THE ROLE OF INTER-GOVERNMENTAL ACTION GROUP AGAINST MONEY LAUNDERING AND TERRORIST FINANCING IN WEST AFRICA (*GIABA)* IN COMBATING MONEY LAUNDERING AND TERRORIST FINANCING UNDER THE ECOWAS COMMUNITY

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A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE-LL.M

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DECEMBER, 2015

DECLARATION

I hereby declare that the realization of this dissertation entitled **The Role Of Inter-Governmental Action Group Against Money Laundering And Terrorist Financing In West Africa (*GIABA)* In Combating Money Laundering And Terrorist Financing Under The ECOWAS Community** is a record of my own research in the Public Law Department, Ahmadu Bello University, Zaria under the Supervision of Prof. K. S. Chukkol and Dr. A. I. Bappah. It has not been published or presented anywhere for the award of a higher or any Degree whatsoever. All quotations and references have been acknowledged properly. I therefore remain solely responsible for any inadequacy or error that may be found in this thesis.

Mohammed YAHAYA _____ _____

LL.M/LAW/06651/2009 – 2010 Signature Date

CERTIFICATION

This dissertation entitled **The Role Of Inter-Governmental Action Group Against Money Laundering And Terrorist Financing In West Africa (*GIABA)* In Combating Money Laundering And Terrorist Financing Under The ECOWAS Community** by Mohammed YAHAYA meets the regulations governing the award of Degree of Master of Laws (LL.M) of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to the Allah (SWT), His beloved messenger, Prophet Muhammad (SAW) and my Mother Aishatu (Asta-joda) Muhammed and my late Father, Malam Yahaya Kapo. May Almighty Allah shower His Mercy on him and grant him eternal peace, Amin.

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ABSTRACT

The ECOWAS Inter-Governmental Action Group Against Money Laundering and Terrorist Financing in West African (GIABA) is a specialized institution of ECOWAS with a mandate to develop anti-money laundering and counter financing of terrorism measures, as well as a Financial Action Task Force Style of Regional Body (FSRB) with its headquarters in Dakar, Republic of Senegal. Its mandate is to develop anti-money laundering and counter terrorism financing (AML/CTF) measures, and to coordinate regional efforts to combat money laundering (ML) and terrorist financing (TF). Its membership consists of all member states of the ECOWAS. As such it is a regional intergovernmental body which supports the work of the United Nations (UN) in preventing, detecting, deterring and suppressing terrorism, particularly its financing Money Laundering and Terrorist Financing undermine development by eroding Social and Human Capital, affecting Social and Political Stability, causing artificial rise in the cost of business, and thus driving away business and investment and undermining the ability of the states to accelerate development. A society that is infested with terrorism and money laundering is bound to be lawless or order less, and anarchy, will thus, set in thereby rendering the society undeveloped politically and economically. The research examined how far and successful has GIABA achieved its mandate of combating money laundering and terrorist financing in West Africa. The research also analyzed the problems and challenges being encountered by GIABA in the discharge of its mandate and made some findings and offered suggestions on the best ways to enhance the discharge of GIABA's function. The methodology adopted is the Doctrinal and Empirical methods. The major findings of the research inter alia that member state of ECOWAS are not represented in FATF, that GIABA is not a law enforcement institutions, even though it is charged with the onerous responsibility of coordinating regional efforts around law enforcement problem; and also GIABA is faced with both institutional and legal problems, i.e. with regards to its mandate, it is only given the power of advice to member states and cannot enforce or investigate any allegation of money laundering or terrorist financing. It is recommended that FATF should consider at least one potential country in West Africa for FATF membership, otherwise, GIABA should amend its Article 2(c) of the 2006 Statute to withdraw as the FATF Styled Regional Body and also stop promoting FATF norms and values more especially FATF 40+9 Recommendations, the research also recommended that GIABA Statute, 2006 to be amended more especially Article 2(b) to provide it with an organ like police or law enforcement agency in performing it day-to-day activities under it mandate; and also recommended that GIABA Statutes, 2006 to be amended to provide it with both coercive and supervisory powers to all the 15 member states on cases of money laundering and terrorist financing.

ABBREVIATIONS

ABCON	Association of Bureaux de Change of Nigeria
ACTU	Anti-Corruption and Transparency Unit
AML/CFT	Anti-Money Laundering/Counter financing of Terrorism
ANSI	Agence Nationale de Strategic et d'Intelligence
AFRCD	Armed Forces Revolutionary Council Decree
AU	African Union
AUSTRAC	Australian Financial Trans actions Analysis Center
BCEAC	Banque Centrale des Etats de I' Afrique Ccntrale
BCEAO	Banque Centrale des Etats de I'Afrique de I' Quest
BOAD	Banque Quest Africaine de Development
CAPEFRANCE	Centre d'Accueil de Ia Presse Etrangere de France
CBL	Central Bank of Liberia
CBN	Central Bank of Nigeria
CDD	Customer Due Diligence
CENT1F	Cellule Nationale de Traitement des Information's Financieres
CFA	Communaute Financiers Africaine
CIIB	Criminal Intelligence and Investigation Bureau
COCOLAB	Committee for Cooperation between Law Enforcement Agencies and the Banking Community
COMSEC	Commonwealth Secretariat
CRF	Centre de Recherche Financiere
CTED	Counter Terrorism Executive Directorate
DAR	Detailed Assessment Report
DNFBP	Designated Non-Financial Businesses and Professions
DNFI	Designated Non-Financial Institution

ECCJ	ECOWAS Community Court of Justice
ECOWAS	Economic Community of West African States
ERG	Evaluation Review Group
EFCC	Economic and Financial Crimes Commission
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorist
FSAP	Financial Sector Assessment Program
FSRB	FATF-Style Regional Body
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
GNP	Gross National Product
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organization
IT	Information Technology
JP	Judicial Police
KYC	Know Your Customer
MER	Mutual Evaluation Report
MEF	Ministry of Economy and Finance
ML	Money Laundering
MTPA	Money Laundering Prohibition Act 2004 (of Nigeria)
MOU	Memorandum of Understanding
NAICOM	National Insurance Commission
NCCT	Non-Cooperative Countries and Terrorist
NCS	Nigerian Customs Service
NGO	Non-Governmental Organization
PNDCL	Provisional National Defence Council Law

SCUML	Special Control Unit against Money Laundering
STR	Suspicious Transaction Report
TANA	Technical Assistance Needs Assessment
UEMOA	Union Economique et Monetaire Quest Africaine
UN	United Nations
UNDP	United Nations Development Programme
UK	United Kingdom
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nation Security Council Resolution
USA	United States of America
USATD	United States Agency for International Development
USPTS	United States Postal Inspection Service
WAEMU	West African Economic and Monetary Union

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

Money laundering and terrorist financing undermine development by eroding social and human capital, affecting social and political stability, causing artificial rise in the cost of business, and thus driving away business and investment and undermining the ability of the states to accelerate development. A State or Society that is infested with Terrorism and Money laundering is bound to be lawless or order less, and anarchy, will thus, set in thereby rendering the society undeveloped politically and economically.

The process of globalization and advancement in modern technology have made West Africa to be more vulnerable to the threats of terrorism and money laundering than any other region of the world. Nigeria, Kenya and some African countries have witnessed the scorch of terrorism: Resources from organized crimes through money laundering have sustained this menace thus the need for a fight against money laundering and terrorist financing. Globalization has resulted in the need for international organization and regional bodies to broaden their focus beyond state - based security threats to encompass, those emanating from non-state perpetrators[1].

[1] Abdullahi Y. S: (2001) "*Implementation of UNSCR, 1373 in West Africa: Issues and Challenges":* A paper presented at the United Nation Security Council General Meeting, held at New York, USA, on Wednesday, 28 September, p.2

Transnational organized crime is one of the major threats to international peace and security. Thus, money laundering and terrorist financing form part of the threat. While money laundering (ML) is a derivative crime, financing of terrorism (FT) is a 'reversed' form of money laundering as it may involve both legitimate and illegitimate wealth[2]. These menaces are detrimental to peace and security, and could undermine the overall development of society. This is why concerted global efforts to eradicate these phenomena are gaining momentum.

Also, technological advancement, in tandem with globalization, has changed the economic and political landscape of the planet. Organized criminals take advantage of the powerful instruments of technology and globalization to perpetrate their unwholesome activities with relative impunity. While criminals respect no territorial boundaries, law enforcement must act within the ambit of the law to counter the activities of criminals. Given the difficulties in responding rapidly to the threat of transnational organized crime, law enforcement, even in the most advanced countries, always seems to be a step behind the complex *modus operadi* of criminals. Consequently, no nation can effectively tackle the menace of transnational organized crime in isolation. It should be noted at the outset that criminals usually explore and exploit the socioeconomic conditions of societies, in particular taking advantage of the weak links in regulation and enforcement, such

[2] *GIABA Annual Report,* 2007, p.9

as inadequate legislation and opportunities to corrupt.[3]

The September 11, 2001 terrorist attacks on the United States of America accelerated this paradigm shift and provoked global efforts to address international terrorism. An important element of such efforts is the United Nations Security Council Resolution (UNSCR) 1373 of 2001, which was adopted subsequent to these attacks principally sought to combat acts of terrorism by placing barriers on movement, organization and funding of terrorist groups[4].

In effort to compliment the United Nation Security Council Resolution 2001 in combating money laundering and terrorism financing in West African Region *GIABA* was created. The inter-Governmental Action Group Against Money Laundering in West Africa (*GIABA*) is a specialized institution of the Economic Community of West Africa States (ECOWAS), as well as a Financial Action task force (FATF) style Regional Body (FSRB)[5]. Its mandate is to develop anti-money laundering and counter financing of terrorism (AML/CTF) measures, and to coordinate regional efforts to combat money laundering (ML) and terrorist financing (TF). Its membership consist of all member states of the ECOWAS as it is, with it's headquarters in Dakar, Senegal, as such, a regional inter-

[3] *Ibid* at P 9

[4] Abdullahi Y.S. *op cit* p. 2.

[5] The Resolution established the counter terrorism committee security council (CTC). This committee is mandated to monitor the implementation of the resolution through the center Terrorism Executive Directorate (UNCTED)

governmental body which supports the work of the UN in preventing, detecting, deterring and suppressing terrorism, particularly its financing.

Since the establishment of a functional secretariat in 2006, the Inter-Governmental Action Group against Money Laundering in West Africa has remained focused on its mandate to protect the economies of member states against abuse and misuse for the purposes of laundering the proceeds of crime[6]. As a FATF - style Regional Body, *GIABA* works assiduously to implement acceptable international standards against Money laundering and Terrorist Financing, including the FATF 40 + 9 Recommendations against money laundering and terrorist financing.

As an ECOWAS Institution, *GIABA* depends on the strong support of the ECOWAS and development partners to provide technical assistance to its members in order to help them build the necessary framework and capacity to respond rapidly to the problems of money laundering and terrorist financing, and to intensify the overall regional integration process of the ECOWAS respond rapidly to the problems of money laundering and terrorist financing, and to intensify the overall regional integration process of the ECOWAS.

[6] *GIABA Annual Report*. op. cit p7

Nigeria as one of the member state of G1ABA is the largest country in sub-saharan Africa, both in terms of size and population, but in 2007 Nigeria had been described as one of the most corrupt country in the World[7]. Pervasive corruption in Nigeria constitutes a major threat and underlines most of the money laundering cases reported in recent time.

However in the recent time Nigeria has demonstrated a commitment to AML/CFT issues both within the country as well as in the Region. In 1995 the first Anti Money Laundering (AML) Act was enacted but was replaced in 2004 by Money Laundering (Prohibition) (MLP) Act, 2004. Also the Economic and Financial Crimes Act, 2004 was enacted which led to establishment of the Economic and Financial Crimes Commission (EFCC) as the coordinating agency for all AML related cases. Nigeria Financial Intelligence Unit (NF1U) was established in 2005 under the EFCC to receive, analyze and disseminate financial intelligence to law enforcement agencies and other relevant institutions. With the recent Boko Haram issue and other activities of terrorism, the Money Laundering and Terrorism Act, 2011 was enacted to combat terrorism, money laundering and other related activities in Nigeria.

[7] Transparency International (TI) Corruption perception Idex from 1995 to 2007.

Also, The Gambia which was lacking behind amongst the *GIABA* member states in combating money laundering and Terrorism in West Africa prepared to upgrade its deficiency on the 27 June, 2012 in which, the Finance and Economic Affairs Minister of The Gambia, Abdou Kolley presented a Bill before the National Assembly, the Anti-Money Laundering and Financing of Terrorism Bill, 2012 for ratification by the Country's law makers[8].

Finally, *GIABA* amongst other things develop the strategies to protect the economics of member states from abuse and the laundering of proceeds of crime, improve measures and intensify efforts to combat the laundering of proceeds of crime in West Africa, also strengthen the co-operation amongst its members[9].

1.2 **Statement of the Problem**

A State or Society that is infested with Terrorism and Money Laundering is bound to be lawless or order less, and anarchy, will thus, set in thereby rendering the society undeveloped politically and economically.

In region like West Africa, those within the corridor of power have access to money and see money laundering as of right, this believe constitutes a major threat and undermines most of the money laundering cases reported in recent time, for example most of these funds are being hidden in Western banks and

[8] www.*GIABA*.Com.Orgaccusedon4thSeptember,2012.

[9] *Ibid*.

off-shore centers, while a significant amount have been laundered through the acquisition of properties, luxury cars and purchase of high net with shares in blue chip companies[10] and some of these proceeds from the money laundering becomes a major financing to terrorism in West Africa.

Another issue is related to deficiencies in the national legal framework of some member states and inadequate national coordination among competent authorities with regard to money laundering and counter-financing of Terrorism. Also, some of the member states do not have laws which adequately criminalize terrorist financing. Even where such law exists, it was observed that there was little or no regulation or procedure in place to ensure appropriate freezing, seizure and confiscation of terrorist funds. Most member states had no mechanism for designation of persons identified as terrorists, delisting or even disseminating updated list of terrorist to financial and non financial institutions[11]. Relatively, the informal and based nature of the region's economy, which facilitate the illegal ownership, movement, transfer or exchange of funds, and the porous borders, among others, constitute precarious mix which could be used as a marker to ascertain the level of risk of terrorist activities and terrorist financing. All the emanated issues need to be visited in order to have a

[10] Mutual Evaluation Report of the Federal Republic of Nigeria, September 24 to October 5, 2007
[11] Ibid.

secure environment for healthy competition, investment, global peace and security.

Another problem with the cases of money laundering and terrorist financing in West Africa is the way and manner the cases were handled before our courts, for example in Nigeria apart from the case of *Queen vs Ibori*[12] the former governor of Delta State, James Ibori, who was convicted in London for money laundering and allied crimes, (a Nigeria judge had earlier tried, discharged and acquitted him of similar offences in *Federal Republic of Nigeria vs Ibori*[13]), only a few higher profiled cases had been decided with laudable sentences. For instance in *Federal Republic of Nigeria vs Balogun*[14], the former Inspector General of Police, Tafa Balogun, was given only 6 month (which he spend in the hospital) for embezzling N17 billion. In *Federal Republic of Nigeria vs Ibinidion*[15], former Edo State Governor Lucky Ibinidion was fined N3 million for stealing N9 billion. In *Federal Republic of Nigeria vs George*[16] former Chairman of the Nigerian Ports Authority, Olabode George, earned just 30 months for stealing over N9 billion. Also in *Federal Republic of Nigeria vs Ibru*[17] former Managing Director and CEO of the Ocenic Bank Plc, Cecilia Ibru was convicted only for 6 months in prison following a "*plea bargain*" for the unprecedented single case of fraud of N190 billion in cash

[12] Robert Barr (27 February, 2015) "Ex-head of Nigerian State Admits Financial Crime" Associated Press
[13] (2009)3 NWR(PT 1127)
[14] FHC/L/099/2005 (unreported)
[15] (2014) ALL FWLR (PT 734) P. 101
[16] Suit No ID/71c/2008 (unreported) ion appeal at the Supreme Court the decision of the Lower Courts were reversed and he was discharge anquited).
[17] FHC/L/299c/2007 (unreported)

and assets.

Recently, menaces by insurgents have been reported in the vast Sahel/Sahara area between Mali and Niger, thus constituting a potential threat[18]. In January, 2008, Mali Customs seized about 750Kg of Cacaine estimated at US $45 million after a desert shootout with heavy armed smugglers near Algerian border[19]. While in Nigeria recently, the menace of Terrorism and terrorist attack is becoming more rampant than any other offence in the country, for example in April, 2014 over 76 people were killed and several injured in Nyanya – Abuja explosion[20]. While in April 15, 2014 over 200 female students abducted in Chibok, Borno State[21]. In May 20, 2014 twin bomb explosions killing 118 people in Jos, Plateau State[22] and in June 2, 2014 over 200 civilians slaughtered in Gwoza, Borno State[23]. As a result of the mentioned, there is need for inter-governmental action to curb these menace, hence the establishment of intergovernmental action group against money laundering and terrorist financing in West Africa (*GIABA*).

1.3 **Aim and Objectives**

The general aim of this study is to analyze the Role of Inter-Governmental Action Group against Money Laundering and Terrorist Financing in West

[18] www.*giaba*.org/member-states/16_Mali.htm1 accessed on 1/7/2013.

[19] *Ibid*
[20] Dailysum "Imagine Another Four Years of Insecurity" Friday, January 23, 2015.
[21] *Ibid*
[22] *Ibid*
[23] *Ibid*

African (*GIABA*). The study seeks to achieve the following intermediate objectives, thus:

a. To examine how far and successful has *GIABA* achieved its mandate of combating Money Laundering and Terrorist financing in West Africa.

b. To analyze the problems and Challenges being encountered by *GIABA* in the discharge of its mandate.

c. To make some findings and offer suggestions on the best ways to enhance the discharge of *GIABA*'s functions.

d. To serve as a future reference material for lawyers, scholars and law students who may be interested in the further research of the subject matter of study.

1.4 **Scope of the Study**

The scope of this study shall be limited to ECOWAS Inter Government Action Group against Money Laundering (*GIABA*) efforts at combating money laundering and terrorist financing in West Africa, the Financial Action Task Force Recommendations 40+9, United Nations Conventions and Treaties on Money Laundering and Terrorist Financing and also African and ECOWAS Treaties related to the subject maters.

1.5 **Research Methodology**

The research methodology to be adopted is the Doctrinal Method.

a) Primary Sources or Authorities to be used shall consist of the Statutes. The Revised Statutes of Inter-Governmental Action group against Money Laundering in West Africa (*GIABA*). The FATF 40+9 Recommendations, United Nations Security Council Treaties and Resolutions on Money Laundering and Financing of Terrorism (AML/CFT), some *GIABA* Member States local legislation on (AML/CFT), like Nigerian AMT/CFT, Act 2011, EFCC Act, 2004 etc.

b) Secondary Sources which shall consist of relevant information from leading authorities, Text books on Anti-Money Laundering and Counter-Terrorism Financing, writings, articles of scholars in journals, magazines and opinion of jurists.

Empirical method of research shall also be adopted to supplement the doctrinal Method. Thus, information shall be sourced from the government agencies, individual's institutions that are involved in Anti-Money Laundering and Counter-Terrorism Financing in Nigeria through the conduct of interviews. All information sources shall be acknowledged in the foot note references and sufficiently analyzed.

1.6 **Literature Review**

The discourse on the subject matter, the Role of Inter-Governmental Action Group Against Money Laundering and Terrorist Financing *GIABA* in combating Money Laundering and Terrorist Financing under ECOWAS Community. The array of literature by several scholars of different discipline

predates the establishment of *GIABA* in 2006 to include but not limited to law and social science. However, there materials where necessary will be called in aid, there are nevertheless not our concern, thus not the subject of this review.

The organisations like Financial Action Task Force (FATF), Egmont Group and the Basle Committee have all provided insight and materials on this topic. The works and material consulted include Abdullahi[24]; Economic and Financial Crimes in Nigeria. Citing the different between "Money movement facilities and money laundering but without making distinct and clear different between the two. Alexandra[25] on Money Laundering in West Africa: An Analysis. Alexander[26] on Terrorism Theory and Practice, and Ohanyere[27]: Issues on money laundering and financial crimes in Nigeria. The aim of this research is actually to fill the gaps and lacunars not covered by other available but rich sources of knowledge.

Ribadu[28], while examine the state of corruption and obstacles to effective prosecution of corruption and other financial crimes in Nigeria identified issues such as the gaps n the law, inadequacy of existing procedural and evidence law, congestion and slow pace of court proceedings, competence of counsel, jurisdictional problems, cost of investigation and prosecution among other factors militating against effective

[24] Abdullahi Y. S., (2006), "*Economic and Financial Crimes in Nigeria*". Issues and Options
[25] Alexandra K: (2009)., *Money Laundering in West Africa; An Analysis*. University of Toronto
[26] Alexander J. (1979), *Terrorism Theory and Practice*, West view press, Calorado
[27] Ohanyere, A. N(2002): *Issues on money laundering and financial crimes in Nigeria*
[28] Ribadu, N: (2004) 'Obstacles to Effective Prosecution of Corrupt Practices and Financial Crimes cases in Nigeria' A paper presented at the 1st Stakeholders Summit on Corrupt Practice and Financial Crimes in Nigeria, Kaduna, November 23rd – 25th.

prosecution of corrupt practices in Nigeria. He concluded by suggesting the need to amend the 1999 Constitution and Relevant Laws on the subject matter particularly the provisions that serve as constraints in the enforcement of the relevant legislation. This also researcher is of the same view and would provide more solution to that effect in this study.

The views of Onu[29], Usman[30], and Ali[31], are found most relevant and are shared in this dissertation. The aggregate conclusion is that there is the need for severe penalties on erring persons/corporations. Thus, stripping the criminal of the profits made from criminal activities is being seen as an effective way to combat crime as well as a means of doing justice by restoring the criminal to the position he was prior to carrying out these crimes. However, it has been observed that enacting many laws with severe penalties without more cannot hope to stamp out or even significantly reduce crime.[32] Besides, while the aforementioned works seems to dwell on issues of money laundering in relation to state security and financial institutions in Nigeria as can be seen in the works of Usman and Ali respectively, this dissertation will attempts to

[29] Onu, P.I., (2003) 'Legal and Institutional responses to Money Laundering in Nigeria: some perspective'. *University of Benni Journal of Business Law*, vol.1., No.1.
[30] Usman, A. K. (2005) 'Money Laundering and State Security in Nigeria' in *Contemporary issues on Nigerian Laws. Faculty of law, A,B.U., Zaria Annual Publication*, pp. 167-186.
[31] Ali, L. H. (2003-2005) 'The Role of Regulatory Institutions and Enforcement Agencies in Combating Money Laundering by Financial Institution in Nigeria: A case study of Banking Industry'. *A.B.U. Journal of Commercial Law,* Vol. 2 No.1, pp. 189-197.
[32] Chukkol, K.S. (1990) 'Towards a National Drug Control Strategy: A blueprint', in Awa, U.K. and Osibajo, Y., (eds) *Narcotics: Law and Policy in Nigeria*. Federal Ministry of Justice; Lagos. Law Review Series, Vol. 8, 1990, p.220.

emphasize on the Money Laundering and Terrorist Financing within the West African region.

Osinbajo[33]. Traced the historical perspectives of Penal Policy of Drugs Related Legislation since the 1935 – Ordinance (The Dangerous Drugs ordinance) to the 1989 National Drug Law Enforcement Decree and came to the conclusion that the policy in this respect has been largely in-coherent owing to the absence of stability in the punishment provisions of the legislation. The discussion touches on the topic of this dissertation and thereby will enrich this research.

Chukkol[34], at the 1st summit on corruption and financial crime, opined that "As regards the latent legislation, the Economic and financial crime Commission Act[35], one must admit mat its powers are so unwieldy that risks of duplication and confusion are very real possibilities. Section 7(2) provides that the commission has the responsibility of "enforcing the provision of the money laundering Act, the advance fee fraud and other related offences Act, the Failed Banks (Recovery of Debts) and other financial practices in Bank Act, the Bank and other financial institution Act, the miscellaneous offence Act and any other law or Regulation relating to economic and financial crimes. According to him, since the expression "economic crimes" includes "any

[33] Osinbajo, Y., 'The Legal and Institutional Framework for the Eradication of Drug Trafficking in Nigeria', in Awa, U.K. and Osinbajo, Y., (eds) *op. cit.*, n. 16, pp. 223-226.
[34] Chukkol K.S. (2004) *"Review of the effectiveness of some existing legislation against corrupt practices and other economic crimes"* Being a paper presented at the 10th stakeholders summit on corruption and financial crime, Kaduna, 24th November, 2004.
[35] *Cap E1 op cit*

form of corrupt malpractice". Then the EFCC can perform a function clearly within the purview of the enforcement agencies spell out under the corrupt practices and other related offence Act. Thus there may be duplication of functions leading to possible conflicts and confusion. This is a topical African legislation that needs to be amended. Abdullahi in his Book[36] presented a simply and concise analysis of various economic and financial issues, reflecting their effects and the responses of the International community toward them. The economic and financial crime is generic terms, which include a number of unlawful practices defined both by FATF and the Economic and Financial Commission Act[37] and other relevant Authorities. But, the author failed to recognize other similar offences including financing of Terrorist.

Ribadu[38], the former chairman of EFCC, in the 3rd plenary of the inter-Governmental Action Group against money laundering (*G1ABA*) said:

> There is special need for heightened focus on the activities of Politically Exposed Persons (PEPs), Our money laundering typology is unique.
>
> Western stereotypes are of little application in the West Africa sub-region. One community is cash-based nature of most transaction. The other is endemic corruption especially in the public sector.

[36] Abdullahi Y. S. (2006) *Economic and Financial Crime in Nigeria*. Issues and options.
[37] Cap E1 op cit
[38] Ribadu J, (2005). *Economic Crimes in Nigeria*, A paper presented at 3rd Plenary of the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA), Abuja Nigeria.

The above view is correct, West Africa region need to develop their unique legislation and unique tactics in combating money laundering and terrorist financing, because the region has unique problems, which the researcher too is of the same view. Finally, it is the opinion of the researcher that the *GIABA* members states need to enact roboust AML/CFT legislation, empowering Anti-graft agencies, establishing Financial Intelligence Units, strengthen securities in border, given special training to immigration officers and punishing the financial institutions that concealed the laundered funds or aids the perpetrators.

1.7 Justification of the Study

With recent Terrorism attacks in the Northern Nigeria, Niger, Northern Mali Senegal and Guinea Bissau and rampant activities of Al-Qaeda and Boko Haram within this Region, developing this aspect of law becomes imperative. Also, this study will be beneficiary to Lawyers, Academicians, and Law Students who may be interested in further research in this area of study.

1.8 Organizational Layout

This study is divided into five chapters:

Chapter one deals with the General Introduction including background of the study, statement of the problem, Aims and Objectives, Scope of the study, the

Methodology of the study, Literature Review, Justification of the Study and finally the organizational layout.

Chapter Two gives an insight as to the Definition of Terms, Evolution and Development of *GIABA*, when and how its created, its Composition and membership include ad hoc ministerial committee, the Administrative Secretariat and Technical Commission, it's mandate, the source of it finance, how the *GIABA* sanction it members, how the membership can be Withdraw and also an overview of the status of the fifteen (15) *GIABA* member states on AML/CTF and finally the conclusion.

Chapter three, deals with the legal framework and international Institutions on Money Laundering and Terrorism financing. These legal frame works includes; The FATF Recommendation/standard, FATF Forty Recommendation and Nine Special Recommendations. *GIABA* Statutes, United Nation Security Council Resolution 1373, (2001), ECOWAS Criminal Intelligence and investigation Bureau and the ECOWAS Community Court of Justice, its jurisdiction, prosecution and practice, judgment, enforcement and finally the conclusion.

Chapter four is the Examination of the role of *GIABA* in combating money laundering and terrorist financing. It discusses the meaning of money laundering and terrorist or terrorism financing. The role and function of *GIABA*, which includes

technical assistance, self assessment, mutual evaluation, implementation of measures, typologies exercise, challenges of *GIABA* and conclusion. Chapter five being the final und concluding chapter deals with summary, conclusion, observation and recommendation.

CHAPTER TWO

DEFINITION OF ML/TF, EVOLUTION AND DEVELOPMENT OF *GIABA*

2.1 Introduction

The aim and objectives of this chapter is to discuss briefly the evolution of *GIABA*, it main organs and also the overview of the anti-money laundering and counter financing of terrorism situation in West Africa.

GIABA is in French Acronym *Groupe Intergovernmental d' Action contre Ie Blanchiment d' Argent en Afrique de I' Ouest* (The Inter- Governmental Action Group Against Money Laundering in West Africa) which is a specialized institution of the Economic Community of West Africa States (ECOWAS), as well as a Financial Action Task Force Style of Regional Body (FSRB) with its headquarters in Dakar Republic of Senegal. Its mandate is to develop anti-money laundering and counter terrorism financing (AML/CTF) measures, and to coordinate regional efforts to combat money laundering (ML) and terrorist financing (TF)[39]. Its membership consists of all member states of the ECOWAS[40]. As such it is a regional intergovernmental body which supports the work of the United Nations (UN) in preventing, detecting, deterring and suppressing terrorism, particularly its financing[41].

[39] Article 4 of Revised Statute of *GIABA*, 2006.
[40] Article 3 of the *Ibid*
[41] Articles 2 and 4 of the *Ibid*

The Financial Action Task-Force (FATF) was set up in 1989 in the capital of France, Paris by the G7 and in the subsequent year,[42] the organization came up with 40 recommendations on money laundering and then another additional 9 special recommendations were developed against the financing of terrorism. These recommendations, the FATF 40 + 9 recommendations, depends on some areas or heading which include the areas of prevention and control of money laundering in the area of financing of proliferation of weapon of mass destruction. The United Nation Security Council Resolution (UNSCR) 1373, which was adopted on the 28th September, 2001, subsequent to the September 11, 2001 terrorist attacks on the United States of America provoked global efforts to address international terrorism especially by placing barriers on movement, organization and funding of terrorist groups.[43] The West African Region in an effort to compliment the Financial Action Task-Force and the United Nation Security Council Resolution 2001 in combating money laundering and terrorism financing in the West African Region *GIABA* was created, with specific mandate.

[42] 1990
[43] Abdullahi Y.S. (2001) *op cit.* at P.2

2.1.1 **Definition of Terms and Meaning of Money Laundering and Terrorism Financing**

Money Laundering

Money laundering operations usually take the form of transfer of large sums of money whether by electronic means or otherwise from it source or origin across the border to destination in such a way as to conceal its origin and the underlying illegal business.[44] Money laundering, can be defined to mean "Any person who converts or transfer resources or property derived directly or indirectly from illicit traffic in narcotic drugs or psychotropic substance or any illegal act, with the aim of either concealing or disguising the illicit origin of the resource or property, ..[45]

The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988[46] defines Money Laundering as the:

> The conversion or transfer of property knowing that such property is derived from an offence for the purpose of concealing the illicit origin of the property, or assisting any person who is involved in the commission of such an offence to evade the legal consequence of his action….. It is the concealment or disguising the true nature, source, locating, disposition, and movement, rights with respect to ownership of property, knowing that such property is derived from an offence or from an act of participation in such an offence[47].

[44] Momodu B. (2006) *Law and Practice of Criminal investigation in Nigeria*, University Press Ibadan, P.238
[45] Section 14(1) Money Laundering Act, Cap M18 *Law of the Federation of Nigerian*, 2004.
[46] The Vienna Convention of 1988.
[47] Article 3(b) (i-ii) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

The Convention defined the offence strictly predicated upon the production, manufacture, extraction, preparation, offerings and distribution of narcotic drugs and psychotropic substances[48] only, excluding other financial crimes, hence, the UN Convention against Transnational Organized Crime[49] strengthened this definition by providing for dual criminality in the definition of money laundering.[50] It defined money laundering as

(i) The Conversion or transfer of property, knowing that such property is proceed of crime, for the purpose of concealing or disguising the illicit origin of the property…

(ii) The Concealing or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is proceed of crime.

While Money Laundering (Prohibition) Act, 2011, on the other hand makes comprehensive provisions prohibiting the laundering of the proceeds of crime or illegal act. It also provides appropriate penalties and expands the interpretation of financial institutions and scope of supervision of authorities on money laundering activities among the other things. The Act also regulates the procedure for making and accepting cash payments of a sum exceeding N5,000,000 or its equivalent, in

[48] Ibid.
[49] The Palermo Convention of 2000
[50] Article 6, Section 1(s) (i-ii) of the International Convention Against Transnational Organized Crime of 2000.

the case of an individual[51] and N10,000,000 or its equivalent in the case of a body corporate.[52] It is submitted that the above threshold reporting will create problem because it is not clear whether multiple transactions in a single day totaling N5,000,000 for individuals and N10,000,000 for corporate body qualify for the mandatory reporting. It imposes duty on any person or body corporate to report international transfer of funds and securities in excess of US$10,000 or its equivalent to the Central Bank (CBN) and the Securities and Exchange Commission (SEC) or the Economic and Financial Crimes Commission (EFCC).[53] Although, the Money Laundering (Prohibition), Act, 2011 have some defects that need to be amended, this was discovered after the judgement in the case of *NBA v. Attorney General of the Federation and one other*[54] delivered on the 22nd December , 2014 by Justice Gabriel Kolawole of the Federal High Court sitting in Abuja. The Court nullified the provision of section 5 of the MLPA, 2011 as against legal practitioners and section 25 MLPA designating the legal practitioners as non financial institutions. The court also, held that the provision of the MLPA, 2011 as it applies to legal practitioners null and avoid, also the inclusion of the legal practitioners in the definition of designated – non financial institutions (DNFI).

[51] Section 1(a) of the Money Laundering (Prohibition) Act. 2011 (As amended).
[52] *Ibid*
[53] *Ibid*
[54] www.punchng.com, accessed on the 22nd june, 2015.

Mens Rea and *Actus Reus*

All current international crimes Money Laundering is inclusive, can be split, as in the domestic criminal law systems, into *actus reus* (the prohibited act or conduct) and *mens rea* (the state of mind which must be established to have existed at the time of the offence). At present there are no crimes of strict liability (i.e. crimes for which no *mens rea* need be proved) within international criminal law. The above relevant Conventions specify the required *means rea*, which is usually phrased in terms of "knowingly" or "knowledge". The knowledge can be actual or implied. Lack of *mens rea* or knowledge will also formulate a defense, including mistake, duress or insanity.

Both the Vienna Convention of 1988 and the Palermo Convention to 2000 as well as the European Communities Draft Directive of 1991 state the *actuas reus* of Money Laundering to include "conversion" or "transfer" or "transformation" or "concealment" "disguising" "usage" "acquisition" or "Possession of Money, property or value.

Who are Money Launders

The term money launders has become a universal term, yet there is no universal acceptable definition but it can be deducted from the definition of some authors on money laundering or the Money Laundering (Prohibition)

Act 2011 to be "any person who transferred a sum of money exceeding N5,000,000.00 or its equivalent, in the case of an individual and N10,000,000.00 or its equivalent in the case of body corporate whether by electronic means or otherwise from its sources or origin across the border to destination in such a way to conceal its origin and underlying illegal business can be said a money launder".

However, those within the corridor of power have access to money and see money laundering as of right, this believe constitutes a major threat and undermines most of the money laundering cases reported in recent time, for example most of these funds are being hidden in Western banks and off-shore centers, while a significant amount have been laundered through the acquisition of properties, luxury cars and purchase of high net with shares in blue chip companies[55] and some of these proceeds from the money laundering becomes a major financing to terrorism in West Africa.

Techniques of Money Laundering

Money laundering is the various procedures and methods by which criminal proceeds are disguised as legitimate funds by concealing their true origin and

[55] Mutual Evaluation Report of the Federal Republic of Nigeria, September 24 to October 5, 2007

ownership to give the picture that they emanate from legitimate source.[56]

International money laundering is usually in phases depending on the objective of the launderer as laundering can be completed even after one of the phases. The three phases are: transferring illegitimate money from country of origin or placement; making the illegitimate money appears legitimate by altering its origin or otherwise known as laying and repatriating the laundered funds known as integration.

Placement

The first stage which is the placement stage involves the physical movement of currency or other fund derived from illegal activities to a place or into a form that is less suspicious for law enforcement agencies and which is convenient to the criminal. The process involves the introduction of the illicit funds into the traditional financial institutions or into the retail economy. When placing the funds, the launderer must convert the form of funds in order to disguise the illegitimate origin of the money. This is usually done by converting smaller bills to larger denominations, cashier's cheques, money orders or other negotiable instruments and by using cash-intensive businesses such as restaurants, bars,

[56] Amazu, H.O: (2002) "*Design of Anti-Money Laundering Compliance System: Reporting Formats and Examination of Reporting Institutions*," being a paper presented at the fifth regional workshop on money laundering and other financial crimes. Organized by WAIFEM in collaboration with the US Treasury Department, p.1.

casinos and car marts.

Layering

The second stage called layering occurs when the launderer has successfully introduced the proceeds into a financial system. It involves the creation of complex layers of financial transactions for example transferring the funds from one account to another within the same financial institution, or to another within the same jurisdiction or different jurisdiction. Once the cash is placed into the financial system, it can be converted into different instruments, so as to disguise the true origin, purpose and ownership of the proceeds[57].

Integration

Integration or mixing takes place when a money launderer uses his dirty money in a legitimate business, for example, trading with it or buying shares with it.[58] When laundered money reaches this stage, it is often difficult to suspect or discover its criminal origin. Businesses that end up victims of dirty money are businesses that are trading well but need capital. So, the money launderer offers his dirty money in return for a share of the equity. As the business prospers, he puts in more money, gradually buying out the original owners and eventually controls the business.

[57] Adebayo S.M., Savage Oyekunle, O. A. Yerokun and T. O. Oloko, (2009) "*The Economic and Financial Crimes Commission (EFCC) and Money Laundering the Cat Got the Mouse*?" A paper delivered at the National Association of Law Teachers conference, held at the Faculty of Law Abia State University, Uturu.

[58] Prosecutors told a London court on Thursday, 19th Sept. 2013 that James Ibori, (former Governor of Delta State, Nigeria) owned large shares in Oando Plc, an indigenous oil company.

These stages, while they can be separate and distinct, more often occur simultaneously or overlap.[59] Another popular method of laundering money is through remission of funds through money broker, they create a licensed money transmission business allowing individuals in a country to wire money to businesses, friends and relatives in their home counties.

Terrorism or Terrorism Financing

The term terrorism has become a universal term, yet there is no universal acceptable definition, it depends on how someone perceived it. Each individual looks at terrorism from different perspective[60] because what is terrorism to someone may not be to another.

Terrorism can be defined "as the practice of using (threat of violence to obtain practical demands)[61] In this regard, the actor use terror or fear in the mind of their victims with a view of getting specific demands, is it political, religious or otherwise.

The International Convention for the Suppression of Terrorist Bombing of 1998 defines terrorism as: Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public

[59] Hopton, D: Money Laundering: A concise Guide, Gower Publishing Ltd. P.53.
[60] The Concept is being viewed from different perspective, be it religious, social and political ideologies.
[61] Procter, P. *Longman Dictionary of Contemporary English* (6th Ed.)

use, a State or government facility, a public transportation system or an infrastructure facility:[62]

(a) With the intent to cause death or serious bodily injury; or

(b) With the intent to cause extensive destruction of such a place, facility of system, where such destruction results in or is likely to result in major economic loss.

The Convention defined the offence strictly on the commission of the offence on putting or placing an explosive or other lethal device against government or public utilities[63] only, excluding the financing of terrorism itself, hence, the International Convention for the Suppression of the Financing of Terrorism[64] strengthen the definition by providing the definition of financing of terrorism[65]. It defined terrorism financing as: Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

[62] Article 1 of the International Convention for the Suppression of Terrorist Bombing, 1998.

[63] Ibid

[64] 2000

[65] Article 2 (1) (a) (b) of the International Convention for the Suppression of Financing of Terrorism 2000

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

The Economic and Financial Crime Commission Act[66], defined terrorism financing or offences in relation to terrorism as "Any person who willfully provides or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used by any act of terrorism, commits an offence under this Act. ... [67]"

Terrorism (Prevention) (Amendment) Act[68], 2013, on the other hand provides a comprehensive definition of the terrorist financing and provides the extra-territorial application of the Act[69]. It also provides appropriate penalty and definition of Terrorist financing to include possessing funds intending it be used or knowing that it will be used, directly or indirectly, in wholly or in part, for the purpose of committing or facilitating the commission of the act, either by person

[66] EFCC Act, Cap E1, *Laws of the Federation of Nigeria, 2004.*
[67] Section 15(1) EFCC Act, Ibid.
[68] The 2013 Act, amended the Terrorism (prevention) Act, No. 10, 2011 and makes provision for extra – territorial application of the Act and Strengthens terrorists financing offences.
[69] Section 13 Terrorism (prevention) (Amendment) Act, 2013.

or groups it will amount an offence under the Act, and it will attracts the punishment for life imprisonment[70].

Terrorism is the act of using threat or violence to obtain practical demands while terrorism financing on the other hand is the channeling of money whether directly or indirectly to facilitate the act or the terrorism.

Mens Rea* and *Actus Reus

Terrorism of Terrorism Financing is like any other international crimes, can be split, as in the domestic criminal law systems, into *actus reus* (the prohibited act or conduct) and *mens rea* (the state of mind which must be established to have existed at the time of the offence). At present there are no crimes of strict liability (i.e. crimes for which no *mens rea* need be proved) within international criminal law. The above relevant Conventions specify the required *means rea*, which is usually phrased in terms of "intension" or "knowledge" or "willfully". The intention or knowledge can be actual or implied. Lack of *mens rea* or knowledge will also formulate a defense, including mistake, duress or insanity.

The above definition and explanation of what is money laundering and Terrorism Financing is just a guide or overview of the meaning of the offences but our aims

[70] *Ibid*

and objective under this chapter is to discuss the evolution and development and the mandate of *GIABA*.

2.2 Mandate of the Inter-governmental Action Group against Money Laundering and Terrorist Financing in West Africa (*GIABA*)

With the creation of *GIABA* Head of States and Governments of the ECOWAS established a specific mandate for the Inter-Governmental Organisation as follows[71]

(a) To ensure the adoptions of standards against money laundering and the financing of terrorist, including the FA TF 40 + 9 Recommendations.

b) To facilitate the adoption and implementation by member states of measures against ML and FT, taking into account specific regional peculiarities and conditions.

c) Function as a forum where members can discuss matters of regional interest and share experiences.

d) Organize self-evaluations and mutual evaluations to determine the efficacy of measures adopted, including their conformity to acceptable international

[71] *GIABA* Annual Report, *op cit* at p.10

standards.

e) Coordinate and provide support to member states to establish and implement *AML/CFT* regimes, including the implementation of laws against the proceeds of crime through mutual legal assistance, and in establishment and maintenance of financial intelligence units (FlUs).

The establishment of *GIABA* is a demonstration of good intention and desire of the ECOWAS Member States to the fight against money laundering and terrorist financing. In June 2006, *GIABA* was recognized as a Financial Action Task Force (FATF) Style Regional Body (FSRB). In practice, *GIABA* operates on one hand as an ECOWAS specialized institution, and on the other hand as a Financial Action Task Force Style Regional Body. Apart from performing the core functions of a FSRB, including mutual evaluations to determine its members' compliance with the FATF standards and typologies exercises to determine money laundering trends and methods, *GIABA* is the only FSRB with a technical assistance mandate.

2.3 **The Organs of the Inter-governmental Action Group against Money Laundering and Terrorist Financing in West Africa (*GIABA*)**

The organs are the three pillars in which the *GIABA* stands. They are: (1) the AD Hoc Ministerial Committee, that consist of the three Ministers of Finance, Justice and Interior/Security, (2) the Secretariat, which is located in Dakar, Republic of

Senegal (the administrative secretariat); and (3) The Technical Commission.

2.3.1 **Ad Hoc Ministerial Committee**

The statute of *GIABA* vested the principal decision-making on the Ad-hoc Ministerial Committee[72]. The Committee shall comprise the Ministers of Finance, the Minister of Internal Affairs or Security and the Minister of Justice of each signatory state. The statute also further provides that the Committee shall be chaired by the Minister whose country is the current chair of ECOWAS[73]. The Committee shall elect annually two (2) Vice-Chairmen who shall preside over the meeting of *GIABA.*

The activities of the Committee shall include the following:

(i) approving the progress report;

(ii) recommending the annual work programme for approval by the council;

(iii) adopting self-evaluation and mutual evaluation reports following similar procedures and processes as those of the FATF including follow - up publication and sharing of mutual evaluations,

(iv) recommending candidates for membership and for the grant of the

[72] Article 9 of *GIABA* Revised Statute, 2006
[73] *Ibid*

status of observer;

(v) proposing the issuance for formal notifications and recommend, through council, the suspension of signatory state, which fail to fulfill their obligations;

(vi) Proposing amendments of the statutes of *GIABA* as the need arises.

The first report by *GIABA* organization was issued in 2006. The review and appraisal of the action for 2004 to 2006 revealed that the Secretariat was only established and became functional in 2005, 5 years after the agreement to create the inter-governmental organization against money laundering.

Since the establishment of a functional Secretariat, the Inter-Governmenta1 Action Group against Money Laundering in West Africa has remained focused on its mandate to protect the economies of Member States against abuse and misuse for the purpose of laundering the proceeds of crime.[74] Though, in 2006 only two of the Member States had adopted a harmonized anti-money laundering in line with international standards while only four of the countries had enacted a law establishing the Financial Intelligence Unit (FlU) and of the four, only two were effectively operational, one in Nigeria and the other is Senegal, which happens to

[74] *GIABA Annual Report*, 2007 *op cit* at p. 7

be the location and head office of *GIABA*.[75] Although *GIABA* is a special institution of ECOWAS as well as FATF style Regional Body, FATF has 35 Member States in all the regions of the World, except West Africa that is not represented.

The main reasons for slow implementation and establishment of operation infrastructures are low income countries competing priorities for scarce government resources, the severe lack of resources and skilled work force to implement the *AML/CFT* programs and the overall weakness of the legal infrastructure within the Member States of *GIABA*. The establishment of the necessary infrastructure has been slow but it should be stated that some achievements have been made since the creation of the *GIABA* organization notably the recognition of *GIABA* as Financial Action Task Force Style Regional (FSRB) and the removal of Nigeria from the FATF list of Non-Co-operative Countries and Territories (NCCT).

2.3.2 **Administrative Secretariat**

Following a decision of the Authority of Heads of State and Government, the ECOWAS Secretariat was transformed into a Commission, similar to the African Union Commission and the European Community. The only impact this has on *GIABA* is the change in the nomenclature or designation of the Administrative

[75] *GIABA Annual Report*, 2006 o*p cit* at p. II

Secretary appointees of ECOWAS to Director General and Deputy Director General respectively. *GIABA* retains its relative independence and autonomy as an FSRB as well as a specialized ECOWAS institution funded directly from the ECOWAS Community levy.[76]

The Administrative Secretary shall be composed of the Administrative Secretary (Director General), his/her Deputy and such other staff necessary for its smooth functioning.[77]

The appointment of the Administrative Secretary (Director General) and his/her Deputy and all other staff of *GIABA* shall be in conformity with ECOWAS principles, Rules and Procedures governing employment of Staff.

GIABA which was established by the Authority of Heads of State and Governments of the Economic Community of West African States (ECOWAS), as a regional specialized institution also derived it resources or funding from the following.[78]

(a) a percentage of the resources of the community levy as may be determined by the council;

(b)an annual contribution made by member states which shall be calculated on

[76] *GIABA, Annual Report, op cit* at p.61
[77] Article 10 of the Revised Statute of *GIABA*, 2006
[78] Article 15 of the Revised Statute of *GIABA* Ibid

the basis of coefficients determined by the council;

(c)any voluntary contributions from signatory states and third countries, international and inter-Governmental organizations or regional Central banks that support its activities; and

(d)any other sources of funds as may be approved by the committee.

The Administrative Secretary as the Director General of *GIABA* is assisted with the Deputy Director General and other staffs as stated above as the Administrators and managers of the day today activities of the secretariat including the implementation of decisions of the Ad hoc ministerial committee, which include the following:

a. implementing decisions of the Committee in implementing the said decision, it shall be assisted by the Executive Secretariat (ECOWAS Commission) whenever the need arises.

b. assisting the Executive Secretariat (ECOWAS Commission) to prepare interim and annual reports which shall be submitted to the ECOWAS Authorities by the Executive Secretary (president of the ECOWAS Commission);

c. implementing the annual work program;

d. preparing the draft budget for adoption in accordance with Article 69 of the Revised ECOWAS Treaty and implement it after its approval by the Council of Ministers;

e. preparing questionnaires for self-evaluation and screen responses;

f. preparing and participate in mutual evaluation missions under the supervision of the committee;

g. working together within the executive secretariat (ECOWAS Commission) to identify the needs of the states in terms of technical assistance and facilitate mobilization of such assistance;

h. in conjunction with the Executive Secretariat (ECOWAS Commission), establish links with Signatory States and other regional Groups, international organizations and third countries on issue of relationship to its sphere of competence; and

i. Discharging all duties assigned to it by the Chairman of the Committee.

Since the establishment of its functional Secretariat in 2006, *GIABA* has remained focused on its mandate to protect the economies of member states against abuse and misuse for the purposes of laundering the proceeds of crime[79].

The purpose of both machineries, the Ad hoc Ministerial Committee and the

[79] *GIABA, Annual Report, op cit* at p.7

Administrative Secretariat is to enhance the efficiency and reliability of *GIABA* in combating Money Laundering and Terrorist Financing. The only problem with the Ad hoc Ministerial Committee and the Administrative Secretariat is that the former who is the principal decision making organs of *GIABA* does not fall within the permanent employees of *GIABA* they are just political appointees comprising the Minister of Finance, Ministers of Internal Affairs or Security and Ministers of Justice of each signatory state. This however, would affect the day-to-day activities of *GIABA* when there is change in government or removal of a Minister by a signatory state, while the later who are the employees of the *GIABA*, who serve in the day-to-day activities of *GIABA* are more or less answerable to ECOWAS Commission and the Ad-Hoc Ministerial Committee.

2.3.3 **Technical Commission**

In accordance with revised *GIABA* statute[80], the Technical Commission shall comprise of experts drawn from Ministries of Finance, Internal Affairs or Security and Ministries of Justice of Signatory States.

In addition, also the statute[81] provides that, the coordinators of the ministerial drug control coordinating committee of each member state shall be *de jure* members of the Technical Commission.

[80] Article, 11 Revised Statute of *GIABA*, 2006
[81] *Ibid*

The Technical Commission shall meet at least once a year and may meet as often as necessary. The meeting shall be convened by the Administrative secretary (The Director General) who shall propose a draft agenda. The meeting of the Technical Commission shall be presided over by the designated expert of the member state that is the current chairman of ECOWAS[82].

The Technical Commission has unique function as oppose to Ad hoc Ministerial committee and the Administrative secretariat. The functions include the following:

(a) the Technical Commission shall make proposal to the committee through the Administrative Secretary (Director General) on measures to combat the laundering of proceeds from crime and the financing of terrorism.

(b) the commission shall also carry out any other functions as may be assigned to it by the committee.

(c) it shall discuss the self-assessment and mutual evaluation reports for approval by the ad hoc ministerial committee.

The Technical Commission which deals with or comprises of experts from ministries of finance, internal affairs or security and ministries of justice as opposed to ad-hoc ministerial committee and the administrative secretariat need to

[82] Article 11 (d) Revised Statute of *GIABA*, *op cit*

be expanded to include police and judiciary of each signatory state or in addition the *GIABA* Revised Statute 2006 need to be amended to provide *GIABA* with another organ charged with responsibility in assisting member state in investigation, confiscation and seizure of the proceeds of laundered money or terrorist assets.

2.4 **Penalties for non-fulfillment of obligation by member States**

According to Article 6[83] where a signatory state fails to fulfill its obligations to the group, the Authority may on the recommendation of the Council, following the advice of the Committee impose any of the following sanctions on the said signatory state;

(a) Suspension of all forms of assistance and disbursement on on-going projects or assistance programs.

(b) non-recruitment of its citizens to international posts in the Administrative secretariat.

(c) suspension of voting rights.

Where the signatory state persists in its default, the Authority may revoke the membership of the said state from *GIABA* on the recommendation of council based on proposals received from the committee.

[83] Revised Statute of *GIABA*, 2006

2.5 **Withdrawal of Membership**

By virtue of the revised Statute of *GIABA*[84] all the Member States of ECOWAS shall be eligible for membership of *GIABA*. However Article 7 provides that[85] any signatory state wishing to withdraw from *GIABA* shall give one(l) year's notice thereof in writing to the Executive Secretary who shall immediately inform the other signatory states accordingly. A copy of the notification shall be addressed to the administrative secretariat by the signatory states concerned. If the notice of resignation is not withdrawn within this period, the signatory state shall cease to be a member of *GIABA*.

The state wishing to withdraw from *GIABA* shall continue to fulfill its obligation during the prior notice, thus the one year notice given by that member state.

2.6 **AN OVERVIEW OF THE STATUS OF *GIABA* MEMBER STATES ON AML/CFT**

This sub heading examines Anti-Money Laundering and Counter- Financing of Terrorism situation in each country in West Africa. It also examines the relevant AML/CFT infrastructure, including legal and institutional frameworks of each Member State and whether or not they have complied with *GIABA* Statutes, in

[84] Article 4(9) of the *Ibid*
[85] *Ibid*

particular Article 2(c) and Article 4 of the revised Statutes.[86] A brief country-by-country discussion is thus provided below.

2.6.1 **Benin Republic**

Benin is a member of *GIABA*[87]**,** also a member of West Africa Economic an Money Union known as WAEMU or *UEMOA* (I'Union Economique et Monetaire Quest Africaine)[88] under its French acronym. The *UEMOA* is a formal treaty linking eight French and Portugese-Speaking West African Countries, by virtue of its law No, 94-06 of June 22, 1994, This Treaty in turn governs all AML/CFT efforts among its members[89].

By *UEMOA* Uniforms law which was ratified by Benin, money laundering is criminalize. This law was formally ratified by their national assembly on the 31st October, 2006, as "Law No. 2006 - 14", pertaining to the fight against money laundering. This is also governed by community Regulation No-7/2002/CM/*UEMOA*, which regulates the fight against ML in member slates,

No- 14/2G02/CM/*UEMOA*, which regulates the freezing and seizures of assets and

[86] *Ibid*
[87] Article 3(a) *Ibid*
[88] This is referred to as the West African Economic and Monetary Union (WAEMU) in English Text
[89] *GIABA Annual Report, op cit* at p. 14

No. Reg.98/CM/*UEMOA* which regulates external financial relations among member states.[90]

They are also signatory to several international conventions relating ML, and FT, also recognized security council resolutions 1267 (1999), 1373 (2001) on ML/FT, as well as adhering to the FATF 40 + 9 Recommendations[91].

Finally, by the above explanation we can realized that Republic of Benin is incompliance with *GIABA* Statutes, particular Articles 2 and 4 of the Revised Statutes, 2006.

2.6.2 **Republic of Burkina Faso**

This country been a member state of WALMU (*UEMOA*) must comply with guideline 07/2002/CM/*UEMOA*[92], concerning the uniform law on ML which the government was committed to adopt in its national institutional arrangement.

Burkina Faso, enacted a law concerning the fight against ML No, 026/2006 by Decree 649 PRES[93]. With respect to financing of Terrorism, Burkina Faso have two draft texts, the ECOWAS Draft framework law, made available through

[90] *Ibid* at p 14

[91] *Ibid* at p. 15
[92] *UEMOA*, 19th September, 2002
[93] 29th December, 2006

GIABA, and WAEMU Guideline 04/2007[94], both dealing with the financing of terrorism.

As a member state of *GIABA*, WAEMU and the United Nations, Burkina Faso has committed to full compliance with the UN Security Council Resolution 1373[95]. It's also a signatory to a number of international instruments, including the UN convention against illegal Drug Trafficking and Psychotropic[96], the International Convention for the Repression of Terrorist Financing[97], the UN convention against organized Transnational crime[98]; the AU convention on the prevention of and Fight Against Terrorism[99], and the QIC convention Against International Terrorism[100].

Finally, Bulkina Faso in compliance with the *GIABA* statutes ratified and adopted all the above mentioned laws and conventions, and also designated the ministry of security as the coordinator of Anti-money laundering and counter - Financing of Terrorism activities[101].

[94] 4th July, 2007
[95] 2001
[96] 1998
[97] Adopted by the UN General Assembly of 12th September, 1999
[98] The Convention at its three Protocols, 2000
[99] Adopted by the 35th Session of the Conference of Heads of State and Government, 14th July, 1999 in Algiers
[100] Adopted in *Oaugadougou*, Bulkina Faso on 1st July, 1999
[101] GIABA Annual Report, *op cit* at p.16

2.6.3 **Republic of Cape Verde**

Cape Verde is one of the smallest countries of this region in terms of size and population. The countries[1] strategic location 500 km from the West Coast of Africa near major north-south sea routes, its important communications station, and its sea and air refueling site also carry potential risks of money laundering[102]. Cape Verde being the ECOWAS and *GIABA* member state has ratified some AML/CFT related convention, including the Vienna Convention[103] and Palermo Convention[104]. Although the country has milled the United Nations convention for the suppression of the Financing of Terrorism, but it has neither criminalized the offence of the financing of Terrorism nor the institutional framework for the prevention and control of money laundering is either new either or non-existence to their domestic Legal system[105].

2.6.4 **Republic of Cote d[1] IVoire**

Cote d'ivoire also is a member of the *UEMOA* which is formal treaty linking seven French and one Portuguese speaking West African countries[106], authorizing ratification of the Treaty signed on January 10, 1994, This Treaty in turn governs all AML/CFT efforts among its members. It is also a signatory to several

[102] *Ibid* at P.16
[103] 1998
[104] GIABA Annual Report, op. cit, at p.17
[105] *Ibid* at p.17
[106] By virtue of law No. 94 – 06 of 22nd June, 1994

international conventions relating to ML and FT, it recognises Security Council Resolutions 1267 (1999) and 1373 (2001) on ML, as well as adhering to the FATF 40+9 recommendation[107].

Finally, the Ivorian government recently established unit which will continue to work with previously established investigative units such as the Centre de Recherche Fanaciere (CRF) at the Department of customs and the Agence nationale de strategic et d' intelligence (ANSI) at the presidency[108].

2.6.5 **Republic of The Gambia**

The Gambia is like other *GIABA* countries are facing with problems of money laundering although its magnitude or severity cannot be readily determined. The porous borders, weak controls, prevailing poverty, the dominance of cash transactions, poor know your customer compliance culture, massive Inflows of tourists and anecdotal evidence of increasing drug-related and other criminal flows all contribute to creating a ML risk environment is the country[109].

However, The Gambia with its limited resources and capacity has passed various laws and regulations that are directly or indirectly relevant to AML/CFT in their country. These include the Money Laundering Act[110]; the Anti Terrorism Act[111],

[107] *GIABA Annual Report, op, cit* at p.18
[108] *Ibid* at p. 18
[109] *Ibid* at p. 19
[110] 2003

Economic Crimes (Specified Offences) Decree[112]; the Drug Control Act[113], and the Revised Regulation for the Operation of Foreign Exchange Bureau[114].

All the above five laws related to the money laundering and Terrorism Financing enacted by The Gambian Government are little or no important in fighting the menace, because the recent Money Laundering Act, 2003, has not being fully implemented[115].

Finally, the defect may be address by coming into force the Anti-Money Laundering and Financing of Terrorism Act, 2012[116]. That was assented to law just last year.

2.6.6 **Republic of Ghana**

Money laundering is a problem in Ghana and its manifestations include[117]:

1. The perception of Ghana as a week anti-money laundering jurisdiction;
2. The increasing incidence of drug trafficking and the huge inflows of cash into the country, which are strongly suspected to be laundered funds;

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[111] 2002
[112] 1994
[113] 2003
[114] 2005
[115] *GIABA Annual Report, op cit* at p. 18
[116] *www.GIABA.com op cit*
[117] 2004

3. The surge in expensive real estate purchases paid for in cash in US Dollars; and

4. The apparent lack of public awareness of the phenomenon of money laundering and its harmful effects,

In other to comply with *GIABA* Statutes Ghana enacted some legislation related to the subject matter, these include: Anti-Money Laundering Act[118]; the Anti-Terrorism Act[119], the Anti-Money Laundering Regulations[120], the Mutual and Legal Assistance Act[121] and finally, the Organized Crime Acts[122].

Notwithstanding Ghana enacted the above laws to Money Laundering, Terrorism Financing and other organized crime, but the country need to look forward to work had for their effective implementation. However, in addition to their weaknesses stated above Ghana also is not a member FATF.

2.6.7 **Republic of Guinea**

The Republic of Guinea has suffered from civil unrest in recent times[123]. The wars and other antecedent^ have left the economy badly wounded and most of the institutions of the governance fragile[124].

[118] 2008
[119] 2008
[120] 2008
[121] 2010
[122] 2010
[123] *GIABA Annual Report, op cit* at p. 20
[124] *GIABA Annual Report, op cit* at p.20

The Republic of Guinea adhered to, signed or ratified the main international instruments as follows: the UN Convention against the Illicit Traffic of Narcotics and Psychotropic Substance[125], the International Convention for the Repression of the Financing of Terrorism[126]; the United Nations Convention against Organized Trans-national Criminality[127] and the International Convention for the Repression of Terrorist Attacks with Explosive[128].

Even with the ratifications and adoption of the above mentioned conventions the Republic of Guinea has serious weaknesses, first of all the country has not created a CENTIF and yet no Decree or law has been issued to that effect. This is a fundamental weakness in the AML/CFT frame work in the country[129], while Guinea is vulnerable to drug trafficking; there is also a potential risk for money laundering and terrorist financing.

The Republic of Guinea adopted the UNSC Resolution 1373[130], and upon adopting the Resolution, a Group was formed, which later issued two reports on the status of the fight against terrorism in the country and a draft decree to set up a National AML/CFT[131] which is in the process of being adopted.

[125] December, 20, 1988. Date of adhesion; December 27, 1993
[126] December 9, 1999. Date of signature; November, 16 2001; Date of ratification; July 14, 2003
[127] December 15, 2000. Date of adhesion; November 9, 2004
[128] Adopted by the United Nations General Assembly on December 15, 1997, Date of adhesion, September 7, 2000.
[129] *GIABA Annual Report, op cit* at p.20
[130] (2001)
[131] *GIABA Annual Report, op cit* at p.20

Finally, the process of implementation of *GIABA* Statute and implementation of United Nations convention and FATF Recommendation are more or less in a paper not in practice. Also, Guinea is the only francophone country that is not yet a member of the *UEMOA*[132].

2.6.8 Republic of Guinea Bissau

Guinea Bissau is among the world's least developed countries, depending mainly on agriculture and fishing. The civil war that took place from June 1998 to early 1999 which unfortunately caused very severe damage to the country's infrastructure, widely disrupted economic activity and left the country in state of serious disarray. However the Banking and other financial institution sector in the country is quite limited and therefore not considered to be a major source of Money laundering and financing of Terrorism[133].

Guinea Bissau is a signatory to several international conventions relating to ML and FT, it also adopted UN security council Resolutions 1267 (1999) and that of 1373 (2001) on money Laundering and Terrorism Financing, in addition to officially adhering to the FATF, 40+9 Recommendations[134].

Money laundering has been fully criminalized in Guinea Bissau since July, 2004, in accordance with the uniform *UEMOA* law, which ratified by the National

[132] *GIABA Annual Report, op cit* at p.20
[133] *GIABA Annual Report, op cit* at p.21
[134] www.*GIABA*.com op cit

Assembly (the parliament) of the country, while the financing of terrorism at this time, there is no stand-alone legislation dealing with the issue, which has not been considered a priority until now[135].

Finally, the issue of Money Laundering and financing of Terrorism has not being taking with all seriousness in Guinea Bissau and there is a need for a widespread and systematic sensitization and awareness throughout the country both government officials and the ordinary citizens.

2.6.9 Republic of Liberia

The 14-year civil strife in Liberia, from 1989 to 2003 not only saw the mismanagement of government resources and the destruction of Liberia's physical infrastructures, but also the systematic erosion of the rule of law and the closure of many business, the illegal and rampant exploitation of natural resources, the proceeds of which were presumably laundered and used by the then Government[136].

Also, Liberia is seen as a transshipment point for South-East and South-West Asian heroin, and South American Cocaine for European and US markets. In addition, corruption, criminal activities, arm dealing, the overwhelming dominance of the use of the US dollar as an accepted medium of exchange, and the illegal diamond trade/timber logging along the porous borders outside the security cover

[135] *GIABA Annual Report, op cit* at p.21
[136] *GIABA Annual Report, op cit* at p.21

of the UN mission in Liberia provide a significant potential for money laundering and other offences in Liberia[137].

However, Liberia, in an attempt to comply with UN Resolution 1373[138], in 2005 established a body called the Liberian Policy Committee against Money Laundering and Terrorist Financing. The Committee has the following members: the minister of justice, finance, National planning and the Governor of the Central Bank. This committee is intended to serve as the AML/CFT inter-ministerial committee, as mandated by the *GIABA* Ad Hoc Ministerial Committee[139], although there is no evidence of its effectiveness either through regular meetings or through it activities.

2.6.10 Republic of Mali

Mali is one of the ECOWAS countries with vast landlocked, with porous border especially in its northern part. It is also characterized with informal economy, low banking culture and all-out use cash transactions. And also with it recent menaces of insurgents related in the vast Sahel/Sahara area between Mall and Niger, particular the Northern part of the country[140]. All these factors have led to a

[137] *GIABA, op cit* at p.22
[138] (2001)
[139] *GIABA op cit* at p.22
[140] www.*GIABA*.com*, op. cit*

stronger commitment of public service to fight against money laundering and terrorist financing.

Mali being the member of WAEMU took steps and adopted the WAEMU uniform law on AML/CFT. They are also a signatory to the UN Convention against Organized Trans-national Criminality[141], the International Convention for the Suppression of Terrorist Financing[142] and the AU Convention on the Prevention of, and Fight against Terrorism[143]. The Republic of Mali acknowledges[144] that it has to abide by the obligations contained in United Nations Security Council Resolution 1373[145].

Also, apart from the adoption and ratification of above conventions, the government of the Republic of Mali took a step in strengthen their AML/CFT regime by establishing an effective inter-ministerial committee as provided by Adho-Ministerial Committee of *GIABA*[146]. The Committee is not effective, and also the country has no functional (CENTIF) or financial intelligence unit.

[141] 2000
[142] Adopted in 1999
[143] Adopted in 1999
[144] *GIABA Annual Report, op cit* at p..23
[145] 2001.
[146] www.GIABA.com, *op. cit*

2.6.11 **Republic of Niger**

Niger is one of the 15 member slates of *GIABA* shares borders with seven Countries, including 1,500 Km with Nigeria, The porosity of these borders makes them difficult to control it given the inadequate means of this State. These circumstances contribute immensely to the development of intense trafficking in weapons, drug, tobacco, art pieces and human beings, resulting in large-scale criminality in the north and east of the country, and it also presented as a converging and transit point of criminal groups from Africa to Europe[147].

The country recognizes its commitment to the Security Council Resolution, 1373[148], to address international terrorism. The Government of Niger, by order No. 1999[149] created the inter-ministerial committee at the Ministry of interior and Decentralization, which ensures its supervisions as required by *GIABA.*

The committee consists of the representatives of the Ministries of interior, justice, and finance, the BCEAO, ECOBANK, BIA, BOA and BNCI, The function of the National Committee[150], include amongst others;

1) To sensitive policy decision-making, economic, social, financial and

[147] *GIABA Annual Report, op cit* p 24
[148] 2001
[149] July, 8, 2003
[150] *GIABA Annual Report, op cit* at p 24

monetary stakeholders and the populations in general on the necessity to fight money laundering and the financing of Terrorism.

2) To propose appropriate measures to fight ML/FT;

3) To propose any such measures as would enable the application by country of decisions adopted by G IAB A.

Finally, the above recognition or adoption of the above convention and the inauguration of the inter-ministerial committee were just on paper, however, if the country is serious enough to tackle the menace of Money laundering, terrorism financing and insurgent, a lot need to be done more especially on legislation and personnel.

2.6.12 **Federal Republic of Nigeria**

Nigeria as one of the member state of *GIABA* is the largest in the sub-Sahara Africa, both in terms of size and population, however, in 2007 Nigeria had been described as one of the most corrupt country in the World[151].

Also, Nigeria has been perceived as the centre of Criminal Financial activity for the entire continent. Individuals and Criminal Organizations took advantage of the country's location, weak laws, systemic corruption, lack of enforcement, and poor economic conditions to strengthen their ability to perpetrate all manner of financial

[151] Transparency International (TI) Corruption Perception Index, Op Cit at

crimes at home and abroad. Nigerian Criminal Organizations arc adept at devising new ways of sub-vetting international and domestic law enforcement efforts and evading detention. However, the establishment of the Economic and Financial Crimes Commission (EFCC), along with the Independent Corrupt Practices Commission and the improvements in training qualified prosecutors for Nigerian Courts, yielded some successes in 2005 and 2006[152].

Nigeria is also a signatory to several international conventions relating to ML, and also recognizes Security Council Resolutions 3267[153] and 1373[154] on ML, as well as adhering to the FATF 40 +9 Recommendations.

However, Nigeria has demonstrated a strong commitment to AML/CFT both within the country as well as in the region. The country has the most elaborate legal framework against corruption, economic and financial crimes in the region[155]. In 1995 the first Anti-Money Laundering (AML) Act was enacted but was letter replaced in 2004 by Money Laundering (Probation) (MLP) Act, 2004.

In 2000, the Government introduced the Independent Corrupt Practices and Other Related Offences Commission Act with a view to dealing with matters of corruption and bribering in Nigerian Public Service. Also the Economic and

[152] US International Narcotics Control Strategy Report, March 2007
[153] 1999
[154] 2001
[155] *GIABA Annual Report, op cit* p.25

Financial Crimes Act, 2004 was enacted which led to establishment of the Economic and Financial Crimes Commission (EFCC) as the coordinating agency for all AML related cases and terrorist financing. Section 15 of the EFCC Act[156] criminalizes financing of Terrorist and empowers the EFCC as the enforcement agency for TF offences.

The Central Bank of Nigeria Act,[157] established a body known as the Central Bank of Nigeria, (referred to as "the Bank") and charged it with the responsibility of administering the Banks and Other Financial Institutions Act (BOFIA) of 1991 (as amended), the bank discharges its principal functions of ensuring high standards of banking practice and financial stability through its surveillance activities, as well as the promotion of an efficient payment system. In its role towards combating money laundering, the CBN issued the Know Your Customer (KYC) directives as expounded by circular on Anti Money Laundering/Counter Terrorism Financing (AML/CFT)[158]. The circular reminds the financial institutions of the requirement to implement the various provisions of the Money Laundering guidance notes and to observe the code of ethics and professionalism issued by the Bankers' Committee.[159] The KYC directive requires financial institutions to develop policies, practices that will ensure a rigous customer due diligence in order to protect their institutions from

[156] Cap E1 *op cit*
[157] Cap. C4, LFN, 2004.
[158] CBN Annual Report 2009, p.43
[159] BSD/DIR/GEN/CR/02/0275.

being used for financial crimes. The prudential guideline 2010 reiterated the compulsion of compliance with the Money Laundering Act and other directives related thereto by the CBN.[160] The KYC principles require financial institutions to: inter alia observe the following customer identification and record keeping rules in spirit of Money Laundering (prohibition) Act:

(i) Avoiding keeping anonymous accounts or accounts in fictitious names;

(ii) Verifying with the Corporate Affairs Commission the proof of incorporation of the corporate customers, their structure, address, directors, memorandum and articles of association and the customers' business activities;

(iii) Subject to strict safeguards, detecting or monitoring physical cross-border transportation of cash and bearer negotiable instruments.[161]

(iv) Having clear procedures on and communicate to all their personnel how they should promptly report suspicious transactions to the money laundering reporting officers and to other competent authorities;

(v) Investigating the sources of funds before accepting as a customer, a Politically Exposed Person (PEP), and the decision to open such account should be taken at the senior management level;[162]

[160] www.centralbank.org/publication-circulars,17/09/2010.Accessed on the 26/02/13, at 11.00p.m.
[161] This is to be done without impending the freedom of capital movements.
[162] See also section 3(8)(a) and (b) of the Money Laundering (Prohibition) Act 2011.

(vi) Applying effective customer identification procedure and on-going monitoring standard for telephone and electronic banking customers and proactively assess various issues posed by emerging technologies;[163]

(vii) Undertaking regular reviews of existing records of customers, especially when there is material change in the way the account is operated.[164]

It is submitted that the KYC Guidelines and the prudential guidelines have provided a comprehensive guide for banks and other financial institutions, within the regulatory purview of the CBN, on the uniform procedure to be adopted for obtaining adequate information for the banks to minimize the risk of illicit activities, protect themselves against fraud and reputational risks.[165]

Also the Nigeria Financial Intelligence Unit (NFIU) was established in 2005 under the EFCC to receive, analyze and disseminate financial intelligence to law enforcement agencies and other relevant institutions. In addition, also in recent time the Anti-Terrorism Act, 2011 was amended by the Terrorism (Prevention) (Amendment) Act 2013 and also the Money Laundering Act (Prohibition) Act, 2004 was amended with Money laundering (Prohibition) Act 2011 all to fight the two menaces or to fight the emerging moster with all sense of reality.

[163] Ibid.
[164] CBN Annual Report, 2008.
[165] www.centralbank.org/accessed on the 26/2/13 t 10.00 p.m.

2.6.13 **Republic of Senegal**

Senegal is a member of the *UEMOA*, a formal treaty linking seven French-speaking West African Countries and Guinea Bissau (a Portuguese speaking country), by virtue of its law authorizing ratification of the treaty signed on January 10, 1994. This treaty governs all monetary and financial matters among its members[166]. Also the headquarters of *GIABA* is in Dakar, Senegal,. This privilege gave the government of Senegal to work with *GIABA*, WAEMU and ECOWAS to move to the next level in the fight against ML and TF particularly criminalizing the financing of terrorism.

In addition, Senegal was the first WAEMU (*UEMOA*) Country to enact the WAEMU Uniform Law in Money Laundering, and in a bid to curtail the level of ongoing ML in the Country, they have entered into bilateral Criminal Mutual assistance with France, Tunisia, Morocco, Mali, The Gambia, Guinea Bissau, and Republic of Cape Verde[167].

Senegal is the second after Nigeria in terms of well define financial intelligence unit and legislation in the fight against ML and TF[168]. Senegal is a signatory to several internationals conventions relating to ML and TF, it also recognizes United Nations Security Council

[166] *GIABA Annual Report, op cit* at p 28
[167] *GIABA Annual Report Op Cit* at p. 29
[168] *Ibid* at p.28

Resolutions 1267[169] and 1373[170] on Money Laundering, in addition to officially adhering to the FATF 40+9 Recommendations.

Finally, the Republic of Senegal notwithstanding being the first WAEMU country to ratified the Uniform Laws on Money Laundering and Terrorist financing and being the *GIABA* Headquarters, a lot need to be done to sensitize the public in the danger of dirty money, currency market and introduce the more formal currency system, also to have vibrant and active Anti-Money Laundering law and Counter-financing of terrorism.

2.6.14 **Republic of Sierra Leone**

Sierra Leone is one of the poorest countries in the region, ranked 176 out of 177 countries in the world in 2006[171]. Also, is one of the post-conflict countries in West Africa, having experienced Civil War from 1991 – 2002. However, since the cessation of hostilities, government is steadily re-establishing its control and authority over the state's affairs. Also, there have been several international and donor mission to the country, and Government on its part has also embarked on a couple of reform programmes aimed at promoting transparency and accountability in governance[172].

[169] 1999
[170] 2001
[171] UNDP – World Development Report. Title "*Beyond Scarcity-Power, Poverty and the Global Water Crisis*. 2006
[172] *GIABA Annual Report, op cit* at 31

Money Laundering has been criminalized in Sierra Leone through the Anti-Money Laundering Act[173], while financing of terrorism is fully criminalize[174]. Although, Sierra Leone is keeping with United Nations Resolution 1373[175], it has established National Counter terrorism Committee, Comprising the Financial Secretary, Governor of Sierra Leone Central Bank, Director General Ministry of Foreign Affairs, Chief Immigration Officer, Coordinator Office of National Security, Director General Drug Law Enforcement Agency, Registrar National Registration Secretarial and Permanent Secretary Ministry of Mineral Resources[176]. Nonetheless, Sierra Leone is a signatory to all international conventions on Anti-money laundering and Counter-Financing of Terrorism.

Finally, the Government of Sierra Leone need to take the issue of money laundering and financing of Terrorism with all seriousness in order to improve it fragile economy and also to compete with other *GIABA* member states.

2.6.15 **Togolese Republic**

Togo is a member of *UEMOA*, and the *UEMOA* Treaty governs all AML/CFT efforts in the country. Also with recent rapid changes taking place in many neighboring countries, both socio-economical and political, Togo feels

[173] 2005
[174] *www.GIABA.Com, op cit*
[175] 2001
[176] *GIABA Annual Report, op cit* at p. 31

compelled to participate more fully in the new sub-regional order of things. Laws have been enacted, institutions created, systems initiated and assistance sought in order to bring the country up to a level of competence that will enable it to deal properly with some of it major problems, among which are corruption, trafficking and more especially money laundering and the potential financing of terrorism[177].

The potentials of money laundering today taking place in Togo is either payoff for complicity with traffickers in illicit drugs and other commodities, or results from participation in corrupt practices by government officials, private business man etc[178]. However if the menace of corruption, have been curtail it will have direct impact on all AML/CFT efforts.

Money laundering has been criminalized in Togo, in accordance with Uniform *UEMOA* law[179]. Although all activities related to money laundering and financing of Terrorism were historically covered by section 234 of the Penal Code of the Republic of Togo. Also it is important to note that Togo is a signatory to several international conventions relating to ML, in addition they recognizes United Nations Security Council Resolution 1267[180] and

[177] *GIABA Annual Report, op cit* at p.33

[178] *www.GIABA.com, op cit*

[179] Ratified by the Togolese national Assembly on the 20th June, 2007

[180] 1999

that of 1370[181] respectively on money laundering, and they are adhering to the FAIF 40+9 Recommendations.

Finally, the Togolese government adopted the Anti-Money Laundering law[182], which lead to the establishment of an FIU (the CENTIF), under the authority of the Minister of Economy, Finance and Privatization. However, this body is still in-active or non-existence.

In conclusion Money laundering and terrorism financing became global problem and require an international effort to combat organized gangs schemes not to launder their ill-gotten gains into the legal financial systems of the world. As a global problem most nations have or are in the process of establishing anti-money laundering legislation and counter-financing of terrorism in order to combat the menaces. The West African region has become a part of the fight against ML/FT and has acknowledged and recognized that as other nations put in place stronger and stronger controls, organized gangs Increase the use of West Africa as a transit area to launder their monies and perform their terrorist activities due to their weak infrastructures, informal markets and the high levels of corruption in the area and poorest boarder.

[181] 2001
[182] July, 2007

However, the establishment of *GIABA* is therefore a demonstration of the strong commitment of the ECOWAS member Stales to the fight against organized crime, particularly money laundering and terrorist financing.

CHAPTER THREE

THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR COMBATING MONEY LAUNDERING AND TERRORISM FINANCING

3.1 Introduction

This chapter will briefly discuss the legal and Institutional framework for combating money laundering and terrorism financing and how their applications assist *GIABA* in performing it mandate. These institutions include the Financial Action Task Force (FATF)[183], its recommendations and standard; the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,[184] the United Nations Convention against Transnational Organized Crime,[185] the United Nations Security Council Resolution (UN SCR) 1373, of 2001[186]; ECOWAS Criminal Intelligence and Investigation Bureau[187] and finally the ECOWAS Committee Court of Justice[188].

The aims of this chapter as earlier stated is to discuss briefly the legal and institutional framework for combating on money laundering and financing of terrorism and how their application relate to *GIABA* in discharging its

[183] Adopted in 1989 in Paris by the G.7 group 7 nations (now G-20)
[184] Refined to as they "Vienna Convention"
[185] Referred to as panama convention, 20000
[186] Adopted on 28th September, 2001
[187] Adopted by the ECOWAS at the 29th Session 7th Authority of Heads of State and Government at Niamy on the 12th January, 2006.
[188] Established by ECOWAS Revised Treaty, 1993

mandate. Although, the analysis is not exhaustive nonetheless it will provide synopsis on the subject matter under consideration.

3.2 **FATF Recommendation/Standard**

The Financial Action Task Force in Money Laundering (FATF) was set up in Paris[189] by the G-7 group of nations (now effectively the G-20) and as at April 2011 was made up of 34 countries[190] and territories, plus 2 regional organisations with 8 associates and 21 regional organisation with 8 associates and 21 observers.[191] This is in response to the mounting international concern against money laundering[192], FATF is an inter-governmental body whose purpose is the development and promotion of policies[193]. It also works with a number of other international and regional bodies involved in combating money laundering and terrorist financing[194]. The body came up with 40 Recommendations which essentially are measures which the task force has agreed to implement and which all countries are encouraged to adopt[195]. It was in 1990 that the recommendations were originally drawn up, but were revised in

[189] In 1989
[190] *www.GIABA.org op cit*
[191] *Ibid*
[192] Momodu, B: (2007) *Law and Practice of Criminal Investigation and Prosecution in Nigeria*, University Press, Ibadan p. 244.
[193] Momodu, B: at p. 244.
[194] Johnson, J: (2008), *"The Round FATF mutual evaluation indicate declining compliance"* Journal of Money Laundering Control, Vol. 11 No. 1 pg 47.
[195] Momodu, B: *Ibid*

1996[196]. It was further revised in 2003 to provide a comprehensive strategy against money laundering[197]. Also the effect of the 9/11 attack in the United States of America (USA) and the increased relationship between terrorist financing and money laundering[198] led to the development of an additional 9 special recommendations[199].

The FATF recommendations are designed to have universal application hence various countries of the world are required to comply with them or be blacklisted[200]. Nigeria was placed on the FATF list of non-cooperative countries and terrorist in 2001, because of identified deficiencies in the country's anti-money laundering/counter financing of terrorism[201] and was given December 2002 to comply or face sanction[202]. In response to that, Nigeria took certain steps in order to mitigate or to avoid the sanction, by enacting the Economic and Financial Crimes Commission (EFCC) Act[203], Money Laundering Act[204] and Terrorism Act, 2011 and Terrorism (prevention) (Amendment) Act, 2013.

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[196] Kern, A: (2001) *"The International Anti-Money Regime: The Role of the Financial Action Task Force"*, Journal of Money Laundering Control, (2001) Vol. 4 No. 3 p. 231
[197] Qorchi M: Munzele S.M: and Wilson, J.F: (2003) *Informal Fund Transfer Systems, An Analysis of the Informal Hawala System,* IMF and World Bank Occassional paper, No. 222
[198] Financial Action Task Force (2008), 9 Special Recommendation, FATF
[199] *Ibid*
[200] Momodu, B: *op cit* at p. 244
[201] Rabadu N: 3rd Plenary of the Inter-Governmental Action Group against money laundering in West Africa (GIABA) *op cit*.
[202] Momodu, B: *op cit* at p. 244
[203] Cap E1 *op cit*
[204] Cap M18 *op cit*

However, Nigeria on it part has undertaken several initiatives aimed at Combating Money Laundering, although some of these have arguably been in response to international pressure. The first legislation was probably the 1989 National Drug Law Enforcement Agency Act, which brought Nigeria in tandem with the 1988 Convention Against Illucit Traffic in Narcotic Drugs and Psychotropic substance, also referred to as the "Vienna Convention" and subsequent legislations followed. In 1991, Banks and other Financial Institution Act (BOFIA) was enacted and amended in 2002; Advanced Fee Fraud and other Related Offences Decree, 1993; Failed Banks (Recovery of Debt and Financial Malpractice in Bank), 1994 – creating a "419" Offences; Corrupt Practices and Other Related Offences Act, 2000 – establishing Independent Corrupt Practices Commission; 2002 Electoral Act replaced the Electoral Act, 2001 and further amended in 2006, the 2006 Act was repealed with Electoral Act, 2010. In 2002 the Economic and Financial Crimes Commission Act was put in place, establishing the Economic and Financial Crimes Commission. Also the Money Laundering Act was enacted in 2004 replacing the Anti-Money Laundering Act, 1995. In 2002 the Economic and Financial Crimes Commission Act along with the important amendments to existing Money Laundering Legislation was passed partly in response to

international pressure. The Act was signed just one day before the FATF deadline to recommend sanctions for non-compliance.

Although, many develop nations have taken the necessary steps by applying the recommendations of FATF to combat money laundering and terrorist financing, however, developing nations like those located in Western Africa have lagged behind for many years and are subject to abuse by organized crime[205].

Also, according to a United Nations Report on Crime and Development in Africa, released in May 2005, Africa is often a target of organized crime and criminals gangs that frequently explore the weak administrative, legal and financial structures of African countries by creating an environment that is prone to conventional crime and urban violence[206].

The FATF recommendations are only principles for actions which countries are to implement according to their particular circumstances and legal system. However there is what is called the Combined Code[207], which is the Combined Convention issued by the UN which incorporated the recommendations of FATF, UN Conventions, World Bank Declarations and IMF Policies[208]. As a result, FATF style

[205] Alexander K; (2009) *Money Laundering in West Africa; An Analysis*, University of Toronto p.12
[206] http://www.netotimesonline.com/content/view/4907/55/accessed on 7/1/2013.
[207] http://works.bepress.com/egi/viewconjent.cgiarticle=1001andcontext=syefancassela,accessed 7/1/2013
[208] Blazejewski K.S., (2008). *The FATF and its Institutional Parties: Improving the Effectiveness and Accountability of Trans Governmental Networks* 22 Temp. Int'l and Comp L.J. 59 P.1-61

regional groupings were created in various areas of the world[209]. The aim of the groups is to combine to combat money laundering and financing of terrorism. Specifically for West Africa in 2000 the Economic Community of West African States (ECOWAS) established the Inter-government Action group against money laundering in West Africa (*GIABA*) for the prevention and control of money laundering and terrorist financing in the region in line with the FAFT Recommendations. Below are the other regional Intergovernmental Action Group related to *GIABA* as well as the Financial Action Task Force Styled Regional Bodies.

3.2.1 **Caribbean Financial Action Task Force**

Caribbean Financial Action Task Force (CFATF) is an organization of the Caribbean basin,[210] which has set target to implement comment counter measures, address the problem of criminal money laundering in line with the Vienna Convention and also as a regional window for implementation of FATF Recommendations. It is a FATF styled regional body established as the result of meetings convened in Aruba in May 1990 and Jamaica in November, 1992.[211]

[209] http://www.works.bepress.com *Op Cit*
[210] www.fatf.org/11102009, Accessed on the 11th of December, 2012 at 330pm.
[211] *Ibid*.

3.2.2 East and South African Anti-Money Laundering Group

The East and South African Anti-Money Laundering Group (ESAAMLG) is the FATF style regional group for East and South African states. It is launched at a meeting of Ministers and high level representatives in Arusha, Tanzania, on 26-27 August, 1999, The Memorandum of Understanding creating the regional group was agreed to at the Arusha meeting. The Memorandum of Understanding is currently ratified by 14 regional member states[212]. The objectives of the ESAAMLG as outlined in the Memorandum of Understanding centre around combating money laundering and terrorist financing.

3.2.3 Financial Action Task Force on Money Laundering in South America

Also known as *Groupo de Action Finaciera de Sudamerica* (GAFISUD)[213], is the FATF style Body for countries of South America. It was formally established on 8 December, 2000 in Cartagena de Indian, Colombia.[214] The origin of GAFISUD is underscored by the various efforts in South America and was encouraged by the creation of other anti money Laundering regional groups that were established following the FATF model. The GAFISUD has adopted the 40 Recommendations

[212] Botswana, Kenya, Malagasy, Mauritius, Mozambique, Nambia, South Africa, Swaziland, Seychelles, Tanzania, Uganda, Zumbabwe.
[213] *Groupo de Action Finaciera de Sudamerica* on the 12th of December, 2012, at 11.00p.m.
[214] www.fatf.gafi.or/documents/35. Accessed on 2/03/2014, at 1230pm.

of the FATF as the standard for countering money laundering and combating terrorism financing.[215]

3.3 The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psycho tropic Substances also referred to as the "Vienna Convention"

The Convention recognized that illicit drug traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business and society at all level and the first international instrument to make the fight against the proceeds of crime an angle of attack in the fight against organized crime and drug trafficking. The Convention was opened for signature on December 19, 1988 to December 20 1989 and entered into force on November 13, 1990[216], with 157 states and the European Union as parties[217]. This Convention revised and consolidated the 1961 and 1971 Conventions. The cardinal purpose of the Convention is to promote cooperation amongst parties so that they may address more effectively the various aspects of Illicit Traffic in Narcotic Drugs and Psychotropic Substances and money laundering activities having international dimension by taking necessary measures including legislative and administrative measures under domestic laws to confront the problem.

[215] *Ibid.*
[216] International Legal Materials Vol. 28 1989. P. 493.
[217] Nigeria is a signatory to the Vienna Convention.

The preamble to the Convention underscored its effectiveness which was anchored on deep concern of the parties to the Convention by the: "magnitude of and rising trend in the illicit production of, demand for and trafficking in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society".[218] The parties also recognised the links between illicit traffic; and other related activities which undermine the legitimate economies and threaten the stability, security and sovereignty of states and that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and highest priority.[219]

3.4 The United Nations Convention against Transnational Organized Crime (Palermo Convention), 2000

The Palermo Convention[220] is the instrument designed to combat the phenomenon of transnational organized crime. It is a multipurpose instrument supplemented by three additional protocols bearing respectively on the treatment of individuals, trafficking of migrant over land, air and sea and the illegal manufacture and trafficking of firearms.[221]

[218] Herbert and Morais: (2001), The War Against Money Laundering, Terrorism and Financing of Terrorism, *Law Asia Journal, 18.*
[219] Ibid
[220] Nigeria is a signatory to the Convention and was elected President of the Conference.
[221] Ibid

Under the Convention, four offences considered to compromise the structural characteristics of organized crime are required to be addressed by the states in their domestic law, criminal association, money laundering, corruption and obstruction of justice.

The statement of purpose of the Convention clearly spelt out its intention which is to promote cooperation, prevent and combat transnational organised crimes more effectively,[222] In 41 Articles, the Convention provides a blueprint for countries working to shut down international criminal organizations, eliminate "safe havens," protect witnesses and block money laundering. Significantly, for the first time, the Convention offered the international community universally recognized definitions of several fundamental concept of criminal law linked to organized crime, such as "organized criminal group," "serious offences and "the proceeds of crime. The Convention also broached the subject of approximating national criminal legislation by establishing criminal offences of a universal nature[223], and by obliging the states parties to co-opt them into their domestic criminal law.

In response to mounting concern over money laundering and the threat posed to the banking system, the Financial Action Task Force (FATF) on laundering was established by the G-7 summit that was held in Paris in 1989[224].

[222] Artile 1 of the United Nations Convention against Transnational Organized Crimes.
[223] For example, participating in an organized criminal group, money laundering, obstructing of the cause of justice, corruption, etc.
[224] http//www.oecd.org/fatf.accessed on 11/02/14 at 1100 hours.

3.5 **United Nation Security Council Resolution 1373**

The process of globalization and world global village have resulted in the need for international organizations and regional bodies including ECOWAS to broaden their focus beyond state-based security threats and to encompasses those enacting from non-state perpetrators. The attacks on the United States of America on the September 11, 2001 necessitate the global efforts to address international terrorism[225].

Also as a result of the September 11, attacks, the EU commission made a statement stressing the need for closer operation between European Union and United State of America to combat terrorism[226]. This was later backed up by a joint EU and US statement of partnership, on the 12th September, 2001, while NATO re-initiated same position of the attack[227], they regarded the situation as one within Article 5 of Washington Treaty i.e. an arm attack against one ally was to be regarded as an attack against all of them.

While on the 14 September. 2001, a joint Declaration by the Heads of State and Government of the E.U, the President, the parliament, the European Commission, that all countries should make greatest efforts to light against terrorism and that in

[225] Abdullahi, Y.S. (2001) *Implementation of UNSCR 1373 in West Africa Issues at Challenges, op cit* at p.2
[226] The next day that is September 12, 2001, through its President Mr. Podi
[227] NATO position or statement was also made on the 12th

their view international law made u possible to seek out those involved in or supporting terrorism.[228]

An important element of such efforts is the United Nations Security Council Resolution (UNSCR) 1373 of 2001[229], United Nations Security Council on the 28th of September, 2001 adopted the Resolution 1373 under it chapter VII jurisdiction requiring all states (not just UN Members Suites) to[230]:

a) Prevent and suppress the financing terrorist acts;

b) Criminalize the willful financing of such acts;

c) Freeze assets of persons or entities involved in such acts;

d) Restrain from supporting anyone involved in terrorist acts;

e) Deny Safe haven to those involved in terrorism

f) Prevent the use of their territory for terrorist purpose;

g) Ensure that terrorist are brought to justice

(h) Assist Criminal Proceedings and investigations relating to terrorism; and

(i) Prevent the movement of terrorists by maintaining effective border controls,

[228] Claire T and Edwin S., (2003) *International Criminal Law and Human Right*, Sweet and Maxwell, London p.250.
[229] Abdullahi Y.S.(2001) *Implementation of UNCR 1373 in West Africa Issues and Challenges, op cit* at p.2
[230] Claire T. and Edwin S. *International Criminal Law and Human Right, op cit* at p.25.

All states were also urged to become parties to existing anti-terrorism treaties, and the inherent right of individual or collective self-defence against terrorist acts, and to fully **i**mplemen**t** them within their jurisdiction. In West Africa, the principal mechanism for complementing the efforts of the United Nations convention in implementation of the United Nation Security Council Resolution (UNSCR) is the establishment of the inter-Governmental Action Group against Money Laundering in West Africa (*GIABA*), which serves as ECOWAS Specialized institution and also a Financial action task force (FATF) style regional body (FSRB).

3.6 *GIABA* Statutes and ECOWAS Member State's

Following the *29th* Session of the Authority of Head of States and Governments decision No A/DEC. 6/12/200, the Statutes of the inter-Governmental Action Group against Money Laundering in West Africa (*GIABA*) was adopted[231].

The member's determined to apply the policy Declaration and plan of Action against Money Laundering adopted at the Twentieth Session of the United Nations General Assembly devoted to the control of the global drug problem which was held in New York on the 10th June, 1998[232].

[231] *Official Journal of the ECOWAS*, December, (2000) Vol. 38 p. 8
[232] *Ibid* at p.8

Also to adopt the Forty (40) Recommendations adopted by the Financial Action Group to Combat Capital Laundering set up by the Heads of State of the Seven (7) most industrialized countries and the President of the European Commission[233].

The *GIABA* Statutes were revised in January 2006 to reflect the increasing link between money laundering and the financing of terrorism around the world. The revision of the statutes was also partly justified by the terrorist attacks against the United States of America on September 11, 2001[234].

The Aim is to establish a structure to promote the application of the instrument and standards by members states, monitor their implementation status, evaluate the effectiveness of the measures adopted at the sub-regional and national levels and adopt operational guidelines for the said structures, and also to establish in each member state effective mechanisms and structures for the detection, pursuit, freezing, seizure and confiscation of the proceeds of criminal activity[235].

Articles 2 states that[236]:

(a) The objective of *GIABA* shall be to:

i. Protect the national economies and the financial and banking systems of signatory states against the proceeds of crime, and combat the financing

[233] *Ibid*
[234] *www.GIABA op cit*
[235] *Official Journal of the ECOWAS, op cit* at p.8
[236] *GIABA Revised Statute, op cit* at

of terrorism;

ii. Improve measures and intensify efforts to combat the laundering of proceeds from crime;

iii. Strengthen co-operation amongst its members.

In addition to the above, Article 2(b) of the Revised statute also state that *GIABA* shall:

(i) Combat the laundering of proceeds from crime and the financing of terrorism;

(ii) Ensure harmonized and concerted efforts at adoption of appropriate measures to combat money laundering and financing of terrorism;

(iii) Evaluate, through self evaluation and mutual evaluation to the FAFT, and

(iv) Encourage any other state to join *GIABA*.

Article 2(c)[237] make it mandatory that every member state of *GIABA* shall recognize, adopt and implement FATF norms, the FATF 40 +9 Recommendations as adopted by the United Nations General Assembly as an Action Plan against Money Laundering on 10th June, 1998 in New York and the international convention for the suppression of the financing of Terrorism of the 19th December, 1999 and any other relevant international instrument.

[237] *Ibid*

The statutes makes it mandatory that all the member states shall take action to combat money laundering and the financing of terrorism, adopt the FATF Recommendations and implement them effectively, take ownership and incorporate the anti-money laundering/combating financing of Terrorism methodology adopted by the FATF in 2004 and as updated from time to time at international level[238].

Finally, the *GIABA* statute makes it mandatory that all member state shall take steps to develop, pass and implement anti-money laundering and counter-terrorism financing legislations and other measures on programs based on the FATF Recommendations, using the methodology and other agreed Mutual evaluation template documentation, also implement the ECOWAS decisions on Anti-Money Laundering and Counter-Financing of Terrorism.

3.7 **Money Laundering (Prohibition) Act, 2011 and Terrorism (Prevention) (Amendment) Act, 2013**

This law makes comprehensive provisions prohibiting the laundering of the proceeds of crime or illegal act. It provides appropriate penalties and expands the interpretation of financial institutions and scope of supervision of authorities on money laundering activities allying the other things, The Act regulates the procedure for making and accepting cash payments of a sum exceeding N5, 000.000 or its

[238] *Ibid*

equivalent, in the cast of an individual[239] and Nl0,000,000 or its equivalent in the case of a body corporate[240]. It is submitted that the above threshold reporting will create problem because it is not clear whether multiple transactions in a single day totaling N5,000,000 for individuals and N10,000,000 for corporate body qualify for the mandatory reporting. It imposes duty-on any person or body corporate to report international transfer of funds and securities in excess of US$10,0OON or its equivalent to the Central Bank (CBN) and the Securities and Exchange Commission (SEC) or the Economic and Financial Crimes Commission (EFCC).[241]

The Act makes it mandatory for financial and designated non-financial institutions to verify the identity and update all relevant information on the customer[242] before opening an account or issuing a passbook to, entering into financial transaction with, renting a safe deposit box to or establishing any other business relation with the customer[243], and during the course of relationship with the customer.[244] What is not clear from this provision is the use of the term "its customers" as that raises the question at what stage will a person be considered as a customer? In the South African case of *Kwamashu Bakery Ltd v. Standard Bonk of South Africa*[245] the court

[239] *Ibid.*
[240] *Ibid.*
[241] *Ibid.*

[242] *Ibid.*
[243] *Ibid.*
[244] (1995) I SA 377
[245] Section 3(2) (b) of the Money Laundering (Prohibition) Act, 2011.

held that banks arc required in terms of common law to verify prospective customers who want to open bank account.

The address of an individual customer is also verified by the customer presenting to the financial institution the original of receipts issued within the previous three months by public utilities or any other documents as the relevant regulatory authorities may from time to time approve.[246] What is not clear is whether the receipts must necessarily bear the name of the customer or of any other person's name. The likely effect of the utility bill bearing the name of the customer is that it may foreclose tenants, dependents, squatters and such others, who will find it difficult to have utility bills in their names. To achieve the objective of the law, it is necessary to expand the scope to include utility receipt issued in favour of a guardian, guarantor, or any such similar person among others.

Public utilities connate services provided for the public, for example, an electricity, water or gas supply,[247] In Nigeria today, it is an onerous task to demand receipt of public utilities from even those who own residential accommodation let alone squatters. Today, the fixed line telephone line is almost extinct and the common telephone facilities arc GSM[248] and fixed wireless[249] which are substantially pay-as-you-go with no issuable receipt to establish evidence of particular residential

[246] *Oxford Advanced Learners Dictionary*, sixth Edition
[247] For example MTN, Airtel, GLO, Etisalat, et cetera.
[248] For example multi links, starcomes etcetra.
[249] Section 6(1) (a-d) of the Money Laundering (Prohibition) Act, 2011, (As amended).

address. The electricity bills are now replaced with pre-paid metering system where electricity consumer will only buy credit units and receipts are no long necessary. Water bill receipts are similarly not a common instrument among the citizenry, because substantial reliance for water supply is through personalized boreholes and water vendors who issue no receipt. It is submitted that to achieve (he objective of the law, a liberal approach of customer's verification procedure should be introduced to give an opportunity for every Nigerian to open account in banks.

The Act also made provision for reporting suspicious transactions involving:

> A frequency which- is unjustifiable or unreasonable; is surrounded by conditions of unusual or unjustified complexity; if it appears to have no — economic justification or lawful purpose(s) to the Nigerian Financial Intelligence Unit (NFIU)[250] or where in the opinion of the financial or designated non-financial institution involves terrorist financing or is inconsistent with the known transaction pattern of its account or business relationship that transaction shall be deemed to be suspicious and the financial institution shall seek information from the customer as to the origin and destination of the funds, the aim of the transaction and the identity of the beneficiary[251].

[250] *Ibid.*
[251] Section 7(1) of the Money Laundering (Prohibited) Act, 2011.

The problem here is that suspicious transactions are defined in the context of scope. What is suspicious is not defined and financial institutions can raise the defence that they did not perceive the transaction as suspicious. Section 25 of the *Money Laundering (Prohibition)* Act, 2011, (As amended), defines "Suspicious Transaction" as a matter which is beyond mere speculation.

A financial institution or designated non-financial institution shall keep at the disposal of the authorities the record of customer's identification for a period of at least five years after the closure of the account or the severance of relations with the customer.[252]

The Act, also mandated financial and designated non-financial institutions to report to the NFIU within 7 days any single transaction, lodgement or transfer of funds in excess of N5, 000,000 or its equivalent in the case of an individual and in the case of corporate body ₦10, 000,000. The disclosures are generally referred to as "Currency Transaction Report" (CTRs).[253] The problem here is, it is not clear whether an individual or corporate body who split their transactions into bits exceeding N5, 000.000 or 10,000,000 will report such transactions. It is submitted that in both situations, the financial institution must report such transaction to the NFIU.

[252] Section 10 of the EFCC (Establishment) Act, 2004.

[253] *GIABA* Mutua Evaluation, 2011.

In response to the *GIABA* Mutual Evaluation,[254] the Money Laundering (Prohibition) Act, 2011 (As amended) enlarged the predicate offences of money laundering to include: participation in an organized criminal group, racketeering, terrorism, terrorist financing, trafficking in persons, smuggling of migrants, sexual exploitation, sexual exploitation of children, illicit traffic in narcotic drugs and psychotropic substances, illicit arms trafficking, illicit trafficking in stolen goods, corruption, bribery, fraud, currency counterfeiting, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, hostage taking, robbery or theft, smuggling extortion, forgery, piracy, insider trading and market manipulation or any other criminal act specified in this Act or any other Law in Nigeria. This has negated the observation made by *GIABA*[255] that Nigeria has not included fraud as money laundering predicate offence.

3.8 ECOWAS Criminal Intelligence and Investigation Bureau

By the decision of Heads of States and Governments of the Economic Community or West Africa (ECOWAS)[256] at 29 Session considering th**e i**ncreasing sophisticated methods employed by the Criminals and the rise in Criminal activities have agreed to establish a mechanism for a fight against various intelligence and investigation bureau, and provide it with

[254] Section 15 (6) of the Money Laundering (Prohibition) Act, 2011 (As amended).
[255] *GIABA* Mutua Evaluation, 2011.
[256] Done at Nimey on the 13th Day of January, 2006

adequate structures and put in place the appropriate procedures for its adoption[257].

They have agreed as follows:

By virtue of Article 2 of the Protocol Establishing an ECOWAS Criminal Intelligence and Investigation Bureau[258]**, t**hat:

(1) There is hereby established an ECOWAS Criminal intelligence and Investigation Bureau, here in referred to as "CIIB"

(2) The CIIB shall be a specialized institution of ECOWAS, tasked with preventing and combating transnational crimes**.**

Article 1[259]

Defined "Crime or organized Crime" to include drug trafficking, terrorism, trafficking in persons, money laundering, currency counterfeiting, cyber crime and other forms of trans-national crimes**.**

However, one of the objectives of *G1ABA* is to combat the laundering of proceeding from crime and the financing of Terrorism[260]. This happens to fall **w**ithin one of the trans-national crime or organized crime, contemplated

[257] *Official Journal of the Economic Community of West African States* (ECOWAS)
[258] 2006
[259] Protocol Establishing ECOWAS Criminal Intelligence and investigation bureau, (CIIB), 006
[260] Article 2(b)(i) GIABA Revised Status, *op cit*

by the protocol establishing ECOWAS Criminal Intelligence and Investigation Bureau.

In addition**,** Article 2(3)[261] provide that: The CI1B shall have a single national unit to be established in member states in accordance with Article 46(3) of the protocol relating to the mechanism on conflict prevention, management, resolution, peace keeping and security of 10th December, 1999 and also have with the National Central Bureau of Interpol and other similar organizations. According to this Article similar organizations shall include specialized ECOWAS institution like *GIABA*.

3.8.1 **Objective and Functions of CIIB**

By virtue of Article 3(1)[262] that the objective of the CITB shall be, to improve the effectiveness and cooperation of the competent authority in member states in preventing and combating trans-national crime and other related Criminal offences in West Africa.

Also, Article 3(2)[263], provide that in the framework of its objective pursuant to paragraph 1 above, the CIIB shall;

a) Facilitate the exchange of information on Criminals, Criminal

[261] Protocol Establishing the CIIB, *op cit*
[262] Protocol establishing the CIIB, *op cit*
[263] Protocol establishing (*op cit*)

Organizations and their activities.

b) Facilitate Criminal investigations by law enforcement agencies of member states, by providing them with any useful information they may require;

c) Participate in the formation of coherent strategies aimed at combating crime(s) and eliminating criminal networks;

d) Collect data from institutions such as the judiciary, the police, the gendarmerie and other law enforcement agencies in member states on criminals, their mode of operation, arrests prosecutions, trials and convictions pertaining to crime, particularly transnational crimes;

e) Establish a data bank on criminals, their mode of operation, current developments or innovations in crime methods, and national legislation relating to crime;

f) Use modern information technology to promote data sharing among member states on criminals, their mode of operation, prosecutions, trials and convictions pertaining to transnational crimes;

g) Provide such information as the CIIB may consider appropriate from its data bank to member states for dissemination to law enforcement agencies;

h) Contribute to the development of human resources and skill of law enforcement agencies by organizing training courses and seminars and developing training materials;

i) In collaboration with the technical bodies of the committee of West African Chief Police, and technical bodies of similar organisations; advice the management board on

(A) Method of strengthening regional capacity and capabilities to deal with transnational crimes;

(B) The revision of existing laws relating to various forms of transnational crime, so as to bridge the gaps in legal system which can be exploited by organized crime, so as to bridge the gaps in legal system which can be exploited by organized crime groups;

(C) Performance such other functions as may be necessary for the achievement of the objectives set out in the protocols.

The above objectives of CIIB simplify the activities of *GIABA* member states in combating money laundering and terrorism financing, what is needed of them is to have CIIB Headquarters and then units in each member state.

Also, the main reason for discussing the ECOWAS Criminal Intelligence and Investigation Bureau is to identify it relationship with Inter-Governmental Action

Group against money laundering (*GIABA*), however, it reveal that both the later and the former are ECOWAS specialized institutions aimed at combating and preventing the transnational crimes. The next sub-topic to be discussed under this chapter is the ECOWAS Community Court of Justice.

3.9 **ECOWAS Community Court of Justice**

Under this sub-topic we shall discuss and analyze the ECOWAS Community Court of Justice ranging from it establishment and composition, jurisdiction, procedure, judgement and enforcement. We shall also discuss it critically to see how the jurisdictions of the court to be expended to include other matters including money laundering and terrorism financing. Here in after referred to as the "Court",

The Court is one of the institutions of ECOWAS, established for the realization of the overall objectives. This court was established under Article 15(1)[264] as the principal organ of the community. Its mandate is defined by Article 76(2) of the Treaty and also by the protocol on the community court.

The court was created pursuant to the provisions of Articles 6 and 15 of the Revised Treaty of the ECOWAS, with general and specific jurisdictions that are aimed at resolving sensitive disputes between states of ECOWAS, Although the protocol of the Court was adopted in 1991, the Court became operational only in

[264] Revised Treaty of the ECOWAS, 1993

2001 with the appointment of it members and taking the Oath of office or swearing in of its members[265].

The mandate of the court is to ensure the observance of law and of the principles of equity and Human Rights within the ECOWAS Community. The court serves as the principal legal organ of the community.[266]

The composition of the Court is only limited to 7 independent judges[267] who are persons of high moral character appointed by the Authority of Heads of State and Government for four (4) years non renewable term.[268]

3.9.1 **Establishment of the ECOWAS Community Court of Justice**

The judicial organ of ECOWAS was created by virtue of an Article of the Treaty its composition, competence and procedure is defined by the protocol of 6 July, 1991[269].

The above protocol A/P 1/7/91 on the community Court of Justice, particularly Article 2 provides for the establishment of the Court which reads as follows;

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[265] Danti, H. N: (2006) *"The Law, Practice and Procedure of the Community Court of Justice Meaning and Implication" – being a paper presented at the workshop on the law and practice and procedure of the Community Court of Justice of ECOWAS* – organized by the West Africa Human Rights forum from 7th – 9th December, at Bamako, Mali p.2

[266] Articles 15(1) and 76 (2) of the Revised Treaty, *op. cit*.

[267]

[268] Article 3 of Protocol (A/P1/7/91) on the Community Court of Justice

[269] Article 4(3) of the Supplementary Protocol (A/SP.2/06/06) on the Community Court of Justice

"The Community Court of Justice established under Article 2 of the Treaty as the principal legal organ of the community shall be constituted and executes its function in accordance with the provision of this protocol"[270].

The protocol clearly states that the court is the principal legal organ of ECOWAS with the main function of resolving disputes relating to the interpretation and application of the provisions of the revised Treaty as well as the protocol and conventions[271].

Also, the court has enjoined in Article 9(1) of the protocol to ensure the observances of law and the principles of equity in the interpretation and application of the provision of the Treaty.

3.9.2 **Jurisdiction of the Court**

The community Court of justice has general and specific jurisdictions that aimed at resolving sensitive disputes between states of the ECOWAS, or in other words the court has advisory jurisdiction and other jurisdiction.

The advisory jurisdiction is that which the court gives advisory opinion on any matter that requires the interpretations of the community texts while other jurisdiction is such jurisdiction in which the court examine cases of the failure by

[270] Article 15 of the ECOWAS Revised Treaty, While he 1975 Treaty in its Article II Instituted a tribunal of the Community

[271] The Protocol also makes reference to the status of the community Court of Justice without however précising it.

member states to honour their obligations under the community law, also by examining actions by or against the community and jurisdiction to entertain cases of violation of human rights in the member states[272].

Under the advisory function of the court, provided under Article 10 of the protocol, indeed the court can adjudicate in advisory capacity, a legal notice on a - matter that has to do with the interpretation of the provisions of the Treaty. In this capacity it can be "referred by the Authority of the council, or by one or several member states or by the Executive secretary and all institutions of the community", However, the advisory role is within the tradition of international courts attach to an international organization, but the advisory opinion not considered as jurisdictional act. Not having the obligatory power of ruling, it simply analyses as an opinion of the Court aimed at unifying the organ consented it. To that end opinion has only moral authority that can be essential in practice.

Other jurisdiction of the court on the settlement of disputes can be said to be recognized, however through the revised Treaty, and the protocol we can notice or realized that the court has only disputes that could arise between the member states[273]. It formed out to exclude, litigations between institutions, disputes between regional economic groups and members states, Conflicts between persons or legal

[272] Articles 9 and 10 the protocol (A/P1/7/91)

[273] Article 76 of the Treaty, and also of the said the preamble (paragraph 3) of the protocol.

entities and the community, and also more recent issues of trans-national organized crimes like money laundering and terrorism financing.

3.9.3 **Procedure and practice of the Court**

The Rules of procedure of the ECOWAS Court were adopted in August, 2003 by the court on the basis of authority granted by Article 32 of the protocol of the community court of justice[274]. The above Article, that is Article 32, empowers the court to establish it's a Rule of procedure to be approved by the council of ministers. Pursuant to this provision, the court formulated its rules of procedure which was approved by the council vide Regulation C/REG/04/8/02 28th August 2002[275]**.**

However, proceedings before the court shall consist of two parts; written and oral. The written procedure includes - the application, the defence, the reply or **c**ounter statement, the rejoinder and other briefs or documents in support[276]. While the oral proceedings shall consist of the hearing of the parties against, witness experts, advocates or counsel[277]. Under the oral procedure, after the completion of the preparatory inquiry, the president fixes also the date for the opening of the oral procedure. The proceedings shall be opened and directed by the president who

[274] 1991
[275] *Official Journal of ECOWAS* (2002) 8, vol. 41.
[276] Article 13(1) – (3) of the protocol and 32 – 51 of the Rules of Procedure of the Court.
[277] Article 52 – 58 of the Rules of Procedure of Court.

shall be responsible for the proper conduct of the hearing. The court summons a witness by its own motion or upon an application by a party. After the conclusion by the parties the president shall declare oral procedure closed[278].

Article 12 of the 1991 protocol of the court provides that each party to a dispute shall be represented before the court by one or more agents nominated by the party concerned, and the agents may request the assistance of one or more advocates or counsel who is qualified to appear in court on their behave within the area of jurisdiction. A legal practitioner or a counsel representing a party is required to lodge at the registry of the court a certificate showing that he is authorized to practice before the court of a member state or of another state which is a party to the Treaty[279].

3.9.4 **Judgments of the Court**

Upon hearing the parties and closing the evidence the court shall deliberate and give judgment. The deliberations shall **t**ake place **i**n a close session and only judges who were present at the oral proceedings are entitled to take part in the deliberations. Every judge taking part in the deliberations shall stale his opinion and the reason for taking stating such an opinion. Conclusions reached by the majority of the judges after final discussion shall determine the decision of

[278] Articles 50 – 57 of the Rules of the Court.
[279] Articles 28(3) of the Rules of the Court

the court. The judgment of the court shall be read in open court and shall state the reasons on which it is based[280]. Article 62 of the Rules of Court provides that the judgment shall be binding from the date of its delivery. Article 22(3) of the 1991 protocol enjoins all member states and institutions of the community to immediately take all necessary measures to ensure the execution of the decisions of the court.

3.9.5 **Enforcement of the Decision of the Court**

By virtue of Article 76(2) of the Revised Treaty[281], decisions of the Court of Justice shall be final and shall not be subjected to appeal.

Any state or institution involve most comply with the decisions of the court from the moment the principles of monism to the privacy of the community law is accepted which prevails within the ECOWAS region then the obligation to implement the decisions of the court is subject to legal order, to all the organs of Member States. In addition of the finality of decision of the court no National judgment can be revised **t**he decision of the Community Court of Justice on matters defined by the Treaty or related instruments such as human and citizens rights.

In conclusion the court has no direct power of **c**oercion; it has neither army nor police. It has a limited infrastructures and this should depend largely on the

[280] Articles 23, 50, 61 and 62 of the Rules of the Court and Article 19 of the protocol
[281] 1993

Members of ECOWAS. Its weapon is the sentence it pronounces or creates. From then on its mission would be greatly threatened if the Member States do not respect its decisions, which are by virtue of Article 76(2) of the Revised Treaty binding and without appeal[282].

[282] In the United Nation for Example, the decision of International Court of Justice (ICJ) are abiding article 94 of the Charter provide for the principle of execution by force of decisions of the Court by the Security Council.

CHAPTER FOUR

The Role of *GIABA* in Combating Money Laundering and Terrorism Financing

4.1 Introduction

Money laundering is a global epidemic and can have a coercive effect on a country's economy, government and social need of its citizens. The International Monetary Fund stated in 1996 that the aggregated size of money laundering in the world is approximately between 2 - 5% of the world's Domestic Gross National Product[283].

Technological advancement such as internet has facilitated exchange of money and information and new form of property to sabotage. Organised crime and terrorists used money laundering techniques to filter monies generated from illegal activities into the legal one. To change the origin of the funds, the filtering of these illegal funds can led to the distortion of business decision, increases the risk of business failures, takes control of economic policy away from government, harm country's reputation and exposes the nations people to drug trafficking, smuggling and other criminal activity.

[283] www.fatf-gafi.org/documenton02/07/2013

The aim and objective under this chapter is to discuss to what extend *GIABA* perform it mandate in protecting the economies of the member state against abuse and misuse for the purposes of laundering the proceeds of crime and also financing of terrorist. Below are the *GIABA* Technical Assistances and Necessary Majors to member states.

4.2 **Technical Assistance**

GIABA was established as a result of the response to the unique problems and challenges of the West African Region. The Mandate of *GIABA* is unique, unlike other FATF Styled Regional Bodies (FSRBs) it has role to provide technical Assistance[284] to member states to build institutions and capacity against money laundering and terrorist financing.

The menace of money laundering and terrorism financing increases with globalization, criminals are also becoming adaptable, taking advantage of the weak links that create opportunities for them to commit crime with relative impurity.[285]

As a result of that, *GIABA* is not only working to curb these menaces, but also in promoting a regional alliance to achieve this goal. *GIABA*'s strategic niche is to enhance the capacity of regulatory, financial and non-designated financial businesses

[284] Article 2(c) Revised Statutes of *GIABA*, the Inter-Governmental Action Group Against Money Laundering in West Africa (*GIABA*), 2006
[285] *GIABA Annual Report, op. cit* at p.11

and profession (DNFBPs), law enforcement and judicial authorities in member states to prepare them for this battle.

In this respect *GIABA*'s has specific priorities for technical assistance to member states to include the following[286]:

(1) Training and manpower development

(2) Dissemination and promotion of international good practices and standards;

(3) Comprehensive Anti-money laundering and counter-financing of terrorism (AML/CFT) framework, including support for the establishment of operation of financial intelligence units (FIUs); and

(4) Research and evaluations.

GIABA in furtherance of it mandate and above objective, a number of technical Assistance programmes were carried under it framework strategic Action plan between 2007 to 2009 to include the follows:

4.2.1 **Technical Assistance Needs Assessment (TANA)**

A comprehensive Technical Assistance Needs Assessment of member states of *GIABA* was conducted with the financial support of the African Development Bank in 2007[287]. The TANA aimed at determining specific targets for intervention with a view to

[286] *GIABA Ibid* at p.11
[287] *Ibid* at p. 46

making maximum impact in strengthening the regional AML/CFT framework. The following were the main objectives of the project;

(a) Conduct a comprehensive needs assessment of 15 West African countries in order to give clarity on various government policies, ongoing and planned programmes and activities in relating to anti-corruption and the control of economic and financial crimes.

(b) Provide a better understanding of the unique circumstances of the region and a framework for giving technical assistance, avoiding duplication and maximizing comparative advantage.

(c) Provide member states with the information to enable them introduce new policies and legal framework as a result of the self-assessment.

During the year under review[288] four regional experts and one international expert undertook the assessment include visits to member states and discussion with stakeholders, including relevant law enforcement, regulatory and judicial officials, and the organized private sector operators, including banks, other financial and non-designated financial businesses and professions; the news media, and non-governmental organizations.

The term of reference for the exercise included the following:

[288] 2007

(i) Undertake desk review of existing legislator, including the extent of criminalization and other provisions as contained in acceptable international standards

(ii) Review ongoing government policies and reform programmes related to AML/CFT.

(iii) Review current practices and institutional structures, including regulatory, law enforcement, and prosecutorial procedures, and modalities for cooperation among relevant government agencies and extra-ministerial departments.

(iv) Examine and review the extent of compliance with and/or observance of acceptable international standards, including the FATF 40+9 Recommendations and relevant international instruments.

(v) Identify specific need for assistance to strengthen existing AML/CFT infrastructure in each member state.

(vi) Recommend immediate, short and long term support to be provided to each state based on the *GIABA* plan of Action.

(vii) Make any recommendations that would promote regional understanding and cooperation in the combat of money laundering and other related transnational organized crime in the region.

The Five experts undertook the assessment and submitted the report same was adopted by *GIABA* on their 8th Technical Commission meeting in Ouagadougou on 5th – 6th November, 2007 and subsequently endorsed by the ECOWAS council of minister on 14th December, 2007[289].

The TANA exercise revealed amongst other that many people in the various countries, including decision makers, had a limited awareness and comprehension of the magnitude of the practical effects of the ML/TF Phenomenon[290].

The TANA[291] and Several expert recommended amongst others, given the highly specialized native and the complexity of ML/FT case suggested designating specific courts, and judges or magistrates to hear them.

This has been done in Nigeria, with a fair measure of success[292], and it is advisable that all member states should take it with seriousness.

The recommendation, if taken with seriousness it will enhance the fight against ML/TF. This also requires that the presiding magistrate and judges receive adequate training in this matters, as well as other courts.

[289] *GIABA op. cit* at p.11
[290] *GIABA op. cit* at p.11
[291] On 14th of July, 2007
[292] *GIABA op cit* p. 47

4.2.2 *GIABA* Technical Assistance for the Establishment of FIUs

The setting up of financial intelligence units (FIUs) is an essential prerequisite for all member states as it represents one of the criteria for effective implementation of any AML/CFT regimes[293].

A financial intelligence units is a central, national agency responsible for receiving (and as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information concerning suspected proceeds of crime and potential financing of terrorism, or required by national legislation or regulation, in order to combat money laundering and terrorism financing[294].

FATF also in it recommendation 26 requires all member states to set up financial intelligence units which would have the responsibility for the collection, analysis and dissemination of suspicious transaction reports[295].

The aim of FIU is to generate intelligence from analysis of suspicious transactions, which would be forwarded to the competent authorities to aid in investigation and prosecution.

[293] *GIABA, op. cit* at p.49
[294] WAEMU definition
[295] See Recommendation 26 in the FATF (40) Forty Recommendations, 2003

Given the important place the financial intelligence unit occupanied and the strategic role it plays in the AML/CFT framework, the criteria for setting up of the FIU should normally include the following[296]:

(a) It must be established by an enabling law

(b) It should be located in safe and secure premises

(c) It must be sufficiently independent to carry out its work.

(d) It must be provided with the necessary funding and competent staff to function efficiently.

(e) It must be committed to sharing information with other financial intelligence units worldwide.

However, the establishment of FIUs is the primary responsibility of member states. Nonetheless, *GIABA* plays a crucial facilitative and supportive role to that effect. Apart from providing support to members to establish and maintain FIUs, *GIABA* promotes the membership of eligible FIUs to the global net-work of FIUs known as the Egmont group. The Nigeria FIU was admitted[297] in May, 2007 into the Egmont Group through the support of *GIABA*.

[296] *GIABA, op cit* at p. 49 – 50.
[297] Nigeria is the third African nation to be admitted after South Africa and Mauritius.

Also before 2012, only two financial intelligence units were functional within the West African region – which are those of Nigeria and Senegal[298]

Now we have 13 financial intelligence units that are operating in various stages of development. The only two countries that have not established financial intelligence units are Guinea and Liberia. While Guinea is due to their peculiar circumstances of instability that characterize its political affairs in the last few years, that of Liberia is due to certain reforms they are carryout in order to enact the law. The processes are quite long but, so far, these are the only two that have not established financial intelligence unit[299].

Apart from support of *GIABA* for countries to establish financial intelligence units, *GIABA* also follow up with technical assistance in order to strengthen capacity of the institution. They recently also launched a comprehensive software analysis project to four West African countries, bringing the total to six, including Nigeria and Senegal which already had the existing software analysis. The four countries with new software analysis are. The Gambia, Cape Verde, Bulkina-Faso and Ghana[300].

[298] www.leadership.ng/nga/articles/43151/2012/12/21/giaba-accessedon07/01/2013.
[299] As per 21st December,2012
[300] www.leadership.ng.nga, *Ibid*

In conclusion, the role played and achievements recorded by *GIABA* should be attributed to the total commitment of the member states to the struggle against money laundering and terrorist financing in the region.

The immediate goal of *GIABA* as contained in its statutes is to promote cooperation between and among its members and ensure that harmonized efforts and concerted actions are taken to deal with the problems of money laundering and terrorist financing on a regional basis. This has been modestly achieved through the provision of technical assistance to member States, including training and advisory services, as earlier discussed. At the international level, *GIABA* was admitted as a FATF Style Regional Body in 2006, thus providing ample opportunity for networking with other integers in the global fight against ML/FT.

4.3 **Self Assessment and Mutual Evaluation**

Country assessment, better be described as mutual evaluation, is one of the main thrusts of the regional Anti-money laundering and counter financing of Terrorism strategic framework of *GIABA* and also is a core function of FSRB[301].

Mutual evaluation is a process where member states agree to subject themselves to peer review to ascertain their level of compliance with acceptable standards. The evaluation are based on the FAFT forty Recommendations, 2003 and the Nine

[301] *GIABA, Annual Report* 2007 at p. 36

special Recommendations on Terrorist Financing, 2001, using the AML/CFT methodology 2004.

Member states of *GIABA* agree to subject themselves to a mutual assessment process in conformity with international standards for preventing money laundering and financing of terrorism as contained in Articles 12 to 14 of the *GIABA* statute.

The scope of the Evaluation is to assess whether the necessary laws, regulations or other measures required under the essential criteria are in force and effect, that there has been a full and proper implementation of all the necessary measures, and that the AML/CFT system as implemented is effective.

GIABA conducts the evaluation of member states or in accordance with FATF standards and procedure and also in compliance with its enabling statutes. The evaluated country is rated depending on the efficiency of measures put in place to detect, prevent or sanction cases of money laundering and terrorist financing.

The *GIABA* rating mutual evaluation range from compliant, largely compliant, partially compliant, to non-compliant. A report will be issued after completion of the mutual evaluation; it is their discussed and adopted at *GIABA* plenary. Once the report is adopted by the plenary, it will be published on *GIABA* website unless the country raises objection to the publication of the report. In such a situation, the

secretariat would publish a note to indicate that the country has chosen not to publish it report[302].

4.3.1 **Enactment of AML and CFT Laws**

The most critical aspects of any anti-money laundering regime is the enactment and implementation of legal frameworks, regulations and directives which guide the legal, financial and judicial processes involved in the fight against money laundering and terrorist financing[303].

One of the priorities of *GIABA* is supporting member states to promulgate appropriate legislation and upgrading existing ones to conform to acceptable international standard. Before 2006, many countries in the West African region did not have legislation against money laundering let along any legislation on counter financing of terrorism.

Presenting all most all *GIABA* members states have promulgated laws criminalizing money laundering, terrorism financing and related offences. *GIABA* in furtherance of it mandate, has worked with member states to draft and develop AML legislating that conforms to international standards[304]. These international instruments include 40 Recommendations of the Financial Action Task Force and

[302] www.*GIABA*.org.accessed on 07/01/2013
[303] *GIABA Annual Report op. cit* at p. 36
[304] www.*GIABA*.org,accessed on the 07/01/2013

the 9 special Recommendation related to Terrorist Financing (The FATF 40+9 Recommendation)[305], United Nations conventions on Organized crimes,[306] illicit traffic in Narcotic Drugs and Psychotrophic Substances[307], United Nation Convention on suppression of the financing of Terrorism[308], and United Nations Security Council Resolution (UNSCR) 1373[309]. In addition, within the African jurisdiction, *GIABA* member states are also required to adopt and implement the AU convention against corruption and the ECOWAS protocol on the prevension of corrupt practices. Also the eight (8) *UEMOA* countries share common legislative base with respect to AML/CFI[310].

These countries, in order to implement the law according to its fundamental legal principles, made it mandatory that each *UEMOA* member state shall adopt and enact the legislation within its own jurisdiction known as "uniform law" but with slight modifications[311]. All the *UEMOA* countries has already enacted the uniform law as for AML law if concerned while on CFT aspect, the *UEMOA* Commission

[305] FATF (2008)
[306] 2000
[307] 1998
[308] 1999
[309] 2001
[310] *UEMOA* is a formal treaty history seven (7) French and one(1) Portuguese speaking West African Countries
[311] *GIABA op. cit* at p.37

issued a Directive[312] to all the *UEMOA* countries to domesticate and enact national CTF legislation in line with the uniform model legislation developed by *GIABA.*

4.4 **Implementation of Measures**

Implementation of measures is the translation of vision or intention into concrete actions. This amongst others is the establishment of the financial intelligence nits (FIUs). The establishment of FIU is mandatory to all member states which would have the responsibility for the collection, analysis, and dissemination of suspicious transaction reports, which would then be forwarded to the competent authorities to aid in investigation and prosecution.

It is important to note that without the ability to gather intelligence from financial information, it would be practically impossible to develop an effective AML system. However, it should be understand that many countries face considerable difficulties in establishing financial intelligence unit (FIU) and that is why *GIABA* can provide the necessary motivation and support to drive the process.

In this regards *GIABA* secretariat has embarked on series of Advocacy visits, training and advisory services to some member states on the establishment of FIUs and the strengthening of existing FIUs.

[312] On July, 2007

4.5 **Typologies Exercise**

Typologies exercises form an important part of the *GIABA* secretariat. The main objective of typologies is to gain a better understanding of the trends and patterns of money laundering.

Since the inception of *GIABA* only two formal typology reports have been completed and released concerning money laundering techniques in West Africa. The first report raises issues about cash transaction and cash couriers in West Africa while the other on money laundering through the real estate sector.

The choice of the name typologies exercise was based on the fact that most of the region's economic activities are primarily cash based. *GIABA* designed this project purposely to benefit member states and enable them to formulate policies that would strengthen their financial system, in particular to offer modern financial sources to their citizenry and reduce the risk of misusing their economies for the purposes of laundering the proceeds of the crime[313].

This exercise falls within FATF special recommendation ix which states that: countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instrument, including a declaration system or other disclosure obligation….

[313] *GIABA op. cit* at p. 43

The main objective of this exercise as earlier stated is/was to study the practices, trends, risks, threats, and vulnerabilities of cash transaction in West African region. Other objectives or specific objectives include[314]

(1) Understanding the possibility of abuse of cash transactions for the purpose of laundering the proceeds of crime and financing of terrorism,
(2) Examining the legal, regulatory, compliance and enforcement regimes on cash transaction in member state; and
(3) Understanding the impact of cash transaction on the economies of this region and enhance the overall AML/CFT regional framework in accordance with acceptable international standards.

These typologies assist in providing useful trends and patterns of money laundering and provide guidance on how to deal with specific money laundering issues. As *GIABA*'s mandate it was its objective during 2007 – 2009 action plan to complete and perform the typologies exercises, since was done. The following is a brief discussion of the reports and it findings on Real Estate sector.

[314] *Ibid* at p.43.

4.5.1 *GIABA* Typology Report on Money laundering through the Real Estate Sector

The finding of this report suggests that because no average market price for real estate property (contrary to developed nations for example Canada, where average market prices exist for commercial as well as residential property), and the extensive use of large bulk cash transactions pose particular difficulty in determining who is actually is laundering the monies and how the launderers are proceeding in the sector. *GIABA*'s findings identified that prices tend to fluctuate widely between towns and even within the region which also makes the sector more challenging to control. To complicated matters even further is the eventual involvement of legal experts in order to complete the real estate transactions, which makes this category of professionals the potential weakest link in the AML/CFT process especially if legislation does not cover this profession in AML/CFT obligations[315]. Most countries in the Western African region have included in the AML legalisation that the legal practitioners have a legal obligation to report suspicious transactions.

However the obligation does not apply if they represent the individual or persons in matters where of solicitor-client confidentiality can be invoked. The typology

[315] *GIABA Annual Report* 2008, p 58

exercise had difficulty in distinguishing a genuine commercial transaction among the large number of transactions that took place in the sector. The risk and vulnerabilities showed the need for increased awareness of the AML/CFT legalisation and its requirements together with the social and economic effects of money laundering. It was also clearly identified during the exercise that the extreme lack or inadequacy of internal control mechanisms, policies, training and audit systems in the real estate business and great majority of cash transactions within the sector make it a haven for money launderers. The basic techniques that have been identified in the region were the use of unregistered real estate agents and other front men (who could even be legal practitioners), mortgage schemes[316] (i.e. mortgage fraud techniques) and alternative money transfer systems[317]. The aforementioned techniques make the real estate sector very attractive for misuse and abuse by criminals because real estate agents or front men are not controlled in meeting the requirements of anti-money legalisations (mainly due to lack of resources, human capacity and no formal and/or rare existence associations or boards in the real estate sector) and identity fraud and false documents are common problems in the West African region.

[316] www.*GIABA*.org, assessed on 07/01/2013

[317] Buencamino, L. and Gorbunov, S. (2002) "*Informal money transfer systems: opportunities and challenges for Development Finances*" p.5.

The typology exercised concluded that due to the pre-dominantly cash-based nature of the economies in West Africa coupled with the ease that individuals can acquire properties in many of the regions countries without the abiding by the FATF recommendations of customer due diligence (CDD) investigations, record keeping and monitoring of the transactions makes the real estate sector extremely vulnerable to money laundering risks.[318] It should be noted that the current uniform anti-money laundering legislation within the region all have the same requirement that legal practitioners are subject to the anti-money laundering regulations both at the ECOWAS and country level. Many of the regions do not have formal real estate agents, developer or builders and/or a body or association to whom they are required to report to and who could ultimately insure that the FATF requirement are followed. Most of real estate transaction involve many of the legal practitioners, notably notaries who lack awareness of the AML legislation and may not be aware to whom they are responsible to report this large cash-based transaction to or aware of the AML legislation but are extremely reluctant to abide by the FATF recommendations and AML law.

In addition, the report cited five areas that are of particularly vulnerable to misuse involving real estate: the misuse of monetary instruments, front men and businesses, corrupt legal practitioners, service providers and financial institutions including the

[318] *GIABA* Typologies of Money Laundering through the Real Estate Sector in West Africa, p. 8

alternative transfer systems. *GIABA* believes these areas require further in-depth research and more concerted actions by the member states to find particular and cost efficient controls to ensure implementation of FATF recommendations.[319]

Although *GIABA* was able to perform a typology exercise within the real estate sector, in their opinion the information obtained may be perceived as unreliable. The information was received first hand from Member states but was not based on hard facts or real proof.[320] It was believed that results sent could have been based on the best case scenario. The absence of hard facts means that that the report conclusions and results will only be useful to a certain point. The hope is that with the creation and effective commencement of FIU's throughout the region that the FIU will provide various case studies and statistics to assist in developing effective controls against money laundering and undertake awareness campaigns to increase the understanding of the social and economic dangers of money laundering and financing of terrorist.

4.5.2 **Cash -based Transactions and Cash Couriers**

The FATF best practices report on Detecting and Preventing the Cross-border transportation of cash by terrorist and other criminal stated that reporting by law enforcement agencies indicated that cash smuggling is one of the major

[319] *GIABA Annual Report op. cit*. p 58
[320] *Ibid* at p. 59

methods used by terrorist financiers, money launderers and organized crime figures to move illegal money in support of their activities. The FATF typology exercise also highlighted the increase importance of cash couriers and their role in cash smuggling activities, FATF identified a variety of methods that cash couriers use to smuggle cash; such as the use of commercial airlines because they are fast method of transport, the courier can stay close to the cash and airlines go to many foreign destinations. Land border crossings also have been effective because of the ability to conceal the currency in the cash courier's vehicle[321].

As commonly known, cash-based transactions and cash couriers is a serious problem in the Western African region. *GIABA* therefore established as one of its objectives for the 2007-2009 action plan to undertake a typology exercise in the region concerning the aforementioned problem. A discussion of this report is provided as follows:

4.5.2.1 *GIABA* Typology Report on Cash Transactions and Cash Couriers in West Africa

The second typology exercised performed was based on the extremely large cash-based transactions and the use of cash couriers in the West African regions. As previously noted the Western African population relies heavily on the cash-

[321] FATF report, Detecting and Preventing the Cross Border Transportation of Cash by Terrorist and Other Criminals, p 2

based transactions and the informal markets and is considered a normal everyday way for doing business, quite different to a developed nations which relies greatly on credit and relations with financial institutions in order to effectively operate its business on a daily basis and to facilitate individuals daily lives. The *GIABA* Annual Report, 2008 noted country located in West Africa for example, that although the use of financial institution can be considered what spread not just for large account holders but for ordinary citizens as well, however more than 60% of the transactions are still conducted through the informal or cash-based transactions sector.[322]

The typology exercise report did note that although the transactions are carried out in an informal manner, a great majority of the transactions are carried out for legitimate business. The belief is that the dominance of these type of transactions exist because of the ever-present nature, their convenience, their speed and certainty in settling financial obligations, the inadequacy of some financial institutions in the region, the inadequacy of available banking institutions in the region, the prevailing high illiteracy rates and the large sized and continued growth of the cash oriented and unregulated growth within the region economy[323]. Unfortunately, these types of trends and patterns will definitely lead to abuse by criminals and money launderers. The question remains how anti-money laundering controls can be

[322] *GIABA annual report, op. cit*. p.21
[323] *GIABA* Typologies report on cash transaction and cash countries *op. cit.* p.8

effective if these trends and patterns are not changed and many cash-based transactions go undetected?

4.5.3. **Results of the Exercise based on Respondents Feedback**

The 75% of the respondents to the questionnaires used by *GIABA* to undertake the typology exercise confirmed the predominance of cash-based transactions and cash couriers in their respective jurisdictions. The study revealed that outside the law enforcement authority, the money buys respect in the communities located in Western Africa,

Only 62% of the respondents affirmed that money laundering and terrorist financing is a serious problem in the region and the criminal offence encouraged the fight of capital and had social and economic impacts on the region. The rest of the respondents indicated their ignorance of the problem.

The study further revealed that predicate crimes generate large bulk cash. Crimes such a drug and arms trafficking, corruption, tax evasion and advance fee fraud constituted the majority money laundering offences in the regions. Theses offences are to generate the highest cash income that needs to be cleaned up.

4.5.4 **Case Examples in the use of cash in transactions in West Africa**

Bulk cash movements and use of cross-borders and cash couriers

GIABA noted that there is hardly any enforcement of regulations in the ECOWAS community on the ceiling of how much cash one can physically carried or used by on oneself or use. This is in line with the liberalisation of trade in the region. In general, people can walk around and do with large suitcases or vehicle compartments full of cash which can be used to purchase luxury cars and high value real estate property as indicated by the *GIABA* typology exercise on the real estate sector.

A case study in the typology exercise explained that, in country X, exchange control regulations stipulated that the amount of foreign currency in cash carried by outbound travelers from the jurisdiction is not to exceed the equivalent of $4.000 US. Any amount exceeding that limit has to be converted to traveler's cheques or other negotiable instruments, following a plane crash of a plan bound for Country Y in Asia, large amounts of banknotes in foreign currencies were found at and around the site of the crash. Official documents revealed that at the point of departure no declaration of currency was made. According to *GIABA* this scenario demonstrates that exports and imports of commodities in the informal sectors, traders tend to avoid the bureaucracy of exchange transactions through financial institutions- Traders use parallel markets to exchange local currency into foreign currency which is then transported in suitcases for use once arrived at their destination countries. The

possible controls should be to equip customs officials with appropriate equipment and to train officers or law enforcement agents in the detection of smuggled cash. Declaration forms should be given to all travelers crossing the borders requiring them to declare the presence of any foreign currency exceeding a certain amount, as is the case when entering Canada were the customs form ask the traveler if they are entering the country with more than $10,000 or more Canadian dollars or equivalent in a foreign currency in cash. Based on personal experience when travelling in and out of the Nigeria, the declaration forms leaving and entering the country do not require such declaration and nowhere is it indicated at the airport or the borders even though certain regulations require said declaration, It appears that the countries rely on the voluntary declaration by the travelers and the diligence of their customs employees, if any.

4.5.5 **Money laundering through bureau de change and other informal changers**

As previously noted economic operators in the Western African region particularly those in the informal sector have long engaged in the freely exchanged of regional and foreign currencies in parallel markets for the purpose of undertaking business within the region. Although the region has tried to step up regulations the parallel market still has not diminished and remains robust.

Suitcases and boxes full of local currencies are free exchange into foreign currency; in particular at border points without going through any formal channel. A case study by *GIABA* explained that law enforcement agents confronted a bureau de change operator along the borders of countries U and D. who was making several exports of cash, averaging about 1.6 million US dollars which was exported to country U in cash. It was discovered the bureau was making weekly cash transactions across the borders. The individuals crossing the borders claimed that the funds were legitimate business process from the bureau de change business. The bureau de change operator certified the same thing that funds were from his exchanges legitimate business exchanges. This case study is believed to show the co-mingling of illegal and legal gained proceeds making themselves vulnerable to criminal organization and money launderers. In this particular case study the exchange owner was actively involved in the laundering of criminal proceeds.

4.5.6 **Vulnerabilities of West Africa to money laundering and terrorist financing from cash-based transaction and cash couriers**

The vulnerabilities of cash-based transactions and cash couriers can be summarized as follows[245]:

a) The preference of cash over financial instruments to undertake business. This allows for anonymity in the transactions.

b) The predisposition to use informal sector to launder the criminal

proceeds as it is acceptable in the region to make real estate transaction and purchase luxury cars in cash.

c) The business and cultural environment of doing business outside the banking system. This is generally characterized by no paper trail and lack of transparency,

d) Cash provides a convenient medium for financing activities with little or no audit trail. It should be noted that most predicate crimes are cash-based,

e) The cash and carry culture involves the risk that goods and services are purchased with illegal proceeds,

f) The case of conversion of local to foreign currency through the use of poorly regulated cash-based bureau de change offices and the weak controls on cross-border movements. The lack of declarations at the border allows for free and undetected movement within the region.

4.5.7 **Conclusion of Typology Exercise**

The *GIABA* report made several recommendations in order to combat the presence of cash-based transactions and cash couriers. They recommended increased technical assistance and better equipment to detect undeclared cash to law enforcement agencies that are required to monitor cash movement between the borders. In addition, effective links should be established between customs, immigration, police and FIU

to gather intelligence and respond to currency detection. At governmental level the educational system should discuss the impacts of money laundering and terrorist financing on economies in developing nations- In conclusion, member states and financial institution rigorously enforce AML and TF regulation and strongly adhere with the 40+9 recommendations of FATF.

4.6 **Challenges of *GIABA***

The advancement in technology and globalization has turned the world into a Global village. The perpetrators of law take the advantage and threatening to undermine the process of rule of law. The prevention and control of organized crime, including money laundering and terrorist financing became more complex, than ever before.

Although almost all members of *GIABA* now have laws against money laundering and Terrorism financing, the challenge for *GIABA* is to identify[1] those countries whose legislation requires improvement and rapidly extend technical assistance in form of legal advisory services, include drafting some intendments to that legislation.

According to *GIABA* the following are their challenges or sources of then constraints.

a. Inadequate AML/CFT infrastructures in the member states.

b. Lack or limited awareness of *GIABA* activities and AML/CFT issues within the West African region.

c. Significant money laundering vulnerabilities in West Africa such as: pervasive case orientation of the economies in West Africa, large and growing informal sector, high corruption, week criminal justice system, political and economic fragility, poor governance system in both public and private sectors,

d. Free movement of persons and services guaranteed under ECOWAS region.

e. Shortage of AML/CFT skills in the West African regions, and

f. Differential level of AML/CFT infrastructures within the region. According to *GIABA* these vulnerabilities are real and need to be addressed and taken into account if any success or progress is to be made in the region against their fight against money laundering and terrorist financing.

CHAPTER FIVE

SUMMARY, CONCLUSION, FINDINGS AND RECOMMENDATIONS

5.1 Summary

This work, as earlier stated is divided into five chapters, commencing with an introduction through the evolution and organs of the inter-Governmental Action Group against Money Laundering and Terrorism Financing in West Africa (*GIABA*); the legal framework and international organisation on Anti-Money laundering and counter financing of Terrorism related to *GIABA*; the role *GIABA* play in combating money laundering and Terrorist financing and now the conclusion.

The Chapter one in brief is the introductory chapter which discussed the background meaning of the money laundering and terrorist financing, how money laundering and terrorist financing become a problem in West Africa. In which the proceed of crime general corruption in turn facilitates the commission of crimes and undermines the rule of law and as a result of inadequate rule of law undermine the development in West Africa.

Chapter two also discussed the evolution, development of *GIABA* and the conceptual definition of Money Laundering and Terrorist Financing. The chapter also made an overview of the AML/CFT situation in West Africa which revealed that the region is lacking behind, although all West Africa member state

have promulgated laws criminalizing money laundering, but some of the laws require improvement to conform to acceptable international standards while on the counter-financing of Terrorism law, even with the effort of *GIABA* within the region in the fight against the two menaces, yet some *GIABA* members have not enacted laws Criminalizing financing of Terrorism.

The chapter three discussed the legal and institutional frame work for Combating Money Laundering and Terrorism Financing. The discussion revealed that the legal and the institutional framework have made positive impact on the regional Anti-money laundering and terrorism financing, more especially the financial action task force (FATF) and United Nations Security Council Resolution (UNSCR) 1373. On the other hand the ECOWAS Intelligence and Investigation Bureau, which is an ECOWAS specialized Institution responsible for facilitating criminal investigation, establishing data bank on criminals, collection of information from institutions related crimes and trans-national organized crimes amongst others while the Community Court of Justice is also an organ of ECOWAS saddle with responsibility for judicial proceedings on matters within the ECOWAS Revised Treaty, protocols and conventions.

Chapter four discussed the Role of *GIABA* in Combating Money Laundering and Terrorism Financing which is the mandate of *GIABA.* Among the *GIABA* mandate inter alia is to perform Technical Assistance to member state including

establishment of FIU's. The research revealed that the estab1ishiment of FIU's is the primary responsibility of member state, nevertheless, *GIABA* played a crucial and supportive role in establishing 13 FIU's that are operating in various stages of development. The only 2 countries that have not established FIUs are Guinea and Liberia. While Guinea due to their circumstances of instability for the past few years that of Liberia due certain reforms they are carry out in order to enact law.

The research also reveals that the pre-dominant cash-based nature of the economies of the West Africa coupled with the ease that individuals can acquire properties in the regions without abiding by the FATF Recommendation on Customer due diligence (CDD), investigations, record keeping and monitoring of the transaction makes the real estate sector extremely vulnerable to money laundering and financing of terrorist within the region.

The establishment of *GIABA* although a welcome development on the fight against the two menaces, money laundering and Terrorist financing, never-the-less *GIABA* is facing with numerous challenges which are both institutional normative. These challenges include the institutional framework that established *GIABA* which only gave power to advice and personnel to the member state to perform some duties not coercive power. Although the power of sanction given to *GIABA* under Article 6 is not satisfactory, more powers need to be put in place. Also lack of adequate staff manpower and skills, inadequate funding and resources, lack of

knowledge and understanding of *GIABA*, Money Laundering and Terrorist financing by citizenry of the West African member state also affects *GIABA* success. All these among others hindered performance of *GIABA* in the fight against money laundering and Terrorist financing within the region.

5.2 **Findings**

From the above discourse the following findings were made;

i. That *GIABA* is a specialized institution of the Economic Community of West African States (ECOWAS) as well as a Financial Action task force (FATF) Style Regional Body (FARB). But members state ECOWAS are not represented in FATF.

ii. That *GIABA* is not a law enforcement institution, even though it is charged with the onerous responsibility of coordinating regional efforts around law enforcement problem.

iii. That most *GIABA* member states are lacking behind in either establishing financial intelligent units or established but not having operational or functional financial intelligent unit.

iv. *GIABA* member states do not have laws which adequately criminalise terrorist financing. Even where such laws exist, it was observed that there was little or no regulation or procedure in place to ensure appropriate

freezing, seizure and confiscation of terrorist funds.

v. Also, most of the *GIABA* member states has no mechanism for designation of person identified as terrorist, delisting or even disseminating updated list of terrorist to financial and non financial institutions.

vi. It was observed that of the West African countries are still operating in isolation and this will naturally affect the overall implementation of AML/CFT measures.

vii. It was also observed that West African region have the poorest borders that is why it faced with a major challenge in its vulnerability to transnational organized crime.

viii. It is also observed that those within the corridor of power in West Africa have access to Money and see Money Laundering as of right and their attitude constitute a major threat and Courses most of the money laundering cases reported in recent time.

ix. GIABA is also facing with both institutional and legal problems, more especially as it mandate, it was only given power to advice a member states.

5.3 **Recommendations**

The following are some of the area which the study has recommended be re-visited for *GIABA* to realize its mandate.

a) FATF is not a political organization but it is an inter-governmental body whose purpose is to develop and promote policies to combat money laundering and terrorist financing, and *GIABA* being it's Style Regional Body in West Africa; it would be fair to consider at least one potential country in West Africa for FATF membership for the country to be representing West Africa in all FATF activities, otherwise *GIABA* should amend its Article 2(C) of the 2006 Statutes to withdraw as the Financial Action Task Force Style Regional Body and also stop promoting the adoption of the FATF norms and values more especially FATF 40+9 Recommendations.

b) *GIABA* Statute, 2006 needs to be amended more especially Article 2(b) to provide it with an organ like police or law enforcement agency in performing it day-to-day activities under it mandate.

c) Articles 12 and 6 of the *GIABA* Statute 2006 shall be amended to make it mandatory for each member states to have functional and operational Financial Intelligent Units or else the defaulting member state should face severe sanction from *GIABA*.

d) Although, asset recovery is complicated process, but *GIABA* within its statute has technical assistance mandate to provide direct assistance to strengthen the capacity of its members to ensure that criminal assets are

Identified from without delay, seized and confiscated within the ambits of law,

e) The writer further recommend that *GIABA* will continue with the task of supporting member states with adopting, improving and implementry legislation concerning identification of persons as terrorist and member states on the other hand would complement GlABA's effort by having a comprehensive list for person designated as terrorist with update after every 3 months and also by designating dedicated counter-terrorism units and personal within the law enforcement.

f) There is a need for Article 2(a) of the *GIABA* Statute, 2006 to be amended to make it mandatory for each member state to have cooperation, understand and coordination with other member states which will include constructive dialogue and Information between them.

g) That each and every member states should try as much as possible to strengthen it border, and so at the regional level, there is a need to balance the free movement of people, good, and services across the region in accordance with the ECOWAS Trade Liberation scheme as part of the ECOWAS integration programme, and the struggle against transnational organized crimes.

h) *GIABA* Statute, 2006 shall be amended to give it power of investigation of any

citizen of a member state be it in private or public sector, who happen to have excessive wealth.

i) *GIABA* Statute, 2006 need to be amended to provide it with coercive and supervisory powers on *GIABA* member states on cases of money laundering and Terrorist Financing.

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