POLICY BRIEF

Strengthening Nigeria's AML/CFT Framework

Challenges and Recommendations

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EXECUTIVE SUMMARY

Nigeria's challenges with curbing money laundering and terrorist financing occasioned its third greylisting by the FATF in February 2023. The implications of greylisting, although contended, are significant and potentially grave. Experts have found that greylisting triggers a substantial reduction in the GDP of listed countries. More profoundly, such countries are less likely to access development credits and will have declined market capitalization and depleted external reserves. This policy brief assesses the potential challenges of strengthening Nigeria's AML/CFT Framework and provides corresponding recommendations.

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What is greylisting and what are the implications for Nigeria?

The Financial Action Task Force (FATF)'s greylist signifies that a country does not have a robust framework for combatting financial crime. Nigeria was greylisted from 2001 to 2006, 2010 to 2013, and most recently, in 2023, after Nigeria's 2021 Mutual Evaluation Report (MER) had recorded the country as non-compliant with several FATF recommendations.

Such listing has implications for countries as it affects private sector businesses by hindering correspondent banking relationships, increasing supplier cost, reducing firm profitability, and undermining access to capital. Costs are also heightened because of firms' investment in compliance tools. Such costs spill over to other countries as their firms are encouraged to ensure enhanced due diligence before dealing with businesses within listed countries. These challenges place increased pressure on corporate expenditures and government borrowing. It can also expose countries to subtle economic sanctions which can limit their access to loans/aid from international development organisations, trigger a decline in their participation in international trade, limit foreign currency inflows, and increase the cost of cross-border transactions.

Beyond the greylist, Nigeria's fragile anti-money laundering and combating the financing of terrorism (AML/CFT) framework means the country still loses significant funds to illicit financial flows (IFFs). For instance, between 1960 and 2018, Nigeria lost $400 billion to IFFs. Such losses undermine the country's ability to meet sustainable development goals (SDG), particularly SDG 16.4. The implications are that more people continue to live under the poverty line, and funds that ought to be earmarked for education, health, or investment projects to improve people's lives are siphoned and laundered.

How is Nigeria tackling this issue?

Recognizing the greylisting implications, relevant government agencies have worked diligently to ensure the country's delisting. Nigeria has recently begun to address the 19 outstanding items listed in its International Co-operation Review Group (ICRG) Action Plan to ensure that they are delisted from the greylist.

As of May 2024, Nigeria has made great progress toward implementing its ICRG Action Plan, but significant Immediate Outcomes (IOs) remain outstanding, specifically:

- effectiveness outcomes related to international cooperation,
- investigation and prosecution of money laundering and terrorist financing (ML/TF) cases,
- supervision of Designated Non-Financial Businesses and Professions (DNFBPs),
- access to beneficial ownership information, and
- the centralization of data on frozen/confiscated assets.

Judges and relevant law enforcement agencies (LEAs) have a critical role in addressing these challenges, especially the adjudication of AML/CFT cases, initiation of international asset recovery cases, and the maintenance of reliable data on confiscations and convictions.

What is the goal of our research?

The implications of financial crime and the avenues that continue to exist for these crimes to thrive have necessitated our research and practical insight into

AML/CFT compliance challenges and ways to address them.

In June 2024, the Global South Dialogue on Economic Crime (GSDEC) and the African Centre for Governance, Asset Recovery and Sustainable Development (AC) with funding from the Economic and Social Research Council (ESRC) therefore hosted a strategic needs assessment. Our findings demonstrate Nigeria still has some grounds to cover regarding IOs 2, 7 and 9. Our goal is to assist Nigeria in addressing these challenges by drafting guidelines, policy briefs, and standard operating procedures alongside sustained capacity-building programmes for key judicial actors/LEAs. It is expected that these activities will facilitate Nigeria's delisting by 2025.

What is our approach and evidence?

Our approach to strengthening Nigeria's AML/CFT framework is research and expert led. Dr Azinge-Egbiri's book titled Regulating and Combating Money Laundering and Terrorist Financing: The Law in Emerging Economies (2021) examined the challenges developing countries encounter in complying with the global AML/CFT framework.

Subsequently, Dr Joy Malala, Azinge-Egbiri et al.'s policy document examined the variances in compliance/effectiveness outcomes across countries. Our findings demonstrated that the most compliant countries (Bermuda, Spain, and the United Kingdom) understood their risks, had heightened national coordination and cooperation, and had strong beneficial ownership frameworks. Conversely, countries with weak compliance did not have robust pre-conditions for effective regulation, nor did they appreciate their risks to act on them.

Following the release of our policy document, we held a 2021 webinar themed 'The Financial Action Task Force (FATF)s Compliant Countries: Lessons for Non-Compliant Jurisdictions'. The webinar discussions centered on how greylisted or non-compliant countries can improve their compliance/effectiveness outcomes.

In 2023, our expert, Professor Louis De Koker, published a scholarly article emphasizing the repercussions of greylisting and advised developing countries such as Nigeria to avoid these consequences by improving their AML/CFT compliance outcomes.

What is our methodology?

Our research also informed our methodology in strengthening Nigeria's AML/CFT framework. We sought to understand the gaps in Nigeria's compliance trajectory from the ground up and in a collaborative manner. Therefore, we conducted desk research (assessing books, journals, reports, policy documents, and media publications) and subsequently held a World Café styled workshop. The workshop provided room for focused interactions between smaller cross-sections of experts from the ICRG contact group to highlight challenges and recommendations while shifting perceptions and encouraging collective action.

The methodology proved suited to the needs assessment as it elicited several areas of concern, particularly regarding judicial actors and law enforcement agencies. The challenges highlighted include:

Fragmented Training and Specialisation of Judicial Actors on AML/CFT Related Matters: Judicial actors, particularly judges, are core to adjudicating ML/TF cases and are instrumental to freezing/confiscating assets where necessary. Yet, judicial training is fragmented and lacks consistency. Consequently, judges need to understand the AML/CFT investigation and prosecution processes and the distinction between predicate offence and simple or complex ML/TF cases. They also struggle to interpret the AML/CFT laws and have yet to clarify gaps or ambiguities proactively. Judges do not also have clear sentencing guidelines to aid them in adjudicating AML/CFT cases. Arguably, the absence of requisite support for judges boils down to the need for more resources for consistent or streamlined training alongside the lack of inter-agency training for judges led by the LEAs.

Knowledge Deficit on Asset Freezing, Recovery and Confiscation: LEAs and judges still struggle with understanding and implementing the newly passed Proceeds of Crime (Recovery and Management) Act 2022. Relevant LEAs are understaffed, and staff are regularly redeployed, undermining consistency in investigations and prosecution. Information sharing amongst staff of relevant agencies remains weak, demonstrating the limited synergy and collaborations amongst relevant agencies. Additionally, the Central Authority Unit (CAU) is bureaucratic in its responses to relevant agencies and there are failings in collaborative attempts between the CAU and the Ministry of Foreign Affairs. Judges also have a limited understanding of AML/CFT processes - a challenge that has occasioned inefficient handling of cases or wilful blindness, even regarding the proactive issuance of orders such as warrants or restraining orders in implementing POCA. Other challenges include the valuation of seized/confiscated or forfeited assets, the absence of a standard procedure for the deployment of domestically recovered assets for public use, etc.

Weak Data Centralisation, Synchronisation, and Management on Judicial Decisions, Beneficial Ownership, Confiscation Orders, etc.: Data is central to meeting the FATF's standards and can undermine a country's ability to showcase its compliance and effectiveness. Yet, Nigeria lacks synchronized data on confiscated/ recovered assets and AML/CFT judicial decisions (many are still stored in paper files). Where available, the data quality is usually low or inconsistent, or there is delayed sharing with the Nigerian Financial Intelligence Unit (NFIU), demonstrating the sub-par skills of staff in handling sensitive data. Staff are also frequently redeployed, hindering sustained learning and implementation.

Policy Recommendations

1 Judicial training on AML/CFT must be held alongside LEAs to facilitate collaborative expertise on the processes involved in investigation, prosecution, and recovery/confiscation of assets. Such training must incorporate sentencing guidelines (with specific provisions for plea bargaining settlements), policy briefs and a critical understanding of the risks and consequences of the ICRG processes beyond the isolated adjudicatory issues. Training must be continuous, and the training of trainers (TOT) approach must be adopted and monitored to ensure the scalability and sustainability of training programmes. Training could also be embedded within existing anti-corruption academies. Specialized AML/CFT courts alongside virtual court proceedings must also be considered to aid the efficient delivery of justice.

2 Relevant LEAs must be trained on the application of the Proceeds of Crime (Recovery and Management) Act 2022 and subsequent regulations, particularly on non-conviction-based asset forfeiture and data management/sharing. SOPs are required to facilitate efficient synergy between the CAU and the Ministry of Foreign Affairs.

3 Funding and capacity building of relevant LEAs staff on data collation, sharing, synchronization, and management is critical to foster transparency and better communication of effectiveness and feedback to the public. The Federal Ministry of Justice (FMOJ) must hasten the full deployment of a comprehensive central asset recovery database. AI and machine learning should be utilized to enhance data analysis capabilities.

4 Relevant institutions should develop a robust framework and timelines for staff redeployment to enable consistency in handling cases and clarity during necessary handovers.

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