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CLIENT CONFIDENTIALITY, DATA PRIVACY AND SUSPICIOUS TRANSACTIONS REPORTING: THE ACCOUNTANT'S ETHICAL DILEMMA IN THE NIGERIAN PROFESSIONAL SPACE

Derek Okubokeme Opudu[1] Stanley Ogoun[2]

[1]*Department of Banking & Finance/Accounting, University of Africa, Toru-Orua (UAT), Sagbama L.G.A., Bayelsa State,,Nigeria.*
Email: okubokeme.opudu@uat.edu.ng
[2]*Department of Industrial Relations and Personnel Management, Michael Okpara University of Agriculture, Umudike Umuahia, Abia State, Nigeria.*
Email: stanleyogoun@ndu.edu.ng

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Abstract
The need for foreclosing illicit funds flow has become a prime policy trust for nations and the global community. This has resulted in the enactment of legal measures and institutional frameworks for combating money laundering. In the twist of that, the accountant finds himself often caught between implementing anti-money laundering laws and client confidentiality as an ethical expectation. Hence, this study interrogated the issue of the ethical dilemma of the accountant, given the requirements of client confidentiality and data privacy, juxtaposed against the anti-money laundering requirement of suspicious transactions reporting (STR). From a theoretical literature prism, the study observed that the accountant faces a major ethical hurdle in complying with STR requirements, against the background of losing face before clients. This is because data privacy and client confidentiality are cardinal pillars of professional ethics. Following, the study concludes that both responsibilities can never be performed optimally because they are conflicting demands. The mutually exclusive nature of the accountabilities creates an ethical dilemma for the accountant. It is therefore imperative that both regulatory authorities and the accounting professional bodies synergize towards evolving alternative ways of delivering on both expectations, without destroying client trust and as well foreclosing financial crimes for overall societal wellbeing.

Key Words: *Ethical Dilemma, Money Laundering, Whistleblowing, Suspicious Transaction, Surveillance Theory.*

Introduction
The emergence of the financial crime construct has placed a new demand on the accounting profession to accommodate and align with the changing trend of national objectives. Though, there is a traditional perception that the accounting profession owes clients a duty of secrecy and confidentiality (Guenin-Paracini & Gendron, 2010). However, when this client confidentiality data privacy requirements (as encapsulated in professional/personal ethical requirements, Norton, 2018) stand in the way of national development priorities and encroach on the surveillance structures, such as concealing

illegal business activities then, it is expected that the veil has to be removed by expanding reporting requirements through the suspicious activity reports system (SARS). Malsch and Gendron (2013) noted that the accountants generating SAR reports may encounter a conflicting interest between commercialism pressure and social service professionalism because filing SARs of clients, means prioritizing the former over the latter which may result in loss of clients' trust, which believe that the duty of secrecy has been breached. However, Norton, (2018), and Picard, Durocher and Gendron, (2014) are of the view that self-interest, where the accountants desire to protect their fees/remunerations sometimes outweighs a wider sense of professionalism of statutory obligations. In justification of the surveillance obligation, Morales, Gendron, and Guenin-Paracini (2014) stated that the traditional role of accountants in detecting and preventing frauds/financial crimes has outgrown the ordinary responsibility due to the ever-changing economy. Norton, (2018) revealed that the modern role of an accountant in today's world is to promote significant supervision and develop relevant skills in fraud detection through internal auditing and forensic investigation approaches, and the injection of accounting systems concepts by which opportunistic behaviour is abridged. Therefore, effective internal and external auditing control, in conjunction with proper supervision systems, tends to reduce opportunistic behaviours.

The expected accounting role that impedes fraud, corruption and financial crime has been discussed in the literature (Norton, 2018; Neu, Everett, Rahaman, & Martinez, 2013; Compin, 2008; Arnold & Sikka, 2001). Meanwhile, the work of Mitchell, Sikka, and Willmott (1998a:1998b) expresses the role of accountants in curtailing financial crimes, especially money laundering. Auditing as a cardinal aspect of the accounting profession is expected to serve a crucial purpose in verifying and giving credibility to the financial information it provides and plays the role of reducing economic crimes in the real sense due to the special insight the profession has into financial matters/companies' operations (Ringh & Sultani, 2014; Ping, 2010; Audit Quality Forum, 2005). Therefore, auditors/accountants stand a better chance in the surveillance role of containing economic crime by way of detection, prevention and notification thereof (AMLA, 2011). Agreeably, the accountant's job primarily involves the identifying and recording of financial transactions, as well as the detection and prevention of fraud, which also inhibits criminal behaviour. Furthermore, auditors are at present required by law to consistently audit their relationship with clients for any proof of 'dubious activities' which, whenever distinguished, have to be reported to the NFIU through the recording of a SAR (Nigeria Anti-Money Laundering Act, 2011). This recently settled semi-policing role is at odds with the conventional idea of the Auditor-Client relationship. Consequently, the accounting recruit in the insight-gathering cycles of government will require new essential measurable training skills and forensic tools. Another challenging task that affects each day's process function of the accountants is the strategies of online reporting, construction and compulsory fields of the SAR form, and filing time limits. This can influence their conduct since the person in question is said to have carried out or supported a crime if data that raises reasonable suspicion doubt identifying with the customer's classified monetary affairs is not documented in SAR. Signified from the (Guenin-Paracini & Gendron, 2010, Malsch and Gendron 2013; Picard, et al., 2014; Norton, 2018) is the need dual and mutually exclusive demands. The Nigerian legal and

control framework for combating financial crimes places enormous responsibility of financial gatekeepers is instigates this research effort. This apparent contradiction poses an existential threat to the accounting professional space in Nigeria. Hence, the study interrogates the accountant's role based on: morality, exposure to the risk of losing clients, jobs, or existence versus upholding anti-money laundering rules through STR or whistle-blowing.

Literature Review

Financial Crimes and the Accounting Profession

Financial crimes can be described in simple terms as the illicit acts on or against any institution or person that causes financial, reputational or regulatory loss to the victim party. The resultant effect or purpose is to defraud, steal or circumvent any set laws for personal gain. It is a wide aspects that encompasses and coats various criminal activities such as tax evasion, bribery/corruption, aiding and abetting criminal enterprises; identity theft; money laundering; forgery; financial fraud; embezzlement; terrorist financing; insider trading and market abuse; electronic fraud; humans/drugs trafficking, as well as other illicit acts to make unmerited monetary gains (Nwoye, Ekesiobi, Obiorah & Abiahu, 2016). When such crimes are carried out, it is habitually considered as a compliance case. Therefore, failure to establish robust anti-money laundering structures may result in significant losses for financial gatekeepers, coupled with heavy fines from regulators accompanied with reputation damaging news against the gatekeeper under whose watch the crimes sufficed. The Professional accountant as anyone, who has proficiency in the accounting field which he/she has attained through formal learning and practice, and can express and maintain competence to comply with the code of ethics or standard laid down by the professional accounting bodies and other regulatory mechanism (IFAC, 2011). Accounting professionals could be: tax, financial, auditing, cost, forensic, or management inclined etc. However, whistle-blowing or reporting financial crimes at an external or internal level is not domiciled with the forensic accountants, rather it is a national responsibility saddled on everyone by law. However, for accountants to avoid unnecessary financial penalties/fines, reputational loss or any other negative impact of non-compliance (Nwoye, Obiorah & Ekesiobi, 2015), it is crucial to appraise the risk of financial crime and its life cycle at its three stages: the risk prevention phase, risk detection phase and the investigation stage. Hence, due to the accuracy and speed needed to report outliers on time to avoid oversight or negligence; modern best processes are adopting artificial intelligence (AI) in profiling, preventing, detecting, verifying, and monitoring customer/transaction patterns for irregularities (anomalies) and flag them on the spot.

A successful laundering process entails an aspect of continuous patronage of the financial markets, by which criminal organizations engage the services of financial experts and specialized accountants, who can find possible loopholes and technical defects in the law to circumvent acceptable standards and national regulations. Compin (2008) stated that the accounting profession when engaged by criminals can mystify the activities of financial crimes by offering sophisticated assistance to the approach and in the same vein their services with legitimate entities coupled with ethical values, serve as a force that can minimize the risk of crimes. The job function becomes the value creation by which

financial communications are given a positive spin to assemble requisite standards. Hence, the Nigerian Anti-Money Laundering Act requires accounting professionals to scrutinize these seemingly lawful organizations for any evidence of a crime and report any detection or suspicious activities to the National Financial Intelligence Unit (NFIU). The raw materials upon which surveillance success depends are derivative of diverse sources; some are more objectively defined, while others are probably unclear and have fewer facts.

In justification of the surveillance obligation, Morales, Gendron, and Guenin-Paracini (2014) stated that the traditional role of accountants in detecting and preventing frauds/financial crimes has outgrown the ordinary responsibility due to the ever-changing economy. Norton, (2018) revealed that the modern role of an accountant in today's world is to promote significant supervision and develop relevant skills in fraud detection through internal auditing and forensic investigation approaches, and the injection of accounting systems concepts by which opportunistic behaviour is abridged. Therefore, effective internal and external auditing control in conjunction with proper supervision systems tends to reduce opportunistic behaviours. Auditors are at present required by law to consistently audit their relationship with clients for any proof of 'dubious activities' which, whenever located, have to be reported to the NFIU through the recording of a SAR (Nigeria Anti-Money Laundering Act, 2011). This recently settled semi-policing role is at odds with the conventional idea of the Auditor-Client relationship. Consequently, the accounting recruit in the insight-gathering cycles of government will require new essential measurable training skills and forensic skills. Another challenging task that affects each day's process function of the accountant is the strategies of online reporting, construction and compulsory fields of the SAR form, and filing time limits. This can influence their conduct since the person in question is said to have carried out or supported a crime if data that raises reasonable suspicion or sensible doubt identifying with the customer's classified monetary affairs is not documented in a SAR. It is also true that modern financial crimes have become sophisticated due to the advent of electronic gadgets/software applications and cyberspace facilities. Making the accounting services a complex and challenging one, especially for accountants who are not ICT inclined.

Suspicious Transaction Reports (STR) Policy

Reporting of Suspicious transactions rule is a crucial aspect of AML policies. It is the aspect that reveals a set of information by alerting regulatory authorities that certain actions in some manner are looking suspicious and might indicate and point to terrorism financing or money laundering (Fleming, 2005). The obligation to report STR occurs irrespective of the money involved; whether the type of the crime is significant; or whether the reporting unit acknowledges client transactions or not (Chaikin, 2009). While security personnel are involved in the combat against financial crimes and other organized crimes, finance/accounting professionals also have their mandate by law to focus on the objective of preserving the economic system and its operators/users. The engagement of financial experts is not to directly combat financial crimes per se but it is to aid the prevention of illicit transactions in the economy at the financial system level. Hence, the efficacy of AML acts is hinged on this structure. The fundamental structure operates under normative frameworks like record-keeping/reporting requirements and

Know Your Customer (KYC) policy regulations. They must verify their customers' (clients') identities, keep relevant books of account of their business transaction relationships for a set period, report suspicious transactions, and respond to inquiries from competent regulatory authorities, particularly those from each member-national state's financial intelligence unit (FIU) (Ezechukwu, Amahalu & Okudo, 2022).

Remarkably, the Anti-Terrorism Financing and Anti-Money Laundering Acts broaden the reporting requirements scope to include incomplete transactions that are attempted or illicit conduct under the Act, Any action that has a direct or indirect link with any major crime or any foreign serious charges. Therefore, a transaction is labeled suspicious when the behavior and circumstances are sufficient to identify or suspect a crime (Gold & Levi, 1994). Based on the foregoing, it may be very intricate for one to consider and report transactions as suspicious. This may force the reporting accountant to rely on intuition and discretion because he may not know the specific nature of the crime or whether the monies were obtained through illicit means. Hence, the need for serious caution because of the risk that is associated with terrorism financing or money laundering. When such a level of caution becomes so strict, it may obstruct the day-to-day financial dealings or Auditor-Client relationship. To address these basic reporting issues, prudential standards provide that financial gatekeepers must submit STR when it is absolute that completing the client due diligence procedure on any new or current customer is impossible and that such a customer is unreasonably evasive and unwilling to cooperate with lay down rules. In this regard, STR reporters must make rational decisions based on their internal policy and normal commercial criteria. It is important to note at this point that an unsuccessful STR period will lead to defensive and inaccurate reporting. This might threaten the STR era's efficacy since an influx of reports could overwhelm the system and deplete the available scarce resources on irrelevant files. Therefore, to solve the problem, the STR reporter needs to spell out and identify the best channels for reporting suspicious transactions. Since the AML law has made this obligation crucial, it is therefore expedient for financial gatekeepers to observe the STR reporting exercise using a medium that is timely, prompt and dynamic to catch up with the changing trend of technology.

Financial Crimes and Suspicious Transactions Reporting (STR)

There is no widely accepted theory explaining why financial crimes occur. However, there is a wealth of knowledge about criminal behavior. It has been argued logically that financial crimes, like all other criminal behavior, are an unavoidable result of the competitive ethic of capitalism, notwithstanding the divide in opinion on the viability of a definitive theory on the predictability of criminal behavior. This idea contends that the acknowledgment of the winners and losers in the economy has led to the prosperity and riches that the world is continually exposed to. The incentive behind committing any crime, whether it is money or not, is still the desire to succeed or to meet one's earnest desires (needs) (Wheeler, 1992).

Financial crimes, in the light of Silverstone and Sheetz (2004), are driven by a variety of causes, including a corrupt societal culture and the tolerance of poor moral values. They contend that the daily existence and practice of a corrupt culture at work and society puts

tremendous pressure on financial crimes. Hence, negative corporate and cultural values pressure or result in the inversion of good personal or corporate values. In the long run, loyalty might turn into complicity, good behavior into bad, and teamwork could turn into conspiracy. Poverty is another key factor in financial crimes. The survival instinct can push some individual into negative habits where they may no longer uphold their moral values or ethics. This may not be the case for everyone, especially the die-hard ones who are ready to be martyrs for their beliefs or righteousness. However, in a lawless, hopeless or retarded economic situation, the animalistic nature of some may take the better part of their reasoning. In a workplace situation, Sutherland (1949) argues that financial criminal behaviour may result from the fear of being fired or shunned if one's superior's favor is lost. Additionally, this illegal behavior could be displayed in close proximity to persons who define and facilitate such financial criminal behaviour. The fraud theory perspective indicates that Pressure, Opportunity, Rationale, and Capability are the core elements that give credence to the existence of financial crimes and for it to be contained these responsible factors (variables) should be eliminated in an organization or in any setting. Therefore, anything that leads someone to commit fraud may be referred to as 'Pressure'. While, 'Opportunity' factor is the potential for deception presented by inadequate managerial supervision, lax internal controls, and other factors generated or that revealed weaknesses, or chance, to obtain.'Rationalization'on the other hand, is the process by which a criminal reconciles their actions with accepted standards of decency and trust, whereas 'Capability' is that attributes of the criminal to possess the ability to handle any stress or inconveniences arising there from subtleties of the crime. The prospective money launderer should have the right capacity and skills to carry out the illegal act of crime. Thus, "capability enables the person to recognize the open doorway as an opportunity and take advantage" by walking through it again and again (Sorunke, 2016; Wolfe & Hermanson, 2004 in Abdullahi & Mansor, 2015). Therefore, curtailing financial crimes through whistleblowing using STR surveillance structure as required by law is a national obligation on professional accountants and other financial gatekeepers.

Whistle Blowing

The theory of whistle-blowing is perceived to have its roots in the practice of policemen blowing their whistles in an attempt to apprehend a criminal suspect as well as the practice of referees during sports events that blow whistles to prevent unethical acts (Michael & Robert, 2011). The term designates a form of social and unethical behavior control of and in the organization where a current or former member, discloses information to eliminate illegal and immoral practices or wrongdoings. It entails exposing unethical clandestine activities in that a corporation or an individual is involved (Duska, 2007). Duska, Duska and Ragatz, (2011) see "whistle-blowing as the practice in which employees who know that their company or colleague is engaged in activities that: cause unnecessary harm; violate human rights; are illegal; run counter to the defined purpose of the instructions or the professions; are otherwise immoral informs superiors, professional organizations, the public, or some government agency of these activities". Whistle-blowing is defined by Baltaci (2017) as the reporting of ethical standards and regulations that are violated in organizations. The whistleblower could be an employee of an organization who is aware of the illegal acts which are contrary to current legislation and the generally acceptable ethical standards of the society or anyone who

may have observed such illegalities and reported such actions or behaviors to the organization, persons or authorities who can prevent such actions and behaviors (Viale, Gendron, & Suddaby, 2017; Ponemon, 1990).

Generally, it refers to anyone who gives information or reports unlawful activity within an organization or a person who reports any illegality to an authority that can stop the act. When an alleged misdeed is reported to someone in authority within a corporation, it is known as internal whistle-blowing (Hoffman & McNulty, 2009). External whistle-blowing occurs when an alleged wrongdoing is reported to outside authorities, such as regulatory organizations, public interest groups, or the news media. The perception and justification of the whistleblower here are to report illegal or unethical acts to the authorities for corrective measures based on laid down principles and moral standards. The theory provides a valid money laundering detection method that helps to establish a level of social responsibility across the board and prevent unnecessary harm to society. This ethical stance is so relevant that the United Kingdom has launched the Public Interest Disclosure Act (PIDA, 1999), the US introduced the Sarbane-Oxley Act, 2002 and Nigeria enacted AMLA, (2011) just to obligate, protect, and empower whistleblowers to see reporting illicit acts as part of their fundamental duty to prevents crimes (Ricoeur, 2010; Hoffman & McNulty 2009; Ray, 2006). In recent times whistle-blower policy in some countries has attracted public attention because it is a financial detection technique whereby an anonymous person secretly contacts government authorities about stolen money availability to receive a monetary reward. This whistle-blower policy fraud detection method is mostly adopted by countries today. Before now, De George (1986) was the first to theorize the criteria for when a whistleblower should blow the whistle and that the whistleblower should when the act is only morally prohibited, morally permitted or morally required. By permissible, he means that the act of crime should be able to do serious threat or substantial harm to the public. The whistleblower should have evidence and not escalate beyond the organization. "De George's criteria imply that there is no moral duty for self-sacrifice". However, Hoffman and McNulty (2009) assert that De George's criteria for determining the validity of whistleblowing lack the strength of ethical principles directed toward public interest, professional and moral judgments. It also limits the good theory of whistleblowing in the provision of guidance on how to minimize harm to all stakeholders. Therefore, they argued that whistleblowing should be both permissible and duty as long as the action supports the dignity of all relevant stakeholders.

Whistle-blowing, be it in the financial sector, accounting firms, audit firms or law firms, comes with so many responsibilities for the person blowing the whistle. The whistleblower is often at the center of the investigations and will be asked to make known the problem areas (Perry, 2015; Poitras, 2014). That is the reason why it is often difficult for people to divulge unethical situations (especially money laundering). Due to moral values decline, the optics are against the whistle blowers. The reason for which most individuals dare not to blow the whistle. Although legal and institutional efforts are been crafted to protect whistle blowers but prior whistle blowing acts within the Nigerian space had created existential challenges to the blowers. Though as reported by Humphrey, & Owen, (2000) the emergence of regulatory framework works appears to

be providing some lee ways. It was this moral duty and obligation that made Sharron Watkins report the unscrupulous acts of Enron Corporation in 2001. Regardless of the negative perception of whistle-blowing by critics who are on the other side of the divide, there are lots of mutual benefits that can be derived from whistle-blowing. First, whistleblowing assists to put the needs of other concerned entities as a top priority. In a scenario where false profits are presented to the public, whistleblowing can save investors from unwanted losses (Perry, 2015; O'Neill, 2013; Rizzi, & Lerner, 2013). In the case of money laundering, it can alert the government to recover financial-economic losses and mitigate the impact of the crime. However, it is observed that there is no workable direct policy put in place to protect and help the whistle-blower in the country, besides mere announced promises from the government. Truly, blowing the whistle comes with serious repercussions to the informant ranging from loss of trust, business, relationship and/or life.

Conceptual Identification and Theory Building

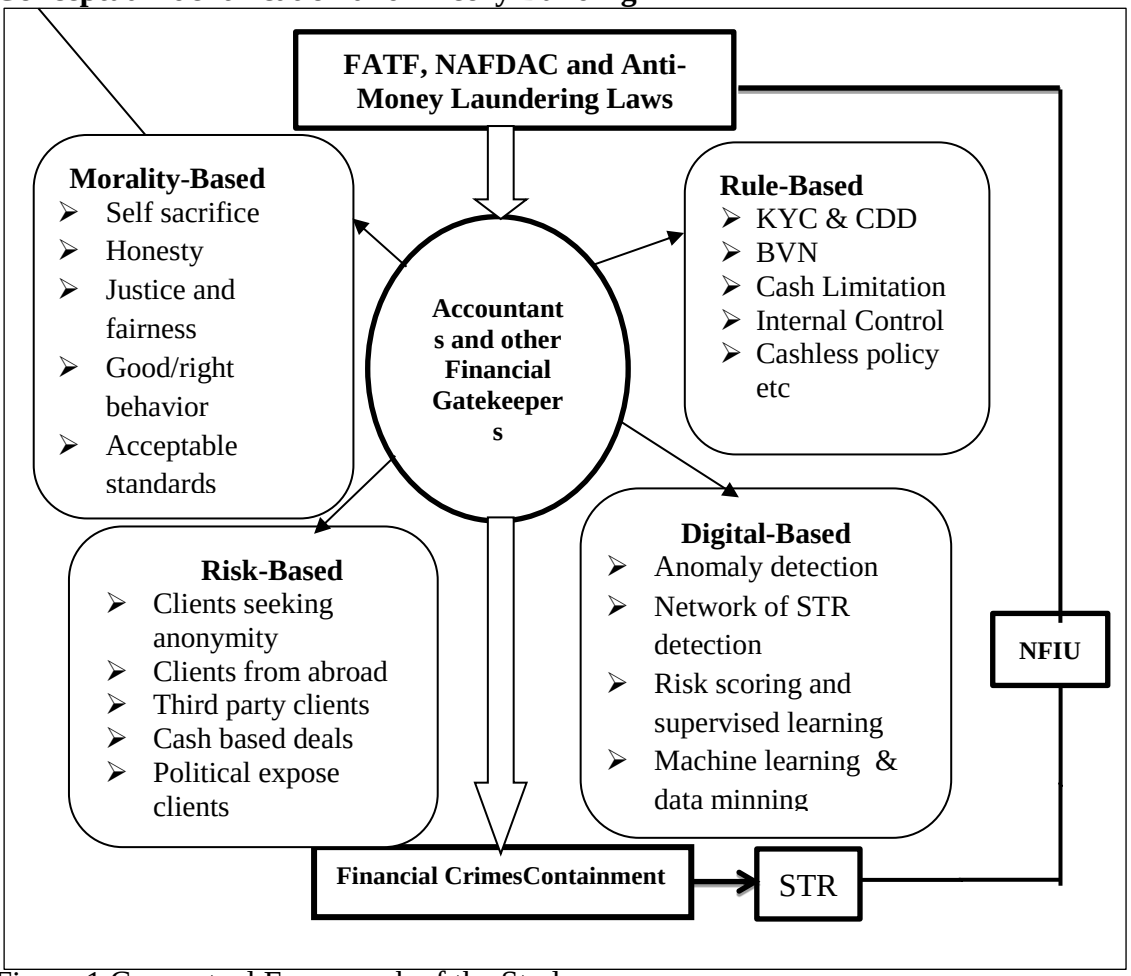


Figure 1 Conceptual Framework of the Study
Source: Researcher's Conceptualization (2023).

The void of knowledge in a situation where all the needed research outcomes are lacking could pave the way for novel research areas so as to close the knowledge gap (Ule, Opudu

& Nwankwo 2020; Muller-Bloch & Kranz, 2015). Such void may emanate where knowledge is limited or lacking or yet to be investigated enough in a particular research discipline and as such require scholarly thoughts to explore related domains (Jacobs, 2011). Therefore, the conceptualization in Figure 1 depicts the practical scenario of the life and exposure of the accountant and the dilemma he may encounter in the field during the event of criminal or suspicious activity(s) and the decision options he is exposed to as well as the consequences of the choice of action. First, his personal ethics and professional training or standards will come to bear in the first dilemma scenario. This may lead him to begin to evaluate or deduce the state of affairs based on what he thinks is morally right or wrong in conjunction with the rule of law. If he chooses to follow or do what is morally right then, he will likely adhere to and uphold the Anti-money laundering/terrorist financing rule by whistling out to the regulatory authorities or reporting the crime based on the available medium for channeling such STR. However, if he chooses to overlook the crime, due to any ties or benefits that may accrue to him directly or indirectly or based on any other judgment; then, his decision may overlap with the Risk he is willing to take and the consequences thereafter if the crime happens to be detected in the future in connection to him.

The accountant may find his or herself in a tight spot because the AML Law is yet to consider or provide the needed shield or reward that could sustainably or unabatedly motivate the full compliance of whistlers. Therefore, looking at the loopholes of the Nigeria AML, accountants in such a scenario may be rational in their decision. The choice of upholding morality, vs. protecting his client/job, or accepting a settlement for the crime becomes a dilemma. Morality in this context is the individual ethical system, as well as other standards or values that guide the behavior of the accountant that is commonly acceptable by regulatory bodies, society and the State. Because of the disparity in belief systems, culture and goals, it is inherent for some individuals (accountants) to behave differently from the expected rules of reporting STR. This is based on the fact that what one may consider morally right or what should be reported as a crime may vary when personal interests, culture, religion, tribe or relationship ties are involved (Opudu & Ogoun, 2023: Reganati and Oliva 2017). Therefore, the accountant may want to consider some intrinsic and explicit factors before carrying out whistleblowing. Such as the consideration of the available motivation and protection system, the perception of the society towards whistleblowers, his (personal) ethics, and what he may stand to gain if he chooses to report the crime and/or potential penalties for non-compliance. Though, the rule and risk-based approach is essential for the efficient application of the FATF recommendations and AML in the containment of money laundering and terrorist financing activities but it may be lacking some elements because it has not yet addressed all potential vulnerabilities, particularly in the relationships risk between accountants (financial gatekeepers) and clients in the control of financial crimes within and outside a system.

Conclusion and Recommendations

The accounting industry is a diversified field in terms of scope and type of services it offers to clients, the size and complexity of the business and its employees/owners are dynamically sophisticated in nature. Accounting as the only global financial language,

makes accountants susceptible to being unintentionally involved in or complicit with financial crimes. The service deals with multifaceted streams of financial transactions from the public to private and individual domains. Because of this, the requirement by AML law for the sector to meet KYC/customer due diligence requirements and maintain pertinent records on behalf of their clients as a first point of call in the event of money laundering acts becomes pertinent. However, the whistleblowing requirement of reporting STR exposes the accountants to several unprotected risk and dilemmas that requires robust reevaluation. However, the policies may have offered the accountants options of either complying with or following the rule-based approach or risk-based approach basically. on the other hand, there are still other approaches like the Digital-based and Morality-based models that have become relevant in current times.

Thus, from a theoretical literature prism, the study observed that the accountant faces a major ethical hurdle in complying with STR requirements, against the background of losing face before clients. This is because data privacy and client confidentiality are cardinal pillars of professional ethics. Following, the study concludes that both responsibilities can never be performed optimally because they are conflicting demands. The mutually exclusive nature of the accountabilities creates an ethical dilemma for the accountant. It is therefore imperative that both regulatory authorities and the accounting professional bodies synergize towards evolving alternative ways of delivering on both expectations, without destroying client trust and as well foreclosing financial crimes for overall societal well-being.

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