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# **NIGERIA FIGHT AGAINST FINANCIAL CRIMES: A CRITICAL EXAMINATION OF ITS SUCCESSES AND PITFALLS IN THE RESTORATION OF VICTIMS OF CRIME**

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## **Abstract**

*Financial crime is a global phenomenon that challenges the economy of sovereign nations. As a trans-border crime, it is often one of the most difficult crime to investigate and prosecute. This is because perpetrators device different approaches on regular basis to circumvent the security architecture of any nation. Victims of crime sustain humongous loss to financial criminals which in consequence significantly affects their livelihood. This paper therefore seeks to examine the Nigeria approach to fighting this crime with the view to how victims are treated after the trial and conviction of financial criminals. The paper adopted doctrinal approach to answer the lone question of how victims are treated after the conviction of financial criminals. The research discovers that victims are not reckoned with by most of the applicable laws to fighting financial crimes in Nigeria. The paper therefore recommends a comprehensive review of these legislation to carry on board order for restitution to victims of financial crime after the trial and conviction of the offenders.*

**Keywords:** Financial crimes, victims, restitution, compensation, victimization

## **Introduction**

Globally, financial crimes have, over the years, increasingly become of great concern to governments. This concern is understandable because the impacts of financial crimes vary and are in different contexts. It is common knowledge that the prevalence of economically motivated crime is a huge threat to the development of economies and the stability of many nations, including Nigeria. The evolution of the internet has rendered nations of the world to a global village. As part of the down sides of this technological advancement is the ability of cyber criminals to divert funds or deceive people and/or nations to part with huge amount of money from the comfort of their bedrooms and the click of computer buttons. Such financial onslaught could also take in physical interactions between financial criminals and their victims. The effects of these and other related activities on the global economies are not lost on the

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international community. Hence, the United Nations news of 24 September 2020, reports that –

Global finance controls haven't kept pace with a globalized, digitalized world. The FinCen Files involving \$2tn of transactions revealed this week how some of the biggest banks have allowed criminals to move dirty money around the world. They are the latest reports from investigative journalists showing the system to regulate dirty money has major gaps.

“Corruption and tax avoidance are rampant. Too many banks are in cahoots and too many governments are stuck in the past. We're all being robbed, especially the world's poor,” said Dr. Dalia Grybauskaitė, FACTI co-chair and former president of Lithuania. “Trust in the finance system is essential to tackle big issues like poverty, climate change and COVID-19. Instead we get dithering and delay bordering on complicity,” she said.

Criminals have exploited the pandemic, says the report, as governments relaxed controls to speed up healthcare and social protection. “Our weakness in tackling corruption and financial crime has been further exposed by the COVID-19,” said Dr. Ibrahim Mayaki, FACTI co-chair and ex-prime minister of Niger. “Resources to stop the spread, keep people alive and put food on tables are instead lost to corruption and abuse,” he said.<sup>1</sup>

In response to the global financial threat, Nigeria signed into law the Economic and Financial Crimes Commission (Establishment) Act, 2004<sup>2</sup> wherein several aspects of financial crimes are addressed. To give effects to the provisions of the EFCC Act, the Act itself establishes the Economic and

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<sup>1</sup> United Nations Department of Economic and Social Affairs, *Tax abuse, money laundering and corruption plague global finance* <https://www.un.org/development/desa/en/news/financing/facti-interim-report.html> accessed 06 June 2021

<sup>2</sup> Herein after referred to as 'EFCC Act'

Financial Commission whose main responsibilities are to track, investigate and prosecute financial crimes within the country.

This paper therefore seeks to examine the success of the success of this document as it relates to victims of financial crimes. The paper starts by identifying the problems arising from financial crimes as they affect the victims and the inability of the extant laws to address these problems. The paper thereafter briefly explains the defining terms. Significant aspects of some of the Nigerian laws whose main objectives is to combat financial crimes are considered with the aim of identify how victim injury occasioned as a result of the type financial crime they respectively seek to fight have been addressed.

### **The Problems**

Financial criminals exploit the inadequacies of the law to swindle their unsuspecting victims. This act of criminality is partly aided by the dearth in the level of illiteracy and poverty and partly aided by the inappreciable efforts of government to create awareness in the people before falling victims of these swindlers. These swindlers have also mastered the art of defrauding people of their hard-earned money in manners that could be difficulty of the criminal justice apparatus to successfully trace their foot prints except by a dint of luck. However, the most worrisome aspect of all these is attitudes of the criminal justice system on the injury suffered by the victim of financial crimes where the swindler is prosecuted, convicted and sentenced. According to one author, 'victims seldom receive compensation for the money they have lost.'<sup>3</sup> They are hardly restituted back to their position before they were swindled.

Another significant problem is the focus of the law and the Commission set up under the EFFF Act on those who have stolen huge amount of money such as political office holders while paying less attention to those criminals who have swindled petty traders or low income earners of their little capital they use in running their petty businesses. This class of victims are the neglected high percentage of victims of financial crimes in Nigeria. The net effect of the foregoing is that this class of victims may have lost confidence in the Nigerian criminal justice systems and what is witnessed particularly in poor settlements as well as among low income earners and petty traders is to

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<sup>3</sup> Yemisi Bamgbose, Sonia Akinbiyi, *Criminal Law in Nigeria* (Evans 2015) 321

result to self-help in seeking revenge for the injury suffered from the financial loss.

## **Conceptual Clarifications**

### **a. Financial crime**

Financial crime is defined as crime that is specifically committed against property. These crimes are almost always committed for the personal benefit of the criminal, and they involve an illegal conversion of ownership of the property that is involved. Financial crimes can occur in many different forms, and they happen all over the world. Some of the most common crimes facing the financial sector are money laundering, terrorist financing, fraud, tax evasion, embezzlement, forgery, counterfeiting, and identity theft. The two most prevalent types of financial crime faced today are money laundering and terrorist financing.<sup>4</sup> These crimes are perpetrated on recurrent basis and criminals device different methods to circumvent the criminal justice apparatus also on regular basis.

According to the online source, Comply Advantage,

Criminals who launder money and provide financing to terrorists generally use very sophisticated techniques, which means they are difficult to detect and catch. Both of these crimes are often international, as money launderers and terrorist financiers need to smuggle cash over borders to facilitate their plans. It is not uncommon for these criminals to have corrupt connections in government and business; these could include financial institution employees, accountants, government officials, and other service providers.<sup>5</sup>

The term can be expanded to include bribery and corruption, proceeds of drug trafficking, terrorist financing (TF), the financing of proliferation of weapons of mass destruction. The list is endless.

In countries like Nigeria that are transitioning to industrialization, the criminal influence on the financial system could undermine the transition to industrial and technological revolutions, which subsequently keep the country under perpetual imports slavery. Overall, it is an indisputable fact that, both in Nigeria and abroad,

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<sup>4</sup> Comply Advantage, Knowledgebase: An overview of Financial Crime and How it can affect You, <https://complyadvantage.com/knowledgebase/financial-crime/> accessed 06 June 2021

<sup>5</sup> *ibid*

the opportunities required for growth and development have been eroded by lack of trust and confidence in business relationships with Nigerians.

The following are essentially the groups of people who can commit the various types of financial crime:

1. Organised criminals, including terrorist groups, are increasingly perpetrating large-scale frauds to fund their operations.
2. Corrupt heads of state and other political leaders may use their position and powers to loot the coffers of their (often impoverished) countries.
3. Business leaders or senior executives manipulate or misreport financial data in order to misrepresent a company's true financial position.
4. Employees from the most senior to the most junior steal company or institutions' funds and other assets.
5. From outside the company, fraud can be perpetrated by a customer, supplier, contractor or by a person with no connection to the organisation.
6. Increasingly, the external fraudster is colluding with an employee to achieve bigger and better results more easily.
7. Finally, the successful individual criminal, serial or opportunist fraudsters in possession of their proceeds are a further group of people who have committed financial crime.<sup>6</sup>

#### **b. Victim**

The term 'victim' is derived from the Latin word '*victima*', which signifies a living being who is offered to the gods.<sup>7</sup> Beyond its original meaning the term has been defined in different ways. A 'victim' is a person harmed by a crime, tort or other wrong.<sup>8</sup> He is a person who has been attacked, injured or killed as a result of crime, a disease, an accident etc.<sup>9</sup> A victim is a person destroyed, sacrificed, or injured by another or by some condition or agency; or he is a person who has been cheated or duped; or he is a person sacrificed to some deity or in the performance of some religious rites.<sup>10</sup> The meaning of the word 'victim' also draws quite significantly from the emotional and psychological reactions it often evokes. Whereas the word 'criminal' is likely to attract indignation, disapproval, and moral condemnation, the

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<sup>6</sup> *ibid*

<sup>7</sup> Ezzat A Fattah, *Understanding Criminal Victimization: An Introduction to Theoretical Victimology* (Prentice-Hall Canada Inc., Scarborough 1991) 89.

<sup>8</sup> Bryan A Garner (ed), *Black's Law Dictionary* (7<sup>th</sup> edn West Group, St Paul MN 1999) 1561.

<sup>9</sup> A S Hornby, *Oxford Advanced Learner's Dictionary of Current English* (8<sup>th</sup> edn Oxford University Press, Oxford 2010) 1656.

<sup>10</sup> Cleobis H S Jayewardene and Hilda Jayewardene, 'The Victim and the Criminal Law' in Hans Joachim Schneider (ed), *The Victim in International Perspective* (Walter de Gruyter, Berlin 1982) 392.

word ‘victim’ attracts pity, sympathy, compassion, and commiseration.<sup>11</sup> A victim is the one acted upon as opposed to the one who acts upon him.

The harm principle has been adopted in several jurisdictions and in international instruments to describe the concept of a ‘victim’.<sup>12</sup> For instance, under the 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,

“Victims” means persons who, individually or collectively, have *suffered harm*, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.<sup>13</sup>

In another instance, the EU Framework Decision of the Council of the European Union on the Standing of the Victims in Criminal Proceedings [2001], art 1 (a) defines victim as, ‘a natural person who has *suffered harm*, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of the criminal law of a Member State.’<sup>14</sup>

In summary, victim in the criminal justice system can be said to be of two broad categories and these are the direct and the indirect victims of crime. A direct victim is the one who suffers the immediate consequence of a criminal act or omission, such as a person, organisation, corporation, or society. An indirect victim is one who, not being the direct victim, suffers the effects of an injury suffered by the direct victim. An instance, in the context of this paper, could be the immediate family of a person who is swindled of his earnings through which he caters for the family. Other instances include the parents or partner of a victim of financial crimes who not only bears the immediate cost of financial crimes but also goes through excruciating psychological torture of knowing that their daughter, son, wife or husband as the case may be has been defrauded. Therefore, a person or interest is considered a victim in the context of this paper because the person or interest has suffered a kind of victimisation from the illicit financial activity or fraudulent omission of another. In the context of this paper therefore, a victim is the person who suffers any harm which could be economic or emotional and which is considered by law as crime.

### **c. Compensation**

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<sup>11</sup> Fattah (n 7) 89.

<sup>12</sup> Matthew Hall, *Victims and Policy Making: A Comparative Perspective* (William Publishing, Abingdon 2010) 30.

<sup>13</sup> UNGA Res A/RES/40/34 (29 Nov 1985) Annex para 1.

<sup>14</sup> Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:en:PDF> accessed 06 June 2021.

Compensation refers to the award to a victim of the crime for the injury suffered from the crime for which the defendant has been convicted. Compensation is required to be commensurate to the injury suffered by the victim and this is may be paid by the defendant himself or any other person or the State as the court may deem fit.<sup>15</sup> In the Administration of Criminal Justice Act, 2015 which is one of the principal enactments that regulate criminal trials in Nigeria, this power of court to order payment of compensation to the victim of crime may be exercised notwithstanding the civil or criminal jurisdiction of the court.<sup>16</sup> What this suggests is that the power of a trial court to award compensation to a victim of crime will not be determined by the jurisdiction of the court to impose any particular amount of fine or a degree of punishment.<sup>17</sup>

#### **d. Restitution**

Restitution focuses on payment of compensation to the victim. The aim of this approach is to restore the victim back to his position before the crime as much as it is practicable. Hence, a trial court may, after convicting a defendant, order the convict either in addition to or in lieu of any other penalty prescribed for the offence of which the defendant has been convicted, to make restitution or pay compensation to any victim of the crime or to the victim's estate where death occurs as a result of the crime.<sup>18</sup> Where in a case of stealing or receiving stolen property the defendant is convicted, the sentencing Judge may order that such property or a part of it be restored to the person who appears to the court to be the owner, either on payment or without payment of any sum named in such order by the owner to the person in possession of such property or a part of it.<sup>19</sup>

### **Global Approaches to Fighting Financial Crimes**

#### **a. United Nations**

The United Nations Convention against Corruption is the only legally binding international anti-corruption multilateral treaty. It was adopted by the UN General Assembly in October 2003 and entered into force in 14<sup>th</sup> December 2005.<sup>20</sup> The Convention is widely accepted as the global framework guiding the fight against corruption, having been ratified by 186 countries. Nigeria is a party to The United Nation's Convention against Corruption 2003 (Corruption Convention). Nigeria signed the Convention on 9<sup>th</sup> December, 2003 and ratified it on 24 October 2004.<sup>21</sup>

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<sup>15</sup> ACJA s 314 (1)

<sup>16</sup> *Ibid*

<sup>17</sup> Yahya Duro Uthman Hambali, *Practice and Procedure of Criminal Litigation in Nigeria* (2<sup>nd</sup> edn, Feat Print and Publish 2018) 509.

<sup>18</sup> ACJA s 321 (a)

<sup>19</sup> CPL s 270 (1); ACJ(R&R)L s 297 (1)

<sup>20</sup> United Nations Office on Drugs and Crimes, 'Signature and Ratification Status' <https://www.unodc.org/unodc/en/corruption/ratification-status.html> accessed 07 June 2021

<sup>21</sup> United Nations Office on Drugs and Crimes, 'Signature and Ratification Status' <https://www.unodc.org/unodc/en/corruption/ratification-status.html> accessed 07 June 2021.



Nigeria's report,<sup>22</sup> identified several successes and good practices, including the establishment of anti-corruption units across Government Ministries, Departments and Agencies. The provision made for civil society consultations in the adoption of the national budget, as well as the adoption of the Freedom of Information Act. The report also specifically recognised Nigeria's leadership in pursuing asset recovery cases and its readiness in sharing its wealth of experience with other countries facing similar challenges.

On 4<sup>th</sup> and 5<sup>th</sup> December 2019, the Federal Government of Nigeria in partnership with the United Nations Office on Drugs and Crime gathered national stakeholders and international anti-corruption experts in Abuja, Nigeria to launch the second report on Nigeria's implementation of the United Nations Convention against Corruption (UNCAC).<sup>23</sup> At the same time the report identified a number of areas in which further improvements are required with a view to effectively and fully implementing the provisions of UNCAC, such as achieving the complementarity of functions of various anti-corruption bodies, providing specific training for civil servants considered vulnerable to corruption, as well as members of the judiciary; a further clarification of conflicts of interest beyond the area of public procurement and the establishment of a beneficial ownership register. The report also noted a number of bills<sup>24</sup> pending in the National Assembly.<sup>25</sup>

### **b. International Criminal Police Organisation (Interpol)**

In Nigeria, the police is responsible for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged.<sup>26</sup> The Nigeria Police Force, which is a federal force, covers the entire thirty six states of the Federal Republic of Nigeria and the Federal Capital Territory, Abuja. The International Criminal Police Organisation (Interpol) is the world's largest international police organisation with its headquarters, the General Secretariat, located in Lyon, France. The mandate and primary task of Interpol is to support police and law enforcement agencies in all its member countries in their

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<sup>22</sup> <https://www.unodc.org/unodc/en/corruption/country-profile/index.html>. Accessed 12 March 2021.

<sup>23</sup> UNODC Nigeria, 'Fast-tracking the effective Implementation of the United Nations Convention against Corruption in support of the Sustainable Development Goals' <https://www.unodc.org/nigeria/en/fast-tracking-the-effective-implementation-of-the-united-nations-convention-against-corruption-in-support-of-the-sustainable-development-goals.html> Accessed 12 March 2021.

<sup>24</sup> Such as the Whistleblower Protection Bill; the Public Interest Bill; the Witness Protection Bill and the Proceeds of Crime Bill.

<sup>25</sup> UNODC Nigeria, 'Fast-tracking the effective Implementation of the United Nations Convention against Corruption in support of the Sustainable Development Goals' <https://www.unodc.org/nigeria/en/fast-tracking-the-effective-implementation-of-the-united-nations-convention-against-corruption-in-support-of-the-sustainable-development-goals.html>. Accessed 12 March 2021.

<sup>26</sup> Police Act, 2020 s 4.

efforts to prevent crime and conduct criminal investigations as efficiently and effectively as possible. Interpol aims to promote the widest, possible mutual assistance between criminal and police forces and to establish and develop institutions likely to contribute to the prevention and suppression of international crime.<sup>27</sup>

Nigeria shares land borders with four other West African countries and a long coast in the Atlantic Ocean's Gulf of Guinea. This geographical location is attractive to many organised crime groups. These criminal activities often lead to money laundering and violent crime. Nigeria sits on the crossroads between West Africa and the Sahel's most violent conflict zone. The resulting instability provides fertile ground for terrorist groups and criminal networks. The international characteristics of these crime areas and their links with crime networks around the world make the role of the Interpol National Central Bureau (NCB) in Nigeria fundamental to maintaining national and regional security. Nigeria's NCB is the coordination and investigations office for international police enquiries linked to Nigeria. The NCB plays a central role in preventing the country and surrounding regions from serving international organised crime. By providing globally sourced intelligence about regional crime, the NCB helps police officers across Nigeria to detect and investigate the flow of illicit goods along trafficking routes in and around the country. Nigeria's national police force uses the NCB to work with the global police community in investigating crime and bringing criminals to justice. It works in tight collaboration with Nigeria's other leading agencies including the National Drug Law Enforcement Agency, Economic and Financial Crimes Commission, Immigration Services, Customs, National Agency for the Prohibition of Trafficking in Persons and the National Agency for Foods, Drugs Administration and Control.<sup>28</sup>

### **Various Nigerian Legislation Aimed at Fighting Financial Crimes as National and Transnational Crimes**

It is possible to divide financial crime into two essentially different, although closely related, types of conduct. First, there are those activities that dishonestly generate wealth for those engaged in the conduct in question. For example, the exploitation of insider information or the acquisition of another person's property by deceit will invariably be done with the intention of securing a material benefit. Alternatively, a person may engage in deceit to secure material benefit for another. Second, there are also financial crimes that do not involve the dishonest taking of a benefit, but protects

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<sup>27</sup> INTERPOL, 'What is Interpol?' <https://www.interpol.int/en/Who-we-are/What-is-INTERPOL> accessed 07 June 2021

<sup>28</sup> INTERPOL Nigeria, 'How INTERPOL supports Nigeria to tackle international crime' <https://www.interpol.int/en/Who-we-are/Member-countries/Africa/NIGERIA>. Accessed 03 March 2021.

a benefit that has already been obtained or facilitates the taking of such benefit. An example of such conduct is where someone attempts to launder criminal proceeds of another offence in order to place the proceeds beyond the reach of the law.<sup>29</sup>

Nigeria has significantly enacted various laws to combat problems of financial crimes. Some of these laws will be examined next with the aim of identifying the success or otherwise of each of the laws in addressing the injury suffered by the victim as a result of the financial crime the particular laws aims to combat.

**a. Cybercrimes (Prohibition, Prevention, Etc) Act, 2015:**

This Act provides an effective, unified and comprehensive legal, regulatory and institutional framework for the prohibition, prevention, detection, prosecution and punishment of cybercrimes in Nigeria. It also ensures the protection of critical national information infrastructure and promotes cyber security and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.<sup>30</sup> The foregoing objectives of the Act and its provisions apply throughout the Federal Republic of Nigeria.<sup>31</sup>

The Cybercrimes Act 2015 creates many offences. The offences and penalties under the Act are contained in Part III of the Cybercrimes (Prohibition and Prevention etc) Act. Only few of the offences which we consider prevalent and quite damaging to business and individual interests nationally and transnationally will be discussed with the view to showing how they affect victims. The offences are cybersquatting, electronic cards related fraud, manipulation of ATM/POS terminal and identity theft.

**i. Cybersquatting**

Cybersquatting, according to an author, ‘is the act of reserving a domain name on the internet, especially a name that would be associated with a company’s trademark and then seek to profit by selling or licencing the name to the company that has an interest in being identified with the name.’<sup>32</sup> This foregoing definition is quite narrow in scope looking at the offence from the perspective of its wide coverage.<sup>33</sup> The section of the Cybercrimes Act 2015 that criminalises the offence provides for the various ways by which the offence may be committed. That is to say, section 25 of the Act provides as follows:

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<sup>29</sup> International Financial Association, ‘What is Financial Crime?’ <https://www.int-comp.org/careers/your-career-in-financial-crime-prevention/what-is-financial-crime>. Accessed 26 October 2020.

<sup>30</sup> Explanatory Memorandum to Cybercrimes (Prohibition, Prevention etc) Act, 2015.

<sup>31</sup> Cybercrimes (Prohibition, Prevention etc) Act, 2015 s 2.

<sup>32</sup> Bamgbose & Akinbiyi, (n 3) 457

<sup>33</sup> Yahya Duro Uthman Hambali, ‘An Appraisal of the Victim Compensation Regime under the Nigerian Cybercrimes Act 2015’ 2019 (9) ABUJIL 159

25 (1) Any person who, intentionally takes or makes use of a name, business name, trademarks, domain name or other word or phrase registered, owned or in use by any individual, body corporate or belonging to either the Federal, State or Local Governments in Nigeria, on the internet or any other computer network, without authority or right, or for the purpose of interfering with their use by the owner, registrant or legitimate prior user, commits an offence under this Act and shall be liable on conviction to imprisonment for a term of not more than 2 years or a fine of not more than ₦5,000,000.00 or both fine and imprisonment.

(3) In addition to the penalty specified under this section, the court may make an order directing the offender to *relinquish* such registered name, mark, trademark, domain name, or other word or phrase *to the rightful owner*. (Italics supplied for emphasis.)

The business interest of victims is the main target of the cyber offenders in this type of offence. Before the Act, this type of crime was always addressed and prosecuted as a case of infringement of trademark or passing off for which the victim could claim damages.<sup>34</sup> It was difficult to treat the conduct as a crime it was so criminalised by any law. Rather, it was more of a civil wrong than crime.<sup>35</sup> It should be noted that, even with the coming into force of the Cybercrime Act 2015, the act of intentionally taking or making use of ‘a name, business name, trademarks, domain name or other word or phrase registered, owned or in use by any individual, body corporate or belonging to either the Federal, State or Local Governments in Nigeria’ still remains a civil wrong and an infringement of the provisions of the Trademarks Act or passing off as the case may be. What however qualifies the conduct as a cybercrime is the commission of same through the medium of the internet or a computer network.<sup>36</sup>

Although, the Act provides for restitution to the victim of this offence under section 25 (3) reproduced earlier, it is however worrisome that the word ‘may’ is used as opposed to the word ‘shall’ which has been held to connote, most often than not, ‘imperative’.<sup>37</sup> It seems to us that going by the wording of the subsection 3 of the section reproduced above, the trial court after convicting the accused of cybersquatting is not under any obligation to make an order directing the offender to

<sup>34</sup> See Trademarks Act Cap T13 LFN 2004 s 5(2).

<sup>35</sup> Hambali, ‘An Appraisal of the Victim’ (n 33) 160

<sup>36</sup> *ibid*

<sup>37</sup> See for instance *State v Ilori* [1983]2 SC 155

*relinquish* such registered name, mark, trademark, domain name, or other word or phrase *to the rightful owner* (i.e. the victim).

## **ii. Manipulation of ATM/POS terminals**

This is a case whereby a cybercriminal manipulates, for financial gain, the Automated Teller Machines (ATM) which Banks and some other financial institutions place at strategic places either around their place of business or elsewhere for purposes of cash withdrawals or other transactions by their customers, or the Point of Sales (POS) device which business owners keep in their place of business with the permission of their banks for purposes of receiving moneys due to them from their customers' Bank account directly into their own Bank account.<sup>38</sup> Manipulation of ATM/POS terminals is an offence under section 30 of the Cybercrimes Act 2015 which provides as follows:

30 (1) Any person who manipulates an ATM machine or Point of Sales terminals with the intention to defraud shall be guilty of an offence and upon conviction sentenced to Five years imprisonment or ₦5,000,000.00 fine or both.

(2) Any employee of a financial institution found to have connived with another person or group of persons to perpetrate fraud using an ATM or Point of Sales device, shall be guilty of an offence and upon conviction sentenced to Seven years imprisonment without an option of fine.

Before the enactment of the Cybercrimes Act, 2015, this is another offence which was commonly charged as theft or stealing under the Criminal Code in the South and the Penal Code in the North respectively because the respective penal laws make provisions for theft or stealing of money, or may even be charged as fraud in some cases under the relevant laws. Understandably, the legislature, at the time of making those laws did not envisage there could come a time when the offence of stealing would shift from the traditional concept being the offence of physical contact to a non-physical contact offence where victims can be defrauded through the internet or computer related devices. Appreciably, the Act provides for restitution to the victim of false pretences or fraud where the property involved is money or property.<sup>39</sup> An order of restitution made by the court in this regard may be enforced by the victim or by the prosecutor on behalf of the victim in the same manner as a judgment in a civil action.<sup>40</sup>

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<sup>38</sup> Hambali, 'An Appraisal of the Victim' (n 33) 161

<sup>39</sup> Cybercrimes Act 2015 s 49(a)

<sup>40</sup> Cybercrimes Act 2015 s 49(b)

### iii. Electronic card related fraud

Electronic card related fraud refers to a dishonest retention, handling or use of an access device including, credit, debit, charge, royalty and other types of financial cards belonging to another by a cybercriminal for the purpose of gaining access to the money accounts of that other person to obtain cash, credit, goods or services for himself rather than handing it over to the true owner.<sup>41</sup> This offence may be committed even where a person comes into possession of an electronic card but appropriates it to his use or the issuer of the card. An extensive provision is made under the Cybercrimes Act 2015 to cover the many ways by which the offence may be committed.

Section 33 of the Act provides as follows:

33 (1) Any person who with intent to defraud, uses access device including credit, debit, charge, royalty and other types of financial cards, to obtain cash, credit, goods or service commits an offence and shall be liable on conviction to imprisonment for a term of not more than 7 years or a fine of not more than ₦5,000,000.00 or to both such fine and imprisonment *and shall further be liable to payment in monetary terms the value of loss sustained by the owner of the credit card.* (Italics supplied for emphasis).

(2) Any person who uses:

- (a) a counterfeit access device;
- (b) an unauthorized access device;
- (c) an access device issued to another person;

resulting in a loss or gain commits an offence and shall be liable on conviction to imprisonment for a term of not more than 7 years or a fine of not more than ₦5,000,000.00 and forfeiture of the advantage or value derived from his act.

(3) Any person who steals an electronic card commits an offence and shall be liable on conviction to imprisonment for a term of not more than 3 years or to a fine of not more than ₦1,000,000.00. *He shall further be liable to repayment in monetary terms the value of loss sustained by the card holder or forfeiture of the assets or goods acquired with the funds from the account of the card holder.* ((Italics supplied for emphasis).<sup>42</sup>

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<sup>41</sup> Hambali, 'An Appraisal of the Victim' (n 33) 162

<sup>42</sup> See Cybercrimes Act 2015 s 33 (4)-(12) for other ways by which electronic card related fraud may be committed and their penalties

Victims of this crime most times, could receive several debit alerts on their phone stating that different sums of money have been withdrawn from their account through one or more Automated Teller Machines domiciled in a State or States which are several kilometres away from where the victims are at. Banks have now put some security features in place to protect their customers against such illegal withdrawals. One of such features is the visual recording of ATM users through which the image of the offender may be captured and handed over to the appropriate security agency for the manhunt and eventual prosecution of the cyber offender.

The Act provides for some restitutions to the victim of this crime. It provides in places that the accused upon conviction shall in addition to such other punishment be liable to repayment in monetary terms the value of the loss sustained by the cardholder (i.e. the victim) or forfeiture of the assets or goods acquired with the funds from the cardholder's account.<sup>43</sup>

#### **iv. Identity theft/Cyber theft**

Identity theft under the Cybercrimes (Prohibition, Prevention etc) Act, 2015 means, 'the stealing of somebody else personal information to obtain goods and services through electronic based transactions'.<sup>44</sup> Theft of personal information may be carried out by means such as mobile cloning, telephone card's counterfeiting and illegal access to telephone boards.<sup>45</sup> Thus, the sort of identity theft envisaged by the Cybercrimes Act 2015 is one that has been obtained through electronic based transactions, i.e. an identity theft that has been obtained by means involving computer systems.<sup>46</sup> Section 22 of the Act makes provisions for identity theft as follows:

22 (1) Any person who is engaged in the services of any financial institution, and as a result of his special knowledge commits identity theft of its employer, staff, service providers and consultants with the intent to defraud is guilty of an offence and upon conviction shall be sentenced to 7 years imprisonment or ₦5,000,000.00 fine or both.

(2) Any person who fraudulently or dishonestly makes use of the electronic signature, password or any other unique identification feature of any other person; or

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<sup>43</sup> See for instance, Cybercrimes Act 2015 s 33 (3)-(5)

<sup>44</sup> Cybercrimes Act 2015 s 58

<sup>45</sup> B.R. Sharma B R, *Forensic Science in Criminal Investigation & Trials* (4<sup>th</sup> Rep, 4<sup>th</sup> edn, Universal Law Publishing Co Pvt Ltd 2012) 225

<sup>46</sup> Hambali, 'An Appraisal of the Victim' (n 33) 164

- (3) fraudulently impersonates another entity or person, living or dead, with intent to –
- (a) gain advantage for himself or another person;
  - (b) obtain any property or an interest in any property;
  - (c) cause disadvantage to the entity or person being impersonated or another person; or
  - (d) avoid arrest or prosecution or to obstruct, pervert or defeat the course of justice.

(4) any person who makes or causes to be made, either directly or indirectly, any false statement as to the material fact in writing, knowing it to be false and with intent that it be relied upon respecting his identity or that of any other person or his financial condition or that of any other person for the purpose of procuring the assurance of a card or other instrument to himself or another person commits an offence and shall be liable on conviction to imprisonment for a term of not more than 5 years or a fine of not more than ₦7,000,000.00 or to both such fine and imprisonment.

Impersonation has been an offence under the Criminal and Penal Codes since their existence.<sup>47</sup> Hence, before the promulgation of the Cybercrimes Act 2015, offences bothering on personation of a natural or corporate entity with the intent to gain an advantage whether pecuniary or otherwise were often charged under the relevant provisions of the Criminal Code or the Penal Code depending on the region of the country where the crime took place.<sup>48</sup> However, due the virtual nature of the crime, cyber offender could use the identity of the victim to transact business worth billions of naira without the victim suspecting or knowing until a long period of time when the cyber offender would have attempted to destroy the basic evidence. It could therefore not have been satisfactory to charge cyber related identity theft like any other case of personation under either the Criminal Code or the Penal Code.<sup>49</sup> The Act fails to provide for restitution to victim as part of the trial court imposed sanctions on the convict of identity theft offence.

#### **b. Advance Fee Fraud and Other Fraud Related Offences Act<sup>50</sup>**

Advance fee fraud simply connotes the act of tricking prospective victims into parting with funds by persuading them that they will receive a substantial benefit in return for providing some modest payment in advance. The characteristics of this type of

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<sup>47</sup> See CC ss 484-489; PC s 179

<sup>48</sup> *ibid*

<sup>49</sup> Hambali, 'An Appraisal of the Victim' (n 33) 165

<sup>50</sup> CAP A6 LAWS OF FEDERATION.



fraudulent scheme usually entail enlisting the services of the prospective victim to assist in an activity of questionable legality, thus providing some assurance that the victim would unlikely report the matter to the police, once defrauded. The victim would, rightly, be apprehensive that he or she had aided and abetted some criminal activity and would also be reluctant to make public the fact of his or her gullibility, particularly if adverse media coverage were a possibility. Thus, the offender is able to carry out the scheme repeatedly, sometimes in respect of the same victim, whilst police are faced with difficulties in finding witnesses and securing evidence.<sup>51</sup>

The Advance Fee Fraud and Other Related Offences Act (AFFOA) 2005 repealed and replaced the Advance Fee fraud and Other Related Offences Decree, a similar Act passed in 1995. The 2005 Enactment is an Act to create offences pertaining to advance fee fraud and other fraud related offences. It provides for the arrest and trial of persons who commit such offences and for matters connected thereto. The Act prescribes, among others, ways to combat cybercrime and other related online frauds. It provides several ways of committing the fraud. These include but are not limited to obtaining property by false pretence<sup>52</sup>; use of premises to commit an offence under the Act<sup>53</sup>; fraudulent invitation<sup>54</sup>; laundering of funds obtained through unlawful activity etc<sup>55</sup>; conspiracy, aiding, abetting, counseling, others or attempt to commit or accessory to an act or offence etc<sup>56</sup>. Section 2 makes it an offence to commit fraud by false representation. Subsections (2) (a) and (b) clearly provide that the representation must be made with intent to defraud. A few other provisions of the law will be reproduced to expose its failure to address victim injury in its drive to fight financial crimes.

**3.** Any person who is the occupier or is concerned in the management of any premises, causes or knowingly permits the premises to be used for any purpose which constitutes an offence under the Act is guilty of an offence and the sentence for this offence upon conviction, is imprisonment for a term of not less than five years without the option of a fine.

**4.** A person who by false pretence, and with the intent to defraud any other person, invites or otherwise induces that person or any other person to visit Nigeria for any purpose connected with the commission of an offence under the Act, is guilty of an offence. The

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<sup>51</sup>Russell G. Smith, Michael N. Holmes and Philip Kaufmann, 'Nigerian Advance Fee Fraud' International Society for the Reform of Criminal Law <http://www.nigerianlawguru.com/articles/criminal%20law%20and%20procedure/NIGERIAN%20ADVANCE%20FEE%20FRAUD.pdf> assessed on 18 January 2021.

<sup>52</sup> AFFOA s 1

<sup>53</sup> AFFOA s 3

<sup>54</sup> AFFOA s 4

<sup>55</sup> AFFOA s 7

<sup>56</sup> AFFOA s 8

sentence for this offence is the imprisonment for a term not less than seven years without the option of a fine.<sup>57</sup>

**7 (1)** A person who conducts or attempts to conduct a financial transaction which involves the proceeds of a special unlawful activity -

- (a) with the intent to promote the carrying on of a specified unlawful activity; or
- (b) where the transaction is designed in whole or in part –
  - (i) to conceal or disguise the nature, location, source, ownership the proceeds of a specified unlawful activity or
  - (ii) to avoid a lawful transaction under Nigerian law, is guilty of an offence.<sup>58</sup>

This law fails to address victim's injury while addressing the problems associated with financial crimes committed through advanced fee fraud.

### **c. Money Laundering (Prohibition) Act, 2011.**

This Act repealed the Money Laundering Act, 2004 and made comprehensive provisions for the prohibition of money laundering. It prohibits the financing of terrorism, laundering of the proceeds of a crime, or an illegal act. It also sets penalties for the breach of any of the provisions of the Act. The Act, under section 1 makes it illegal for any individual or corporate body to accept or make any cash payment that exceeds ₦5m (Five Million Naira) and ₦10m (Ten Million Naira) respectively, or equivalent of same.

It is also an offence under the Act for any person to conceal, remove from jurisdiction, transfer to nominees or otherwise retain the proceeds of a crime or to carry out an illegal act on behalf of another person knowing or suspecting that other person to be engaged in a criminal conduct or has benefited from a criminal conduct or conspiracy, aiding, etc; and knowing that any property either in whole or in part directly or indirectly represents another person's proceeds of a criminal conduct, acquire or use that property or possession of it. The accused upon conviction shall be liable to imprisonment for a term not less than five years or to a fine equivalent to five times the value of the of the proceeds of the criminal conduct or both such imprisonment and fine.<sup>59</sup>

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<sup>57</sup> AFFOA s 4

<sup>58</sup> See also Section 7 (2) which only provides for forfeiture of the proceeds to the Federal Government of Nigeria rather than providing for restitution to the victim.

<sup>59</sup> Money Laundering (Prohibition) Act, 2011 s 17.

It is also an offence under the Act for any person to conspire, aid, or counsel any other person to commit an offence under the Act or to attempt to commit or is an accessory to an offence; or to incite, procure, or induce any other person by any means to commit an offence under the Act, and the for offence on conviction is the same punishment as is prescribed for the main offence under the Act.<sup>60</sup>

However, like some of the laws earlier discussed, issues relating to addressing victim injury are not addressed. Perhaps this may not be unconnected with the fact that the key victim of money laundering is the State while citizens only suffer secondary victimization due to the effects of the inability of government to address their social needs due to the laundered state funds.

#### **d. Economic and Financial Crimes Commission (Establishment) Act, 2004**

This Act repealed the Financial Crimes Commission (Establishment) Act, 2002. It established the Economic and Financial Crimes Commission. The Commission, among other things, has the power to prosecute offences relating to financial malpractice, terrorism, false information, retention of proceeds of a criminal conduct, economic and financial crimes etc.<sup>61</sup>

In addition to the powers conferred on the Commission by the Act, it is also the coordinating agency for the enforcement of the provisions of the Money Laundering Act and the Advance Fee Fraud and other Related Offences Act etc.<sup>62</sup>

The Commission has over the years recorded many convictions.<sup>63</sup> In the course of the 2018 financial year, the Commission obtained 315 convictions, and within the first three months of the year, it obtained 192 convictions. In the area of recoveries, ₦11.5billion was recorded in final forfeiture, ₦133.8billion in non-forfeiture recoveries, ₦8.92billion in direct deposits, ₦38.12billion in tax recoveries, ₦1.82billion in subsidy recoveries, and ₦42billion from banks (Third Party), totaling N236billion.<sup>64</sup> Within the first quarter of 2019, the Commission made recoveries which included: N140.7million in cash, N2.021 billion in direct deposits, N7.20billion in tax recoveries, N3.06billion in subsidy recoveries and \$0.292 billion.<sup>65</sup>

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<sup>60</sup> *ibid* s 18.

<sup>61</sup> See EFCC Act ss 6 & 7

<sup>62</sup> *ibid* s 7.

<sup>63</sup> *Federal Republic of Nigeria v Chief Olabode George & Ors* [2013] LPELR-21895 (SC); *FGN v Dr. (Mrs.) Cecilia Ibru* [FHC/L/297C/2009]; *Orji Uzor Kalu v EFCC* [SCN.215/2012].

<sup>64</sup> Economic and Financial Crimes Commission, 'Public Notices and Convictions' [www.efccnigeria.org](http://www.efccnigeria.org), accessed 25 February 2021.

<sup>65</sup> *Ibid*.

From the showing of the foregoing one can easily see that the most popular sanction against a convicted person under the Act is forfeiture of any proceed of such financial crime to the Federal Government of Nigeria. For instance, section 21 of the Act provides –

For the avoidance of doubt, and without any further assurance than this Act, all the properties of a person convicted of an offence under this Act and shown to be derived or acquired from such economic or financial crime and already the subject of an interim order shall be forfeited to the Federal Government.

In cases where victims of such financial crimes are identifiable, the Act is silent on what remediating order the trial court could make to heal the injury they **have** suffered.

### **Challenges in Securing Conviction for Financial Crimes in Nigeria**

Prosecution is simply the process of trying to prove before a court of competent jurisdiction that an alleged offender committed a crime for which he/she was duly charged. The success or otherwise of prosecution will depend on several factors amongst which are:

1. Cooperation from person/institutions who should furnish relevant information: Corruption and financial crimes are non-violent crimes, which are committed in most cases by those who, are in the first place, entrusted with the responsibility of taking care of funds or their collaborators. It being so, those who should have firsthand information in these matters are those who are usually investigated. Under those circumstances, either the information/evidence is destroyed or watered down in such a manner that it will not be useful to law enforcement Agencies. It is often the case that whole files containing incriminating materials disappear or relevant parts of them. The first obstacle to surmount in the bid to successfully prosecute an offender is to be able to obtain the cooperation from those persons who should provide the relevant evidence that will enable successful prosecution.
2. The transparency of investigation of the case itself: Corruption and economic crimes cases are usually very complex and complicated. Some involve document or subjects that are very technical requiring a well-schooled investigator to unravel. It also requires an honest and patriotic investigator who will not compromise his professional competence.
3. The prosecutorial competences of the prosecuting counsel: Criminal trials require diligence, quick wittedness and industry on the part of prosecuting counsel. He must know both the law and procedure in order to effectively prosecute the case. A prosecuting counsel who is either incompetent or compromised is an obstacle

to the case. There is therefore the need for continuing legal education of prosecuting counsel.

4. The transparency and fairness of the presiding judge: A judge, in the dispensation of justice, is seen as an unbiased abiter. He owes a duty to the state, which is represented by the prosecutor, the defendant and the society. He is therefore expected to carry out the adjudication responsibility fairly and without fear or favour, otherwise, he will pose as a hindrance to justice.
5. Lacunas or gaps in the law guiding prosecution:  
Sometimes some provisions of our laws, particularly those bordering on the rights of the accused person, can be exploited by the accused person and thereby making it difficult for the prosecution to secure conviction, even in some cases where it is almost clear that the defendant committed the offence.
6. The threat of financial crime also includes financial fraud, money laundering and bribery, as well as a raft of new cybercrimes, which can be even more difficult to monitor and prevent.
7. Due to new technologies, advanced, multi-dimensional cybercrimes have reached a level of sophistication that renders conventional law enforcement methods ineffective.

## **CONCLUSION**

In this paper we examined in brief the international approaches to fighting financial crimes which are crimes not only committed within the borders of a nation but which are also trans-border crimes. The paper took a positional view that this class of criminal activities has the potency to cripple a nation's economy in addition to being a veritable tool for terrorist financing. It also identified the negative effects this crime, most times, has on victims of financial crimes both as victims of primary victimisation and as victims of secondary victimisation. This led the research into examining Nigeria's approaches to fighting the scourge through legislation. Majority of the major legislation examined in this paper failed to identify victim as the first line contact with financial criminals and how their interaction with these criminals has caused them significant injury. This then explained why these legislation do not make provisions for restitution to victims of financial crimes after their criminals have been tried and convicted for the offence. In the light of the foregoing, we recommend amendment to these laws and other relevant laws to accommodate restitution to victims of financial crimes in Nigeria.