framework for Tackling Financial Crimes in Nigeria

The legal framework for tackling financial crimes in Nigeria has been regularly updated to respond to the challenges posed by ICT in the fight against financial crimes in Nigeria. The various agencies involved in the fight against financial crimes in Nigeria have been in the forefront of recommending regular amendment of the applicable laws in order to respond adequately to the rapidly evolving challenges posed by ICT in the fight against financial crimes. Some of the laws are highlighted below.

Economic and Financial Crimes (Establishment) Act 2004 (as amended)

The Economic and Financial Crimes Commission (Establishment) Act 2004 establishes the Economic and Financial Crimes Commission (EFCC) with the responsibility for the enforcement of all economic and financial crimes laws in Nigeria. The EFCC Act provides for the operations of the Financial Intelligence Unit (FIU) under the EFCC, until the Nigerian Financial Intelligence Unit Act 2018 was enacted. The EFCC Act is the major legislation for combating financial crimes in Nigeria. The enabling legislation gives the EFCC responsibility for co-ordinating the various institutions involved in the fight against all forms of financial crimes in Nigeria.⁵⁰ In *Caratiquit Michael Bryan v Federal Republic of Nigeria*,⁵¹ the appellant

terrorism financing in Nigeria: a legal approach for combating the menace' (2023) 26 (2) Journal of Money Laundering Control 268.

⁴⁶ *Ibid.*

⁴⁷ Diana Johnson, 'What Are the Merits of Taking a Hybrid Regulatory Approach Toward the Enforcement of Corporate Financial Crime in the United Kingdom and United States of America?' (2022) 3 (1) Journal of White Collar and Corporate Crime 23 – 32.

⁴⁸ *Ibid.*

⁴⁹ Allison Jones, "Combating Corruption and Collusion in UK Public Procurement : Proposals for Post-Brexit Reform" (2021) 26 (4) the Modern Law Review 667-689.

⁵⁰ *Ibrahim Shehu Shema & Ors v Federal Republic of Nigeria* (2018) 41 WRN 1, 30-31, per Bage, JSC.

⁵¹ (2017) 17 WRN 151 at pp: 162-163.

was charged along with others⁵² for offences relating to illegal dealing in petroleum products under the Miscellaneous Offences Act. Despite the contention that the EFCC Act does not confer powers on the EFCC to prosecute offences under that legislation, the Court of Appeal held that the EFCC Act donates prosecutorial power to the EFCC over all financial crimes in Nigeria.⁵³

Money Laundering (Prevention and Prohibition) Act 2022

The Money Laundering (Prevention and Prohibition) Act 2022 provides for an effective and comprehensive legal framework for the prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria.⁵⁴ The Act strengthens the existing system for combating money laundering, makes provisions to prohibit money laundering, expands the scope of money laundering offences, provides appropriate penalties and establishes the Special Control Unit Against Money Laundering (SCUML) under the Economic and Financial Crimes Commission (EFCC), for the effective implementation of the money laundering provisions of the Act in relation to designated non-financial businesses and professions.⁵⁵ This Act improves greatly on the 2011 Act⁵⁶ by providing a more comprehensive legal and institutional framework for combating money laundering in Nigeria. The 2022 Act creates additional obligations for financial institutions and designated non-financial institutions dealing with politically exposed persons,⁵⁷ including foreign politically exposed persons.⁵⁸ The additional obligations include the requirement of obtaining senior management approval before establishing or continuing business,⁵⁹ taking reasonable measures to establish the source of wealth or fund of the customer and the beneficial owners of the funds⁶⁰ and conducting of enhanced ongoing monitoring of such business relationships.⁶¹ The definition of funds under the 2022 Act includes virtual assets,⁶² such as crypto-currencies. The 2022 Act extends its regulation to Internet and ship-based casinos.⁶³ The definition of funds to include virtual assets and the inclusion of Internet and ship-based casino within the regulatory framework of the Act is a very welcome development as it tackles Internet-based money laundering offences involving non-conventional legal tenders.

Nigerian Financial Intelligence Unit (Establishment) Act 2018

The Nigerian Financial Intelligence Unit Act 2018, established the Nigerian Financial Intelligence Unit (NFIU) as the central body in Nigeria for requesting, receiving, analyzing and disseminating financial intelligence reports and other information to all law enforcement, security and intelligence agencies and other relevant authorities.⁶⁴ The Act empowers the NFIU to enter into memoranda of understanding or other arrangements with other authorities within

⁵² One of the other parties was Laguta Oleksiy, whose appeal is reported as *Laguta Oleksiy v Federal Republic of Nigeria* (2017) 39 WRN 145.

⁵³ *Caratiquit Michael Bryan v Federal Republic of Nigeria* (2017) 17 WRN 151, 162-163.

⁵⁴ Money Laundering (Prevention and Prohibition) Act 2022, s 1(1)(a).

⁵⁵ *Ibid*; s 1(1) (b), (c), (d) and (e).

⁵⁶ Money Laundering (Prohibition) Act 2011.

⁵⁷ S. 4(9) of the Money Laundering (Prevention and Prohibition) Act 2022.

⁵⁸ *Ibid*; s 4(8).

⁵⁹ *Ibid*; s 4(1).

⁶⁰ *Ibid*; s 4(2).

⁶¹ *Ibid*; s 4(3).

⁶² *Ibid*, s 30.

⁶³ *Ibid*.; s 5(3).

⁶⁴ S. 1 of the Nigerian Financial Intelligence Unit Act 2018.

and outside Nigeria for the effective discharge of its functions.⁶⁵ The Act also empowers the NFIU to collaborate with other regulatory authorities, law enforcement and security agencies, and self-regulatory bodies within and outside Nigeria in combating money laundering, terrorism financing, proliferation of weapons of mass destruction and related offences.⁶⁶ The Act gives the NFIU power to regularly review anti-money laundering, counter-terrorism financing, proliferation of weapons of mass destruction counter measures and other related offences counter measures in consultation with regulatory and other competent authorities.⁶⁷ The provisions of the Act make the NFIU a very central agency for the receipt, review and dissemination of information relating to the fight against financial crimes in Nigeria.

Proceeds of Crime (Recovery and Management) Act 2022

The Proceeds of Crime (Recovery and Management) Act 2022 provides for an effective legal and institutional framework for the recovery and management of the proceeds of crime, benefits derived therein, instrumentality of unlawful activities and unclaimed properties reasonably suspected to be proceeds of crime in Nigeria.⁶⁸ The Act provides for the restraint, seizure, confiscation and forfeiture of property derived from unlawful activities and any instrumentality used or intended to be used in the commission of unlawful activities, non-conviction based procedure for the recovery of proceeds of crime, and for strengthening the criminal confiscation procedure.⁶⁹

Terrorism (Prevention and Prohibition) Act 2022

The Terrorism (Prevention and Prohibition) Act 2022 provides for an effective, unified and comprehensive legal, regulatory and institutional framework for the detection, prevention, prohibition, prosecution and punishment of acts of terrorism, terrorism financing, proliferation and financing the proliferation of weapons of mass destruction in Nigeria.⁷⁰ The Act provides mechanisms for the implementation counter-terrorism, measures for the implementation and enforcement of regional and international counter-terrorism Conventions and Agreements, procedures for declaring a person a terrorist or terrorist financier, extra territorial jurisdiction of the courts in Nigeria in relation to acts of terrorism, and for compensation of victims of terrorism.⁷¹ Despite the ambitious provisions of the Act, there are several challenges encountered by prosecutors in Nigeria in the prosecution of terrorism related cases.⁷²

Nigerian and British Legal Instruments for Tackling Financial Crimes

The legal framework for tackling financial crimes in Nigeria are similar to those in Britain. In both jurisdictions, the same kinds of financial crimes are common.⁷³ While every Nigerian criminal legislation, including financial crimes legislation, must pass the constitutionality test as required by the Nigeria Constitution,⁷⁴ no such requirement exists in Britain. The doctrine

⁶⁵ *Ibid*; s 4(1)(a).

⁶⁶ *Ibid*; s 4(1)(b).

⁶⁷ *Ibid*; s 4(1)(c).

⁶⁸ S. 1 (1)(a) of the Proceeds of Crime (Recovery and Management) Act 2022.

⁶⁹ S. 1 of the Terrorism (Prevention and Prohibition) Act 2022.

⁷⁰ *Ibid*; s 1(a).

⁷¹ *Ibid*; s 1.

⁷² Nasiru Tijani, "The Effective Prosecution of the Crime of Terrorism and Terrorism Related Offences in Nigeria: Challenges and Prospects" (2023) 14 Beijing Law Review, 300-323.

⁷³ Duncan Smith, *Fraud and Corruption: Cases and Materials* (LexisNexis 2022) 2.

⁷⁴ S. 1(3) of the Constitution of the Federal Republic of Nigeria 1999. The doctrine of Constitutional Supremacy is to the effect that any legislation inconsistent with any of the provisions of the Nigerian Constitution shall to the extent of the inconsistency be *void*. See *Marwa & Ors v Nyako & Ors* (2012) LPELR-7837(SC), 169-170,

of constitutional validity is often applied by Nigerian Courts as a norm-validating doctrine based on the supremacy of the Nigerian Constitution. The doctrine of constitutional validity is jealously guarded by the Nigerian Judiciary. Whereas parliament is supreme in Britain,⁷⁵ in Nigeria, the Constitution is held to be supreme and every Court in Nigeria must bow or kowtow to the sovereign nature of the Constitution.⁷⁶ This is a major difference between the laws tackling financial crimes in Nigeria and Britain. British Courts uphold every law enacted by Parliament to combat financial crimes in Britain whereas in Nigeria, some laws or sections of laws are easily struck down by the Courts for being unconstitutional.

Bribery Laws in Nigeria and Britain

The Corrupt Practices and Other Related Offences Act which was initially enacted in Nigeria in the year 2000 and subsequently repealed and re-enacted in 2004 and later in 2010 is the Nigerian equivalent of the Bribery Act 2010 in Britain. Both legislation essentially tackle the offences of bribery and corruption. There appears to be a case law distinction between the words ‘corruption’ and ‘corruptly’,⁷⁷ when used in relation to bribery and corruption offences in Nigeria and Britain. The Corrupt Practices and Other Related Offences Act in Nigeria does not define the word ‘corruptly’.

Whereas the Corrupt Practices and Other Related Offences Act is limited to combating the offences of bribery, fraud and other related offences committed by public officials in Nigeria,⁷⁸ the Bribery Act 2010 in Britain extends to both public officials and private sector actors.⁷⁹ The scope of the Corrupt Practices and Other Related Offences Act covers the offences of bribery, fraud and other related offences⁸⁰ involving public officials in Nigeria, the Bribery Act 2010 in Britain is limited to only the various species of the offence of bribery⁸¹ as defined within the Bribery Act. Thus, in Nigeria, where bribery relates to persons and companies that are outside the public service, the Economic and Financial Crimes Commission (Establishment) Act and other legislation would apply. Thus, the Economic and Financial Crimes Commission (EFCC) investigates and prosecutes private sector offences of bribery in Nigeria.

The implication of the foregoing is that whereas a public official in Nigeria may be proceeded against for either bribery and fraud under the Corrupt Practices and Other Related Offences Act, the situation is not so in Britain. The offence of bribery in Britain is covered by the Bribery Act 2010 while the offence of fraud is covered by the Fraud Act 2006. One major advantage of the Bribery Act 2010 in Britain over the Corrupt Practices and Other Related Offences Act in Nigeria is that whereas the Corrupt Practices and Other Related Offences Act is limited to the offences of bribery, fraud and other related offences committed by public officials, the Bribery Act 2010 specifically tackles bribery by relevant commercial organisations and their

paras. B-F, per Adekeye, JSC. See also *First Bank v TSA Industries Ltd* (2010) LPELR-1283(SC), 74-75, paras. F-A, per Adekeye, JSC; *INEC v Musa* (2003) LPELR-24927(SC), 100, paras. A-C, per Niki Tobi JSC and *Tanko v State* (2009) LPELR-3136 (SC), 18-19, paras. A-D, per Aderemi, JSC.

⁷⁵ In Britain, the doctrine of parliamentary sovereignty imbues Parliament with the power to create or end any law and the Courts in Britain are not permitted to overrule legislation. See <https://www.parliament.uk/about/how/role/sovereignty> accessed on 30 October 2023.

⁷⁶ *Olafisoye v Federal Republic of Nigeria* [2004] LPELR-2553(SC), 87, paras. B-C, per Niki Tobi JSC.

⁷⁷ *Cooper v Slade* (1857) HL Cas 746.

⁷⁸ Ss 8, 9, 10, 11 and 12 of the Corrupt Practices and Other Related Offences Act.

⁷⁹ S. 7 of the Bribery Act 2010.

⁸⁰ S. 1 of the Corrupt Practices and Other Related Offences Act.

⁸¹ Ss 1, 2, 3, and 4 of the Bribery Act 2010.

associated persons, who may be commercial entities within and outside Britain. The Bribery Act 2010 also created the offences of failure of commercial organisations to prevent bribery.

The Bribery Act 2010 extends the offences of bribery to cover transactions outside of Britain by British companies, which include bribery of foreign government officials. This dimension of the offence of bribery outside of Britain is similar to the application of the Foreign Corrupt Practices Act (FCPA) by the United States to American companies operating outside the shores of the US. There is therefore the need to amend the Corrupt Practices and Other Related Offences Act in Nigeria to make same applicable to Nigerian companies operating outside Nigeria. The Bribery Act 2010 and the Fraud Act 2006 are the more handy British legislation for combating financial crimes relating to bribery of government officials and private businesses.⁸²

Whereas the Corrupt Practices and Other Related Offences Act specifically established and empowered the Independent Corrupt Practices and Other Related Offences Commission (ICPC)⁸³ to investigate and prosecution offences under the Act, in Britain, the National Crime Agency (NCA) investigates bribery offences and refers prosecution to the Crown Prosecution Services (CPS). The validity of the Corrupt Practices and Other Related Offences Act as a national anti-corruption legislation in Nigeria has been challenged by some State Governments as infringing on the devolution of powers between the Federal and State Governments under Nigeria's federal system of Government. The Supreme Court has repeatedly held that the Corrupt Practices and Other Related Offences Act is the only valid anti-corruption legislation applicable to the public sector in Nigeria.⁸⁴

Fraud Laws in Nigeria and Britain

In Nigeria, the Economic and Financial Crimes Commission (Establishment) Act, the Advance Fee Fraud and Other Related Offences Act, the Money Laundering (Prevention and Prohibition) Act 2022, the Nigerian Financial Intelligence Unit Act 2018, the Proceeds of Crime (Recovery and Management) Act 2022, and the Terrorism (Prevention and Prohibition) Act 2022 are the major legislation for tackling fraud in Nigeria. The Police and the Economic and Financial Crimes Commission (EFCC) have the major responsibility to combating fraud offences in Nigeria. The major anti-fraud legislation in Britain is the Fraud Act 2006.

In Britain, the Serious Fraud Office (SFO) bears the responsibility for investigating serious or complex fraud cases in Britain. Fraud cases outside the purview of serious fraud are investigated by the Police while His Majesty's Revenue and Customs (HMRC) handle tax fraud cases under the Fraud Act 2006. In Nigeria, the Federal Inland Revenue Services (FIRS) does not handle cases of tax evasion, except within the context of tax investigation. Prior to the enactment of the Fraud Act 2006, a number of lacunae existed as to the dimensions of fraud involving bank transfers. The British House of Lords had held in *R v Preddy*⁸⁵ that funds transferred between accounts is a chose in action and not property obtained from another person under the Theft Act 1968.⁸⁶

⁸² Joseph T Wells, *International Fraud Handbook* (LexisNexis 2018) 370.

⁸³ S. 6 of the Corrupt Practices and Other Related Offences Act.

⁸⁴ *Temple Nwankwoala v Federal Republic of Nigeria* (2018) LPELR - 43891(SC).

⁸⁵ (1996) 3 WLR 25.

⁸⁶ S. 15 of the Theft Act 1968.

One of the major innovations of the Fraud Act 2006 is the provision relating to making false or misleading representation with intent to make financial gains, including corporate false accounting.⁸⁷ This offence of fraud is different from the offence of fraud in many other jurisdictions including Nigeria. The offence is committed in any of three ways, to wit, by making false representation, by wrongly failing to disclose information and by abuse of office.⁸⁸ It is immaterial that the victim was not actually deceived or misled by the false representation.⁸⁹ Liability for this offence is not hinged on the actual effect of the false representation on the mind of the person to whom it is made.⁹⁰

It is believed that despite the innovations introduced by the Fraud Act 2006 in Britain, it is more advantageous to prosecute offences of conspiracy to defraud under the common law where the facts of a case may not sustain a conviction under the Act, as it is immaterial under the common law that the conspiracy to commit fraud actually resulted in the commission of the predicate offence of fraud.⁹¹ Similarly, in Nigeria, in addition to the received English common law, the general criminal legislation, which include the Criminal Code and the Penal Code provide for the offence of fraud. These offences usually involved obtaining property under false pretences or fraudulent conduct or deceit.⁹² Unlike Britain, Nigeria does not have a single legislation that defines and deals with the offence of fraud. The common provision of the Criminal Code in Nigeria dealing with the offence of obtaining property by false pretence is s.419, which has given the offence of fraud the particular name of *419* in Nigeria. However, the Advance Fee Fraud and Other Related Offence Act 2006 enlarged the scope of the offence of fraud in Nigeria to include receipt of property delivered by fraudulent representation, whether or not the property is delivered under the terms of a subsisting contract between the parties involved.⁹³

Money Laundering Laws in Nigeria and Britain

The Proceeds of Crime (Recovery and Management) Act 2022 (Nigeria), the Money Laundering (Prevention and Prohibition) Act 2022 (Nigeria), the Proceeds of Crimes Act 2002 (Britain), the Sanctions and Anti-Money Laundering Act 2018 (Britain), the Serious Crimes Act 2015 (Britain), the Serious Organised Crimes and Police Act 2005 (Britain), the Financial Services Act 2012 (Britain) and the Criminal Finances Act 2017 (Britain) are the major anti-money laundering (AML) legislation in Nigeria and Britain.

The Proceeds of Crime (Recovery and Management) Act 2022 combats the recovery and management of the proceeds of crime, the benefits derived therein, the instrumentality of unlawful activities and unclaimed properties reasonably suspected to be proceeds of crime in Nigeria.⁹⁴ The Act provides for the restraint, seizure, confiscation and forfeiture of property derived from unlawful activities and any instrumentality used or intended to be used in the commission of unlawful activities, non-conviction based procedure for the recovery of proceeds of crime, and for strengthening the criminal confiscation procedure.⁹⁵ The Money

⁸⁷ S. 12 of the Fraud Act 2006.

⁸⁸ *Ibid*; ss. 2, 3, 4.

⁸⁹ *UAE v Allen* (2012) EWHC 1712 (Admin).

⁹⁰ *R v Gilbert* (2012) EWCA Crim. 2392.

⁹¹ *Scott v Metropolitan Police Commissioner* (1975) AC 819.

⁹² *Onwidiwe v Federal Republic of Nigeria* (2006) NWLR (Pt. 988) 382 at p.429.

⁹³ S. 1 of the Advance Fee Fraud and Other Related Offence Act 2006.

⁹⁴ S. 1 (1)(a) of the Proceeds of Crime (Recovery and Management) Act 2022.

⁹⁵ S. 1 of the Terrorism (Prevention and Prohibition) Act 2022.

Laundering (Prevention and Prohibition) Act 2022 deals with the comprehensive prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria.⁹⁶ The Act strengthens the existing system for combating money laundering and makes provisions to prohibit money laundering, expands the scope of money laundering offences and establishes the Special Control Unit Against Money Laundering (SCUML) under the Economic and Financial Crimes Commission (EFCC), for the effective implementation of the money laundering provisions of the Act in relation to designated non-financial businesses and professions.⁹⁷ The POCA in Britain places an obligation on reporting any suspicious transaction irrespective of its significance.⁹⁸

In Nigeria as in Britain, unexplained wealth orders have been used to recover the proceeds of illegally obtained funds or proceeds of crime. The scope of the unexplained wealth orders (UWO) is however wider in Britain than in Nigeria. The major advancement in the area of recovery of proceeds of crime in Britain over the Nigeria is the fact that in Britain, the amount to be recovered is payable on the date the order is made,⁹⁹ interest is payable on the ascertained amount¹⁰⁰ and the Court is empowered to make an order to obtain money from a Defendant's bank account or building society.¹⁰¹

Conclusion

While the deployment of Information and Communication Technology (ICT) in the financial services sector and in modern business transactions is a welcome development, the problems arising therefrom are huge. The dangers posed by cybercriminals and other Internet and ICT fraudsters, including identity theft and other online and mobile crimes must be responded to as quickly as they are evolving. The deployment of commercial services on mobile devices and over the Internet in the era of Artificial Intelligence (AI) and easy identity theft must be accompanied with frequently amended laws to deal with the emerging challenges as they arise. The law must rapidly evolve with the emerging trends in ICT usage in every sphere of human endeavour where criminal elements have engaged ICT for their criminal enterprises. Unless that is the case, the ease of executing financial transactions, especially money transfers on ICT backbones with its associated fast-paced financial criminality on mobile and Internet banking and other financial services platforms, would make the modern financial services world some kind of Hobbean State of nature where the life of mobile and Internet financial services users are seriously endangered.

⁹⁶ S. 1(1)(a) of the Money Laundering (Prevention and Prohibition) Act 2022.

⁹⁸ S. 330 of the Proceeds of Crime Act 2002.

⁹⁹ *Ibid*; s.11.

¹⁰⁰ *Ibid*; s.12.

¹⁰¹ *Ibid*; s.67.