



FACTSHEET

June, 2017

OBSERVATIONS ON THE PROCEEDS OF CRIME BILL, 2017 (SB376)

A. Description of the Bill

The Bill seeks to make comprehensive provisions for the confiscation, forfeiture and management of properties derived from unlawful activities

B. The objectives of the Bill are:

- ◇ To provide for an effective legal and institutional framework for the recovery and management of the proceeds of crime or benefits derived from unlawful activities;
- ◇ To deprive a person of the proceeds of an unlawful activity, instrumentalities of an offence and any other benefit derived from an offence committed within or outside Nigeria;
- ◇ To prevent the re-investment of proceeds of unlawful activity in the furtherance of criminal enterprise;
- ◇ To harmonize and consolidate existing legislative provisions on the recovery of proceeds of crime
- ◇ To make comprehensive provisions for the restraint, seizure, confiscation and forfeiture of property derived from unlawful activities and any instrumentalities used or intended to be used in the commission of such unlawful activities.

C. Salient Issues Raised by the Bill

After careful perusal, it is apparent that the Bill seeks to do the following:

1. **To Establish Proceeds of Crime Recovery and Management Agency (the "Agency")**
The Bill seeks to establish the Proceeds of Crimes Recovery and Management Agency (hereinafter known as "the Agency"), which shall have the power to implement, enforce and duly administer the provisions of this Bill (when it becomes a law). According to Clause 97, the Agency shall have the power to "co-ordinate and enforce all other laws on the investigation, identification, tracing and recovery of the proceeds of unlawful activities", which is similar to Section 7(2) of the EFCC Act. This constitutes a clear duplication of roles.

Clause 101 of the Bill provides for 17 functions of the Agency, which are similar to the functions of the EFCC as provided under Section 6 of the EFCC Act. The functions underlisted in the Bill are a compendium of what the EFCC, ICPC and other relevant security agencies of government working on eliminating criminal activities and managing their proceeds, are empowered to do. Hence, the need to establish another agency to add to the number is inapt and unnecessary.

The Agency under Clause 98 of the Bill shall have a part-time Governing Board made up of a part-time Chairman and other members, who shall be representatives not below the rank of a Director from government bodies like the Ministry of Finance, Attorney General of the Federation, Accountant General of the Federation, EFCC, CBN, Nigerian Police, NDLEA, etc. Given that these agencies from where these board members will be extracted are agencies collectively performing the functions that the Proceeds of Crime Agency shall perform (when established), the arrangement amounts to a duplication of functions and clarifies why an additional agency is not needed.

2. To provide for an effective legal and institutional framework for the recovery and management of the proceeds of crime or benefits derived from unlawful activities

A legal framework already exists in Nigeria, even though the effectiveness in relation to the management of proceeds of crime may be questionable. Several laws provide for the investigation and prosecution of crimes, offences and other unlawful activities, as well as management of their proceeds such as:

- a) Economic and Financial Crimes Commission (EFCC) Act;
- b) Criminal Procedure Act;
- c) Currency Conversion (freezing orders) Act; and
- d) Corrupt Practices and Other Related Offences (ICPC) Act; amongst others.

Clause 41 & 101(m) of the Bill provide for collaboration with international government in the recovery of funds and assets. This role has been covered in the Executive Bill recently passed by the Senate – Mutual Assistance in Criminal Matters Bill, which seeks to facilitate and obtain mutual assistance in criminal matters between Nigeria and other countries.

In addition, the EFCC Act under Section 6(j)(ii) is empowered to collaborate with government agencies, both local and international in the matters concerning the movement of proceeds or properties derived from the commission of unlawful activities. This amounts to duplication.

3. Deprive a person of the proceeds of an unlawful activity, instrumentalities of an offence and any other benefit derived from an offence

The Bill seeks to prevent a person found guilty of a crime from the use of proceeds of the crime. To achieve this objective, the Agency to be established under this Bill, shall have the power to apply to the court for an order of forfeiture, restraint, seizure or freezing of accounts. The EFCC has the statutory power under Sections 20, 26(3) and 34 of the EFCC Act to carry out this function. Where an agency in existence is carrying out this function, there is no need to duplicate it.

4 Establish the Confiscated and Forfeited Properties Account Clause 146 of the Bill seeks to establish a special designated account within the Central Bank for lodging all recovered proceeds of crime; and shall be managed by the Accountant General of the Federation. This is a welcome development, as it will improve accountability with respect to recovered funds. A situation where the acting EFCC Chairman could not give a clear figure of how much was recovered by the EFCC for a specified period of time will be averted.

In addition, it will improve transparency since the money will be lodged at the CBN under the supervision of the Accountant General of the Federation; and the Minister of Finance, with the approval of the President, shall have the power to disburse the funds for reasons provided under Clause 148 of the Bill. The three agencies will collaborate to monitor the flow of money. It shall not be left to one agency alone.

Furthermore, this account can be a repository of funds for existing relevant agencies like the EFCC, NDLEA and others listed under Clause 147 of the Bill. In effect, more agencies will be able to monitor the account and keep each other in check.

It is important to note that Clause 148 provides for the Minister of finance shall from time to time, apply the funds in the Confiscated and Forfeited Properties Account to – compensate any State which has suffered grave pecuniary loss on account of the offence or conduct that gave rise to the confiscation order; compensate any person who has suffered grave pecuniary loss on account of the offence or conduct that gave rise to the confiscation order; pay any foreign country or an agency under the provisions of any treaty agreement or scheme for mutual legal assistance; make payments under any programme approved by the Federal Government under Clause 150 etc.

5. To Harmonize and Consolidate Existing Legislative Provisions

The Bill seeks to amend certain provisions of the NDLEA Act, NAPTIP Act, EFCC Act and ICPC Act. While amendments to these legislative provisions listed under Clause 162 of the Bill, may be needed to increase the efficiency of the established government agencies, there is still no clarity on the need to establish an additional entity.

However the amendments seeking to strip the existing agencies of their powers, in other to provide the basis for establishing the Proceeds of Crime Agency should be are unwarranted and should be deleted from the Bill. The existing government agencies can be strengthened to be more effective and any gaps in the provisions of the Acts establishing them can be corrected with an amendment.

The other objectives, which include - to prevent reinvestment of proceeds of unlawful activity; to make comprehensive provisions for the confiscation, restraint and forfeiture of property derived from unlawful activities are already objectives of the existing agencies like the EFCC, Customs, NDLEA, etc. Establishment of another government agency to do the same shall not make any difference.

Other Salient Issues

6. Structure of the Bill

In terms of the structure of the Bill, the provisions are structured in a cohesive and orderly form making it (the Bill) easy to comprehend; however, some of the Clauses are similar and repetitious that they could have been consolidated rather than stand separately. For instance, Clause 10(2)(c), which provides for the custody of the immovable property without the consent of the court, is similar to Clause 10(5). In addition, Clause 30(1) and (2) provide for the same matter as well.

7. Inconsistent terminology

There are few cases of inconsistent terminology under the Bill that could raise issues. For instance, its definition of property under the effective control of a person in clause 94 which is better elucidated as not dependent on whether or not the person has a legal, equitable or other interest in the property or right, power or privilege in the property may raise legal issues. Also, it is unclear why a confiscation order will remain for twenty-eight days even after a person's conviction of the order is quashed under clause 95. This appears to be inconsistent unless the quashing of the confiscation order is better explained under clause 95(1)(b), which is mentioned but erroneously missing from the relevant clause. Another inconsistency is the reference to the Trafficking in Persons (Prohibition) Law Enforcement and Administration 2003 (as amended) rather than the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015

8. Privacy

Under the Bill, extensive provisions are made that utterly encroach on the privacy of citizens, protected under the Constitution. For instance, the powers of customer information that can be requested from companies whether incorporated in Nigeria or elsewhere gives the court wide jurisdictional powers. In addition to this, a customer information order has effect in spite of any restriction contained in an enactment or otherwise on the disclosure of information- Clause 130(1). Closely related to this are the monitoring orders that can be imposed on one's account. It is noteworthy that although monitoring orders can be given for a 90 day period, there is no limit on the number of times further applications can be made to extend the monitoring orders. The clause would have been clearer if it was stated that the renewal of the monitoring order should be for the life of the case in court rather than being left open for various interpretation.

Jurisdiction:

Clause 151 gives the Federal High Court powers to try offences and impose penalties irrespective of whether the offence was commenced in Nigeria and completed outside Nigeria.

Other Provisions

Clause 157 gives the proposed legislation powers to prevail over the inconsistent provisions of any other applicable Act, subject only to the provisions of the Constitution.

9. Concluding statement

The Bill seeks to establish the Proceeds of Crimes Recovery and Management Agency, Confiscated and Forfeited Properties Account, as well as amend provisions of existing legislations. The contents of the Bill are quite comprehensive and centre on effective management of proceeds of crime; however, establishing an additional agency to all the other “crime-fighting” agencies in existence in Nigeria is not a step in the right direction.

The NDLEA, EFCC, ICPC, Customs Service, Police and several other relevant security agencies are enough to tackle crime and related matters, but they lack the strength and efficiency to do so. The solution should not be an additional agency, rather a strengthening exercise by the government with the assistance of the private sector, Civil Society, international partners and other stakeholders. Amendment to certain provisions of the legislations establishing them is one way to strengthen the existing agencies. The lacuna in the other legislations that are provided for extensively under the Bill can be inserted through the amendment.

It is important to note that this bill deals more with procedures for dispensing with proceeds of crimes. It should be more of the step- by -step processes of disposing proceeds of crimes, which could be accommodated within the EFCC Act and this in turn, will help in prosecution and enforcement, which is lacking presently in the fight against corruption in Nigeria.

Establishment of a separate account within the CBN to house recovered proceeds of crime is a welcome development. It is a means to ensure accuracy of the exact amount or funds recovered. As the Bill provides under Clause 32, it will be profitable to make the special account interest generating, so that the length of time spent on investigations and trials will not affect the value of the money.

It is not the dearth of law that makes it difficult to fight crimes in Nigeria; it is the implementation. It is baseless creating a new agency to duplicate the role of existing agencies; rather strengthening the existing agencies will make a positive impact. While it is clear that the establishment of the special account at the Central Bank shall increase efficiency in the system, the establishment of additional agency shall add no value to fighting crime in Nigeria. It is therefore questionable whether the mischief that the proposed agency seeks to cure, cannot be achieved by strengthening already existing institutions; rather than making copious amendments to institutions currently empowered with the proposed mandate.



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About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes. The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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