The Requirement for Lawyers' Registration with the Special Control Unit against Money Laundering (SCUML): A Challenge to the Constitutional Rights to Privacy and Effective Legal Representation

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Abstract

Upon critically reviewing the relevant extant statutory vis-à-vis the constitutional provisions as applicable to money laundering, financing of terrorism and corruption, this article concludes that the modality of fighting the said evils by requiring Designated Non-Financial Institutions and Businesses (into which lawyers are classified), to register with the Special Control Unit Against Money Laundering ("SCUML"), which by implication compels divulging their clients' secrets to third parties, is an violation of the fundamental right to privacy, a breach of the lawyer-client privileged communication and an unlawful attempt to regulate the legal profession and the practice of law in Nigeria.

1. Introduction

Admittedly, money laundering, financing of terrorism and corruption in all its emerging facets, are evil winds that blow nobody any good. Following the lead provided by America, the United Kingdom, Canada etc., in the fight against terrorism, money laundering and corruption generally since the terrorist attack on the World Trade Center on 11th September, 2001, the Nigerian Government enacted the Money Laundering (Prohi-

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bition) Act, 2004 (MLPA 2004), now amended as the Money Laundering (Prohibition) (Amendment) Act, 2011.[1] In the said Act, some institutions/organisations, such as dealers in jewelleries, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settlement companies, Legal Practitioners, (emphasis mine), hotels, casinos, supermarkets or such other businesses as the Federal Ministry of Industry, Trade and Investment formerly Federal Ministry of Commerce and Industry ("The Ministry") or appropriate regulatory authorities may periodically include are classified as Designated Non-Financial Business and Professions (DNFBPs).[2]

One of the implications of being so designated as DNFBPs by virtue of the Act is that the Central bsnk of Nigeria (CBN) has mandated the Ministry to ensure that the DNFBPs are all registered and obtain Certificate of Registration with the Ministry's[3] Specialized Control Unit Against Money Laundering ("SCUML").[4] To ensure compliance, the CBN made this registration requirement mandatory on or before 30th April, 2013, but later extended the date to 31st December, 2013. Expectedly, a number of banks, pursuant to this directive of the CBN, issued circulars/notices to their customers and one of such notices reads:[5]

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1 See s. 26, of the MLPAA, 2011 which shall henceforth be simply referred to in this article as the "Act."

2 See s. 25 *id*.

2 *Ibid*.

3 See s. 5(1)(a)(b) and (c) *id*.

4 SCUML was created pursuant to the regulatory powers conferred on the Ministry by virtue of section 5(4) of the Act, but taken over, run and managed by EFCC because of the ineptitude of the Ministry.

5 Culled from undated Union Bank Notice/Circular to all its customers sometime in 2013 titled: *Additional Know Your Customer Requirements*.

> "… [B]anks have been required by the CBN to comply with the directive by December 31st, 2013. This means that we are prohibited by the CBN, from providing services to DNFBP customers who do not show us evidence of their SCUML registration by December 31st 2013.

This Notice being a necessary consequence of section (5)(1)(a)(ii) of the Act, which requires existing businesses to submit, within 3 months from the commencement of the Act, a declaration of their activities and all records of their transactions, means that as from the expiration of the Notice on 30th April, 2013, and or the extended time of 31st December, 2013, failure and/or refusal by any DNFBPs to register with SCUML could lead to penal sanctions including stoppage of all activities on all law firms' accounts, payment of fines and/or disbarment.

It was the issuing of this ultimatum to register that prompted the Nigerian Bar Association (NBA) being a body whose members enjoy qualified statutory privileged communications with their clients, being convinced that the requirement of its members' registration with SCUML contravenes some of the provisions of its enabling statutes, subsidiary legislations and/or rules governing the practice of the profession[6] and by extension, the right to privacy enshrined and guaranteed in the constitution of the Federal Republic of Nigeria, 1999 as amended (CFRN 1999)[7] through its Registered Trustees, filed a suit at the Federal High Court ("FHC"), Abuja[8] claiming injunctive and declaratory reliefs against both the CBN and the Attorney General of the Federal ("AGF") as the Defendants.

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6 See s. 192 Evidence Act 2011, Rule 19(1) (2) Rules of Professional Conduct 2007 and the provisions of the Legal Practitioners Act Cap 11 LFN 2004.

7 See s. 37 thereof.

8 Suit No. FHC/CS/173/2013.

Without prejudice to the said pending suit, the objective of this article is to show that the requirement of lawyers' registration with SCUML runs contrary to the statutorily protected and guaranteed right of lawyer-client privileged communications preserved in the relevant provisions of the Evidence Act, the Rules of Professional Conducts for lawyers as well as a contravention of the fundamental right to Privacy under the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (herein after CFRN 199). The paper also set out to establish that section 5(5) of the Act, pursuant to which the CBN, the Ministry, SCUML and EFCC are acting contravenes the provisions of section 37 of the CFRN 1999 (as amended) and therefore should be declared null and void and of no effect by virtue of section 1 (3) of the same Constitution.

2. The Basis of DNFBPs' Registration with SCUML

The meanings of the acronyms of DNFBPs and SCUML have been given under the introduction while "The Minister" refers to that of the Federal Ministry of Industry, Trade and Investment ("The Ministry") which is charged under the MLPAA, 2011[9] to make regulations for guiding the operations of DNFBPs under the section. Pursuant to this Ministerial regulatory powers, SCUML was created as the Ministry's Special Control Unit Against Money Laundering under which DNFBPs (including law firms) whose business involve cash transactions shall, before commencement of business, be registered while those who have existing business status shall also be registered within 3 months from the commencement of the Act by submitting to the Ministry:

(a) A declaration of their activities;[10]
(b) The identity of their customers by requiring them to fill a standard data form and presenting their international

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9 See s. 5(4) of the Act.
10 See s. 5(1) (a) (i) & (ii), *id*.

passport, driving license, National Identify card or such other document bearing their photograph as may be prescribed by the Ministry (for those whose businesses involve transaction of a sum exceeding US $ 1,000 or its equivalent);[11]

(c) Record all the transactions under this section in chronological order, indicating each customer's surname, forenames and address in a register numbered and forwarded to the Minister.[12]

The steps in a-c above are what the DNFBPs (particularly the Financial Institutions) refer to as additional Know Your Customers ("KYC") requirements which according to CBN circular dated 2nd August, 2012, were supposed to be submitted and registered with the Ministry via SCUML not later than 30th April, 2013 but later extended to 31st December, 2013 by which date all DNFBPs were mandatorily supposed to have obtained a certificate of registration failing which they will not be able to operate their bank accounts with other penal sanctions.[13] Upon the Ministry's receipt of the information in a-c above, it shall forward same to the Economic and Financial Crimes Commission (EFCC) within 7 days of its receipt.[14] It is interesting to know that the EFCC has the powers to by-pass the Ministry to demand and receive the required reports directly from DNFBPs.[15]

Apparently, the basis of the requirement for compulsory registration of DNFBPs with the Ministry via SCUML is to checkmate the activities of money launderers and laundering the proceeds of crimes, detecting and wiping out terrorism but the

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11 See s. 5(1) b, *id*.

12 See s. 5(1) c, *id*.

13 See s. 5(6), *id*. Such penal sanction includes a fine of ₦250, 000.00 for each day that the offence continues.

14 See s. 5(2), *id*.

15 See s. 5(5), *id*.

modality of waging this war has unfortunately, seriously endangered and undermined the fundamental doctrine of lawyer-client confidentiality and the citizens' constitutionally guaranteed right to privacy as revealed in this article.

3 The Constitutionality of Section 5(5) of the MLPAA, 2011 as it Relates to the Practice of Law and the Legal Profession

By the tenet of Section 5(5) of the MLPAA, 2011, lawyers in Nigeria are being coerced to make disclosures and to divulge the confidential transactions between them and their clients against the spirit of the Statutes, Rules, and Regulations that are put in place to govern the legal profession in Nigeria.[16] Aside from the right to a legal practitioner of one's choice, with its attendant attorney-client privilege which stands at its very root, as a fundamental freedom, protected and guaranteed to the citizens and none citizens of Nigeria alike, the right to privacy of their homes, correspondences, telephone conversations and telegraphic communications are also guaranteed under the Constitution.[17] Rights[18] guaranteed under the CFRN 1999, could only be

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16 See ss. 192-195 E.A, 2011, the general provisions of the Legal Practitioners Act Cap. L11 LFN 2004 especially ss. 2,4,6,9,10,11 and 24 thereof and Rule 19 (1) & (2) of the Rules of Professional Conducts in the legal profession 2007.

17 See s. 37 of the CFRN 1999 (as amended). Right to counsel is constitutionally guaranteed in Section 35(2) and 36(6) (c) of the same constitution. See *Awolowo & Others v Usman Sarki & Others* (1962) LLR 177. See also ss.352 CPA, 186 CPC and 259 ACJL respectively of accused's Right to counsel in respect of capital offence.

18 For other fundamental rights, see generally the provisions of chapter IV of the CFRN 1999 (as amended).

18 See rule 19(3) RPC. In the case of *R.v Eguabor* (1962) 1 ALL NLR 287; the Supreme Court said: "If counsel finds his client's conduct is such that he cannot, consistently with his duty to the court, continue to represent him, he may ask the court to release him. But whether he takes this extreme course or not, *he is at all times under an obligation*

derogated from as permitted under section 45(1) (a) and (b) of same CFRN 1999 (as amended) where interest of defence, public safety, public order, public morality or the need to protect the rights and freedom of other persons could justify derogation from the said right to privacy.

The Attorney-client privilege is a fundamental element in the relationship between a lawyer and his client, presenting the citizens with the assurance and confidence that their constitutionally guaranteed right to legal practitioners of their choice is real and justiciable. The effectiveness of the right to a lawyer of one's choice stems from the fact that the lawyer is obliged by duty and prevented by law from divulging any information a client provides to him which information is legally privileged to the extent that the lawyer cannot be compelled to disclose it subject to a few exceptions paramount. Such exemptions include: where the lawyer has his client's express consent to disclose such information; where he is consulted for advice for the commission of a crime, fraud or tort; a disclosure permitted under the relevant Rules, Order; Laws or when called as a witness and questioned; he requires information or secrets necessary to establish or recover his fees; or to defend himself or his employees or associates against an accusation of any wrongful conduct.[19] Thus where a client in his clientele relationship with a lawyer has not been involved in any criminal activities, a lawyer owes a duty not to divulge his client's secrets or documents which he comes in contact with in the course of his employment or retainership.

This is the purport of Section 192 of the Evidence Act 2011 when it provides:

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not to disclose the instructions he has received except with the express or implied consent of his client or his former client."

(1) No legal practitioner shall at anytime be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure -

(a) Any such communication made in furtherance of any illegal purpose

(b) Any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

(1) It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

(2) The obligation stated in this section continues after the employment has ceased.

Similarly, Rule 19(1)-(6) of the Rules of Professional Conduct in the Legal Profession provides:

(1) Except as provided under sub-rule (3) of this rule, all oral or written communications made by a client to his lawyer in the normal course of professional employment are privileged.

(2) Except as provided in sub-rule (3) of this rule, a lawyer shall not knowingly –

a. Reveal a confidence or secret of his client,

b. Use a confidence or secret of his client to the disadvantage of his client, or

c. Use a confidence or secret of his client to the advantage of himself or of a third person unless the client consents after full disclosure.

(3) A lawyer may reveal-
   (a) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them;
   (b) Confidences or secrets when permitted under these rules or required by law or a court order;
   (c) The intention of his client to commit a crime and the information necessary to prevent the crime;
   (d) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(4) A lawyer shall exercise reasonable care to prevent his employees, associates and others whose services are utilized by him from disclosing or using confidences or secrets of a client, but a lawyer may reveal the information allowed by sub-rule (3) through an employee.

(5) A lawyer shall not in any way communicate upon the subject of controversy or negotiate or compromise the matter with the other party who is represented by a lawyer, and he shall deal only with the lawyer of that other party in respect of the matter.

(6) A lawyer shall avoid anything that may tend to mislead an opposing party who is not represented by a lawyer and shall not undertake to advise him as to the law.

Ultimately, the grundnorm, CFRN 1999 provides in it section 37:

> The privacy of citizens, their homes, correspondences, right to telephone conversations and telegraphic

> communications is hereby private and guaranteed and protected.

It is therefore unfortunate that despite these statutory and constitutional protections for lawyers and their clients in relation to their clientele relationship in Nigeria, the Nigerian lawyers are liable to pay fines, face disbarment for failing to disclose privileged information or secrets about their clients to the EFCC, SCUML, NDLEA, NCS, etc under the various provisions of the Act.[20] In the pretexts of combating money laundering, terrorism, corruption and all the like crimes, the Act in its s. 5(1)(a) requires DNFBPs whose business may involve cash transactions to make declarations on their activities to the Ministry while section 5(1)(b) of the same Act also obliges DNFBPs to record every transaction over the value of US $ 1,000 or its equivalent in a register and forward this register to the Ministry via SCUML and this will then be forwarded by the Ministry/SCUML to the EFCC. Worse still, the EFCC has the power to demand this information directly from the DNFBPs including the law firms[21] failing which serious punishment ranging from fine, imprisonment or disbarment may be meted out to any such lawyer found guilty with varying degree of punishments depending on whether the culprit is an individual or a firm of partnership[22] despite the statutory conferment of lawyer-client confidentiality.[23]

The Act as it stands presently, is highly discriminatory against lawyers in the sense that it has advertently or inadvertently left out some potential professions and professionals such as engineers, architects, town planners, surveyors, doctors, educational proprietors etc. out of the definition of Designated Non-Financial Businesses/ Professions (DNFBPs). What is it that

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20 See ss. 2(3)&(4), 3, 5(4) & (5), 8, 10(1), 21, 22 and 25 of the Act

21 See s. 5(5), *id*.

22 See s. 5(6), *id*.

23 See above note 5.

lawyers do that those professions and professionals excluded from those classified as DNFBPs don't do? In fact the excluded professions and professionals could pose more potential dangers to money laundering and laundering of proceeds of crimes than the lawyers yet they are excluded from the definition of DNFBPs. This now leads us to the issue of the constitutionality of s. 5(5) of the Act.

An Act of the National Assembly or Law of a State House of Assembly will be constitutional when it does not contravene any of the provisions of the constitution.

The analysis already carried out in this paper on the constitutional guarantee of the right to privacy[24] which is said to be the bedrock of the statutory conferment of lawyer-client confidentiality[25] readily comes to mind again in answering this question. The 1999 Constitution (as amended) gives and guarantees the right to privacy of the citizens of Nigeria thus giving a constitutional flavour to the lawyer-client confidentiality/privileged communication in both the Evidence Act and the Rules of Professional Conducts as extensively quoted above in this paper and there is no section of the same Constitution other than section 45(1)(a) and (b) in limited circumstances, that takes away or derogates from this privileged communication between a lawyer and his client backed up by the said section 37 of the same Constitution. This submission is made notwithstanding the restriction on and derogation from fundamental rights contained in the same Constitution, section 45[26]that provides:

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24 See s. 37 CFRN 1999 (as amended).

25 See s. 196 E.A. and rule 19(1) & (2) RPC in the legal profession, 2007.

26 CFRN 1999 (as amended).

> (1) Nothing in section 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society –
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> a. In the interest of defence, public safety, public order, public morality or public health; or
> b. For the purpose of protecting the rights and freedom of other persons
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> (2)An Act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this constitution, but no such measures shall be taken…save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:
> provided that nothing shall authorize any derogation from the provisions of section 38 of this constitution except in respect of death resulting from acts of war…
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> (3) In this section, a "period of emergency" means any period during which there is in force proclamation of a state of emergency declared by the president….

The point being made is that to the extent that the Nigerian state is operated on the principles of constitutionalism and the rule of law, there is nothing in the provisions of section 45 of the constitution that warrants or justifies the taking away of the lawyer-client confidentiality and right to privacy either on the ground of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights and freedom of other persons and neither is Nigeria in a state of emergency.

On the basis therefore of the irreconcilability of the provisions of section 5(5) of the Act with the provisions of sections 37 and 45(1) of the CFRN 1999 (as amended), the statutory right of lawyer-clients privileged communications enshrined in section 192 of the Evidence Act and given a constitutional flavour by section 37 of the CFRN 1999 (as amended) purported to have been eroded by section 5(5) of the Act in particular and generally by the other provisions of the said Act, could not be justified or is not justifiable either on the grounds stated in section 45 (1) of the constitution or in the pretext of fighting money laundering, terrorism, corruption or other associated crimes whatsoever. To that extent, it is humbly submitted that the provisions of section 5(5) of the Act being inconsistent with the CFRN 1999 (as amended) shall to the extent of its inconsistency be declared null and void in accordance with the same constitution which provides as follows:[27]

> If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of its inconsistency be void.

Section 5 of the Act provides:

> (1) A Designated Non-Financial Institution whose business involves the one of cash transaction shall –
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> a. In the case of
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> i. A new business, before commencement of the business;
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> ii. Existing business; within 3 months from the commencement of this Act, submit to the Ministry a declaration of its activities

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[26] See section 1(3) CFRN 1999 (as amended). See *Savannah Bank of Nig. Ltd. v Pan Atlantic Shipping and Transport Agencies Ltd. & Ors.* (1987) 1 SC 198 OR (1987) ALL NLR 42.

b. Prior to any transaction involving a sum exceeding US$1,000 or its equivalent, identify the customer by requiring him to fill a standard data form and present his international passport, driving license, national identity card or such other document bearing his photograph as may be prescribed by the Ministry;
c. Record all transaction under this section in chronological order, indicating each customer's surname, forenames and address in a register numbered and forwarded to the Ministry

(2) The Ministry shall forward the information received pursuant to subsection (1) of this Section to the Commission within 7 days of its receipt.
(3) A register kept under subsection (1) of this Section shall be preserved for at least 5 years after the last transaction recorded in the register.
(4) The Minister may make regulations for guiding the operations of Designated Non-Financial Institutions under this Section.
(5) Notwithstanding the provisions of subsection (2) of this Section, the Commission shall have powers to demand and receive reports directly from Designated Non-Financial Institutions.
(6) A Designated Non-Financial Institution that fails to comply with the requirements of customer identification and the submission of returns on such transactions as specified in this Act within 7 days from the date of the transaction commits an offence and is liable to-
a. A fine of N250, 000 for each day during which the offence continue.

Section 35(2) of the CFRN 1999 also provides:

> Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

Section 36(6) (c) of the CFRN 1999 also provides:

> Every person who is charged with a criminal offence shall be entitled to-
> c) Defend himself in person or by, legal practitioners of his own choice.

Section 37 of the CFRN 1999 also provides:

> The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

Section 45(1) of the CFRN 1999 also provides:

> Nothing in section 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-
> a) In the interest of defence, public safety, public order, public morality or public health; or
> b) For the purpose of protecting the rights and freedom of other persons.

Can we in the light of Section 45(1) CFRN 1999, say that Section 5 of the Act is inconsistent with section 37 of the constitution by virtue of Section 1(3) of the same CFRN 1999(as amended)? The court in the case of *FRN v Daniel*[28] while considering the constitutionality of Section 41(1) of the National

[28] (2012) All FWLR (Pt. 627) pg. 687 at 704.

Drug Law Enforcement Agency Act[29] held same to be reasonably justifiable in the interest of public safety and public health and not in conflict with the provision of Section 37 of the CFRN 1999.

Thus to the extent that the provisions of section 5(5) of the Act could not be justified on the ground of interest of defence, public safety, public health, public order, public morality or for the purpose of protecting the rights and freedom of other persons, the said law is inconsistent with the provisions of sections 37 and 45(1) of the CFRN 1999 (as amended), the provisions of section 192 Evidence Act, 2011 as well as the provisions of Rule 19 (1) & (2) of the Rules of Professional Conducts in the Legal Profession, 2007, all deemed made pursuant to section 315(1) of the constitution itself, the said section 5(5) and other ancillary provisions of the Act that purport to have swerved the lawyer-client confidentiality is by virtue of section 1(3) of the same constitution, unconstitutional, null, void and of no effect whatsoever[30] as far as it affects the practice of law and the legal profession in Nigeria.

This our humble submission has support in the recent jurisprudence of other common-wealth Nations such as Canada and the United Kingdom where the courts have held similar provisions like our section 5(5) of the Act to be an attack on constitutionally guaranteed lawyer-client privileged communication.

In Canada, in the case of *Federation of the Law societies of Canada v Canada Attorney General*,[31] Canada in December 2008 introduced amendments to its Proceeds of Crime (Money Laundering) and Terrorism Financing Act (as amended) and the

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29 Cap. N30 LFN 1990

27 See *Mandara v AGF* (1984) 1 SCNLR 311. See also *Bronik Motor Ltd. & Ors. v Wema Bank Ltd* (1983) 1 SCNLR 296 OR (1983) ALL NLR 272 and recently *FRN v Daniel*, above note 28 at 704.

31 2013 BCCA 147.

Proceeds of Crime (Money Laundering) and Terrorism Financing Regulations (as amended) making them applicable both to legal counsel, legal firms and notaries in the provinces of Quebec. In response to the amendments, the Federation of law societies of Canada filed a petition challenging the application of the amended law to lawyers and notaries in the province of Quebec.

The Canadian Supreme Court upheld the petition, holding that the amendments offended the rights of lawyers and their clients in a manner that did not accord with solicitor-client privilege pursuant to section 7 of the Canadian charter of Rights and freedoms and could not be justified pursuant to section 1 of the charter. The court was unable to agree with the argument by Canada that exempting lawyers from registration for the purpose of anti-money laundering legislation would make it impossible to prosecute lawyers' criminal breaches. It held that Canada's general provisions in its criminal laws would suffice in cases where anyone including lawyers contravenes the law. Furthermore however, the court held that records of financial transactions must be duly kept by all non-financial institutions in such a way that any government official in authority can on request have access to such records.

The provisions so construed in the Canadian case cited above are very similar to the provisions of the Nigerian Money Laundering Act both in their objective and in the unlawful obligation to break privileged confidence of the lawyer-client. However, based on the decision in that case, the Canadian law unlike the Nigerian Section 5 of the MLPAA no longer compel lawyers' registration with the anti-Money Laundering authority in order to fight Money Laundering.

4. Conclusion and Recommendations

The right to a legal practitioner of one's choice and attorney-client privilege which forms its bedrock is a fundamental right which is protected and guaranteed under the constitution.[32]

Likewise the same constitution in its section 37 also guarantees the citizens' fundamental right to privacy. The clientele relationship of lawyer-client is also accorded a statutory privileged communication but which section 5(5) of the Act purports to strip away by demanding that communications and/or documents of a lawyer's client which is supposed to be privileged from disclosure to a third party, should be disclosed either indirectly to EFCC by a lawyer's client via the Ministry/SCUML or such information/documents can be directly assessed/obtained by the EFCC from the lawyer who is so classified under the Act as a Non-Designated Non-Financial Businesses/Professions/Institutions. This power given to the EFCC and other government agencies under the Act has been argued to be in contravention of citizens' guaranteed constitutional rights of privacy and legal practitioner of their choice and that to that extent, it is argued that the provisions of section 5 (5) of the Act is unconstitutional, null and void as provided in section 1 (3) of the same constitution. The following recommendations are therefore made:-

(i) Lawyers should be exempted from the list of DNFBPs that should register with SCUML in view of the statutorily guaranteed Lawyer-Client confidentiality in Section 192 Evidence Act, Rule 19(1) and (2) of the Rules of Professional Conduct in the Legal Profession, Sections 35(2) and 36(6) (c) and 37 of the CFRN 1999.
(ii) If not totally exempted, Lawyers in Nigeria, as in Canada, rather than being forced to divulge their clients' privileged information should be made, through the platform of amendment of the appropriate laws and Rules that govern

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32 See s. 36(6) (c) CFRN 1999 (as amended).

their profession, i.e. the Rules of Professional Conduct in the Legal Profession and the Legal Practitioners' Act to keep accurate records of all their transactions especially those involving finances of their clients and to make same available on request to any designated government agency or the designated body of the profession such as the Body of Benchers or the Legal Practitioners' Disciplinary Committee as against being forced to do so by EFCC/SCUML or any other government agencies.

(iii) Existing regulatory laws and or Rules governing the legal profession such as Evidence Act, Criminal Code, Penal Code, Legal Practitioners' Act, the Rules of Professional Conduct in the Legal Profession and the Money Laundering (Prohibition) (Amendment) Act, 2011 itself should be amended as desired to fight against the crime of money laundering without the need of compulsory registration of lawyers with SCUML. This is the purport of the amendment introduced to the Canadian Money Laundering Legislation in December 2008 earlier referred to.

(iv) There seems to be sufficient criminal laws in place in our penal books such as the Criminal and Penal Codes to prosecute any offender including money launderers (lawyers inclusive) but in the event of any lacuna, it is suggested that necessary amendments be effected to these laws vis-à-vis the constitution to be able to fight the crime of money laundering constitutionally.

(v) Policies and programmes must be put in place both by the (government, associations/ organizations especially those Designated as Non-Financial Institutions (most especially the Nigerian Bar Association and Non-Governmental Organisations (NGOs)) for preventive measures against the attractiveness of crimes in all their ramifications which includes constructive engagement and employment of the

unemployed and under-employed members of their work force as well as payment of living wages. Social service/insurance schemes should be put in place to reduce the wide gulf between the reach and the poor. Realizing that an idle hand is a devil's workshop, most people that engage in crimes and criminal activities are idle, unemployed or underemployed members of the society including members of the elites' organizations and professional inclusive of NBA therefore gainful employment for members of these organizations will consequently reduce, if not prevent totally, the tendency to commit crimes including those of money laundering, terrorism etc.

(vi) While the government must show the seriousness in preventing crimes, there must be commensurate commitment on its part to investigate, prosecute and punish criminals adequately so as to serve as deterrence to others. A situation where after the rigours of arrest, investigation, trial and conviction, convicts of heinous crimes are pardoned because the President or Governor has the constitutional authority to do so can hardly make crimes and commission of crimes less attractive hence the executive prerogative use of amnesty and pardon should be used sparingly and where and when used, should be weighed against the moral burden and the injuries inflicted on the society or the individual victim rather than for garnering political support as the culture of impunity should the discouraged through appropriate sanction as deterrence against money laundering.

It is hoped that the implementation of the above recommendations will no doubt help advance the fight against money launderers (Lawyers inclusive) without necessarily compelling Lawyers to register with SCUML. Mandating all DNFBPs to keep records of all their financial transactions and

making them available on request to appropriate government agencies/officials just like tax issue will not be a violation of the Lawyer-Client confidentiality; the need of Public Safety, Public Order, Public Morality will be the paramount interest in such cases. This is the purport of Section 45 (1) of the CFRN 1999 (as amended) and the basis of the Canadian amendment to its money laundering law which could be adapted to Nigeria. This will no doubt preserve and protect the Lawyer-Client confidentiality guaranteed under our laws.