KAMPALA INTERNATIONAL UNIVERSITY

FACULTY OF LAW

LEGAL AND INSTITUTIONAL STRUCTURES FOR COMBATING
MONEY LAUNDERING IN UGANDA: A CRITICAL EVALUATION OF
THE PROBLEM, THE CHALLENGES AND THE WAY FORWARD.

BY

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A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR
OF LAWS OF KAMPALA INTERNATIONAL UNIVERSITY IN UGANDA.

JUNE 2012
DECLARATION

I, NYUNUYUZI A. CHARLOTTE, declare this dissertation as being my original work and has not been submitted to any other university or other institution for the award of any academic qualification. All sources and authorities have been duly acknowledged.

SIGN: 

DATE: 16/8/2012

I certify that this dissertation satisfies the partial fulfilment of the requirements for the award of the Degree of Bachelor of Laws (LLB) of Kampala International University in Uganda.

Mr. CHIMA MAGNUS
SIGN: 

Supervisor

DATE: 16/8/2012

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"The money screamed across the wires, its provenance fading in a maze of electronic transfers which shifted it, hid it, and broke it up into manageable wads which would be withdrawn and re-deposited elsewhere, obliterating the trail...

-Linda Davies, 'Nest of Vipers'.
DEDICATION

To my mother, Asta Joan Kunihira Amooti
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ABSTRACT

This study critically appraises the legal and institutional infrastructure for combating money laundering in Uganda, with the view of assessing the lacunas in the law and challenges facing the institutional mechanism. The major objective of the study is to evaluate the adequacy of the law and the capacity of the relevant institutions to fight money laundering in Uganda.

The study attempts to address four main questions.

The first is, whether the absence of a comprehensive law makes it unlikely that the legal and institutional framework in its present form can sufficiently combat money laundering?

Secondly, whether, unless addressed, money laundering in Uganda will increase and infect all institutions?

Thirdly, whether money laundering can be controlled and prevented at an entirely domestic level?

Lastly, whether the lack of awareness and lack of sensitisation perpetuates the money laundering problem?

The study gives the background, antecedents of money laundering in Uganda, including an insight into the common sources of laundered proceeds. The study also examines the scale of money laundering from a domestic and international perspective. The study outlines the various consequences of money laundering on the social, political and economic life of a country.

The study makes a critical assessment of the law and relevant institutions, examining the adequacy and relevance of the laws and the capacity of the institutions in fighting money laundering. The study also examines the challenges facing the enforcement and implementation of various anti-money laundering measures in Uganda.

Lastly, the study outlines various recommendations to address the money laundering phenomenon and create a viable anti-money laundering regime in Uganda. In reaching these recommendations, the study assesses what is lacking in the law and what should be done.
ACKNOWLEDGMENT

I am greatly indebted to my supervisor, Mr. Chima Magnus and I thank him for his wise counsel and invaluable suggestions during the course of the study.

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I greatly appreciate their support and I am forever indebted to them.
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<td>AML/CFT</td>
<td>Anti-Money Laundering</td>
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<td>AMLB</td>
<td>Anti-Money Laundering Bill 2003</td>
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<td>BOU</td>
<td>Bank of Uganda</td>
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<td>CID</td>
<td>Criminal Investigation Department</td>
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<td>COMESA</td>
<td>Common Market for East and Southern Africa</td>
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<td>DPP</td>
<td>Directorate of Public Prosecutions</td>
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<td>EAC</td>
<td>East African Community</td>
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<tr>
<td>ESAAMLG</td>
<td>East and Southern Africa Anti-Money Laundering Group</td>
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<td>ESO</td>
<td>External Security Organisation</td>
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<td>FATF</td>
<td>Financial Action Task Force</td>
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<td>KYC/CA</td>
<td>Know-Your-Customer/Customer Acceptance</td>
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<td>IGG</td>
<td>Inspectorate General of Government</td>
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<td>MDIs</td>
<td>Micro Finance Deposit Taking Institutions</td>
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<tr>
<td>MoFPED</td>
<td>Ministry of Finance, Planning and Economic Development</td>
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<td>MoJCA</td>
<td>Ministry of Justice and Constitutional Affairs</td>
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<tr>
<td>POC</td>
<td>Proceeds of Crime</td>
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<td>PCA</td>
<td>Penal Code Act</td>
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<td>ISO</td>
<td>Internal Security Organisation</td>
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<td>ISS</td>
<td>Institute of Security Studies</td>
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<td>SRPU</td>
<td>Special Revenue Protection Unit</td>
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- Moneylenders Act Cap 273
- National Drug Policy and Authority Act Cap 206
- Penal Code Act Cap 120
- Police Act Cap 303
- Prevention of Corruptions Act Cap 121
- Security Organisations Act Cap 305
- Uganda Law Reform Commission Act Cap 25

Conventions/Instruments
- East and Southern Africa Anti-Money Laundering Group Memorandum of Understanding (Arusha Agreement) 1999
- Nairobi Protocol for the Prevention, Control and the Reduction of Small Arms and Light Weapons
- UN Resolution 1373 (September 28 2001)
- UN Model Legislation on Money Laundering and Terrorist Financing December 2005
- UN Convention against Trans-National Organised Crime 2001
- UN Convention against Illicit Trafficking Narcotic Drugs and Psychotropic Substances 1988
- UN Convention for Suppression of Financing of Terrorism 1999
CHAPTER ONE
GENERAL INTRODUCTION

1. INTRODUCTION

Uganda is a landlocked country located in East Africa, measuring an area of 91,136 square miles, with an estimated population of 35 million people.\(^1\) She is a former British Colony and attained her independence in October 1962 and became a Republic in 1967. Her capital city is Kampala, with a population estimated at approximately 1,659,600 people\(^2\). The official language is English. Uganda is currently under multiparty dispensation under the 1995 Constitution as amended. Uganda has substantial natural resources, including fertile soils, regular rainfall, and sizable mineral deposits of copper and cobalt. The country has largely untapped reserves of both crude oil and natural gas. While agriculture accounted for 56% of the economy with coffee as its main export, it has now been surpassed by the services sector, which accounted for 52% of GDP in 2007\(^3\). The financial sector is young but vibrant since the liberalisation of the economy in the early 90’s. Uganda has one of the most entreprenuial small businesses in the world.\(^4\)

1.1 BACKGROUND

Money laundering involves the concealment of illegally acquired wealth in order to obscure its true nature or source. Proceeds of money laundering are often used to facilitate crime, to finance terrorism or even sustain armed insurrections. Ordinarily, money is laundered through a three stage process, namely placement, which is the initial stage in the laundering process; layering, the stage where proceeds of crime (POC) are separated or disguised from their

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1 Government of Uganda/UBOS, Uganda Population and Housing Census Main Report

2 2011 Estimated Populations of Ugandan Cities And Towns

3 “Uganda at a glance”, World Bank 13 November 2009

4 World Bank, Global Economic Development Index Report, 2004, p. 57
source; integration, the final stage where laundered proceeds are placed back or integrated back into the economy in such a way as to make them appear as ordinary earnings. Money laundering is a fast developing phenomenon in Uganda. Money laundering activities in Uganda account for a significant measure of trans-national organised crime (TNOC) in East Africa. Activities of organised crime in this region include drug trafficking, corruption, arms and human trafficking, cattle rustling, commercial fraud and forgery, smuggling as well as tax evasion. Individuals involved in TNOC across the East African borders take advantage of the weak border controls in the region to conceal illicit goods like drugs and stolen items enroute from other countries to Uganda. Uganda joined the East and Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional organisation coordinating member states in fighting money laundering and TNOC in the region; she signed a memorandum of understanding drawn up by thirteen governments in August 1999. Uganda has since then shown a concerted effort to fighting money laundering by using two main instruments: the law and enforcement institutions. A long chain of legislation has been enacted, amended or drafted to be enacted to bring the financial crime legal regime in Uganda in harmony with the ESAAMLG memorandum, the UN Model Law, the FATF 40 recommendations and other international instruments. As a consequence, the Uganda Anti-Money Laundering Committee (UAML) was established and has developed a sensitisation program on money laundering in Uganda. In 2003, the UAML carried out surveys on money laundering typologies and strategies in the country and it was hoped that upon enactment of the anti-money laundering law, a financial intelligence authority would be set up to coordinate investigations and prosecute money launderers.

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7 Ibid. p.126
However, Uganda still has no comprehensive legislation on AML in place. Various laws existed or were enacted in response to specific crimes and were restricted to certain aspects of financial crime affiliated with money laundering. For instance, the Anti-Terrorism Act\(^9\), \emph{inter alia}, provides for the suppression of acts of terrorism, especially terrorist financing. Sections of the Penal Code Act\(^10\) outlaw organised crime, racketeering, terrorism and terrorist financing, smuggling, drugs and narcotics trafficking, corruption, extortion and bribery, fraud and forgery, piracy, aggravated robbery, kidnap and abduction. The Leadership Code Act\(^11\) and Inspector of Government Act\(^12\) outlaw corruption and bribery involving public officers. The Firearms Act\(^13\) prohibits unauthorised dealings in arms and ammunition. The Bank of Uganda Act\(^14\) empowers BOU with powers to regulate and control financial institutions businesses in Uganda. The Financial Institutions Act\(^15\) requires all deposit-taking institutions to implement BOU KYC rules and to report suspicious transactions.

Furthermore, the Foreign Exchange Act\(^16\) imposes restrictions and controls on foreign exchange and international payments and transfers. In March 2003, BOU issued a circular to forex bureaux, in implementation of the Anti-Money Laundering Guidelines to Commercial Banks and Forex Bureaux prohibiting outward transfers on behalf of customers and placed the limit to over the counter transactions US $ 5,000. Similarly, the Micro Finance Deposit-Taking Institutions Act\(^17\) prohibits certain transactions by MDIs, limits the percentage of shares an individual or family may have in an MDI to 30%, gives

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\(^9\) Act No.14 of 2002  
\(^10\) Cap 120, Laws of Uganda 2000 Edition  
\(^11\) Act No.17 of 2002  
\(^12\) Act No.5 of 2002  
\(^13\) Cap 12, Laws of Uganda 2000 Edition  
\(^14\) Cap 51, Laws of Uganda 2000 Edition  
\(^15\) Act No.2 of 2004  
\(^16\) Act No.5 of 2004  
\(^17\) Act No.5 of 2003
BOU supervisory and monitoring powers over activities of MDIs including compulsory take over in cases of under capitalisation, requires MDIs to observe principles of corporate governance and makes it an offence to conceal, with intent to deceive, a false entry transaction. Lastly, the Financial Institutions (Corporate Governance) Regulations 2005\textsuperscript{18} require financial institutions to have in place proper corporate governance structures and processes.

In 2003, the Anti-Money Laundering Bill was drafted and is yet to be passed. Members of Parliament have now made it clear they want the Anti-Money Laundering Bill (AMLB) No. 13 of 2009 passed as soon as possible. It promises, when enacted, to be the most comprehensive piece of legislation on AML in Uganda. The bill in essence criminalises money laundering, provides for money laundering prevention measures, establishes the Financial Information Authority to identify POC, combat money laundering, to ensure compliance of the AMLB (upon becoming law) and to facilitate enforcement of the afore mentioned laws. The Bill also establishes the Anti-Money Laundering Board, provides for the seizure, freezing and forfeiture of assets in relation to money laundering, for international cooperation, and creates certain offences and penalties such as tipping-off, falsification/concealment of documents, facilitating of money laundering, and failure to report suspicious/unusual transactions.

1.2 STATEMENT OF THE PROBLEM

Money laundering in all its complex forms is proliferating in Uganda without an adequate legal and institutional framework to control it. There is still no comprehensive AML law in place and the relevant institutions, in the absence of an enabling law, often fail to act to deter arrest or even charge culprits\textsuperscript{19}. The existing pieces of law are not only limited in scope but also collectively fail to address the problem. Institutions like mainstream police, Bank of Uganda, Ministry of Finance, Ministry of Justice, the Uganda Law Reform Commission, ISO/ESO

\textsuperscript{18} SI No.47 of 2005

\textsuperscript{19} Interview with Mr. P. Bwango, OC National Fraud Squad, CID Kampala
Economic Monitoring Office, Special Branch, CID, VCCU, Capital Markets Authority, Ministry of Internal Affairs, the Directorate of Public Prosecutions, the Inspectorate General of Government, the UAMLC, the ESAAMLG, the Uganda Bankers’ Institute, and the FATF all operate in a vacuum since there is no law establishing a central body to coordinate the fight against money laundering in Uganda. The absence of key institutions like Financial Intelligence Units (FIU), and the poor functioning of other institutions for lack of adequate resources, both human and material resources, coupled with corruption, has hindered effective enforcement of laws and thus encouraged money laundering.²⁰

There are a number of factors which provide breeding ground for money laundering in Uganda and East Africa. These are inadequate legal framework, corruption, weak enforcement structure and poor regulatory and supervisory framework, non ratification of requisite treaties. To the effect that money laundering is a global problem, which demands both a regional and global effort to combat it, the imperative of international cooperation need to be underscored. In the spirit of international and regional cooperation a number of anti-money laundering and combating terrorist financing initiatives have flourished such as the Financial Action Task Force (FATF) and the United Nations Initiatives. In spite of the fact that international cooperation has long been an important part of the law enforcement, Uganda has not ratified certain treaties. For example, the Convention for Suppression of Financing of Terrorism, adopted by the UN General Assembly on 9th December 1999, had as of April 2002 received ratification from only 26 countries. The delay in adopting recommendations and ratification of treaties weakens the spirit of solidarity and consequently undermines the cooperative effort.

1.3 OBJECTIVES OF THE STUDY

The principal objective of the study was to evaluate the adequacy, relevance of the law and the capacity of the relevant institutions to fight against money laundering in Uganda.

²⁰ Edopu, Infrastructure to Detect and Control Money Laundering and Terrorist Funding in Uganda, p.97
The specific objectives of the study are:

1. To examine the nature and extent of money laundering in Uganda
2. To analyze the effect of money laundering on Uganda’s economy, especially the banking and financial sector.
3. To examine the efficacy of the provision of the Anti-Money Laundering Bill and the institutions that are sought to be established under it.
4. To review the main challenges and to explore any suitable recommendations.

1.4 HYPOTHESIS

There is no specific legislation or institution mandated to combat money laundering in Uganda. The various laws that exist either gloss over the issue or respond to different crimes affiliated with money laundering.

The specific hypotheses of the study are:

1. Whether the absence of a law and delay in passing the Bill makes it unlikely that the legal and institutional framework in its present form will sufficiently respond to contemporarily challenges posed sophisticated modes of laundering such as use of technology.
2. Whether if unchecked, the money laundering and organized crime phenomenon in Uganda will increase disproportionately and it will infect all institutions and the economy by perpetuating all kinds of economic ills such as corruption, fraud, and others.
3. Whether money laundering can be controlled and prevented at entirely a domestic level.
4. Whether the lack of awareness and corresponding lack of sensitization among the business community in Uganda perpetuates the money laundering problem.
1.5 SCOPE OF THE STUDY

The study focused on the gradual development of a policy on law formulation, law reform and institutional capacity building to combat money laundering in Uganda. It covered the nature and magnitude of money laundering both the national and international level addressing the adequacy of the legal and institutional mechanisms. The study was cross-sectional in nature and was conducted among professionals in the banking sector, financial services sector, the police and allied agencies.

1.6 LITERATURE REVIEW

There has not been extensive research on money laundering in Uganda in particular. Several researchers have investigated the widening discrepancy between the money laundering phenomenon and the legal and institutional framework that has been constructed to prevent it. Money laundering has been defined in various contexts that it is often feared that the current definition(s) of the term ‘money laundering’ are not only imprecise but also vague.21 Definitional problems of money laundering have often led to serious misunderstandings of what it is. The Uganda Anti-Money Laundering Bill attempts to define money laundering as the process of ‘concealing or disguising the nature, source, location, disposition or movement of proceeds of crime and includes activities classified under the Bill as constituting crime.’

Prof. Itzikowitz in ‘Money laundering’22 argues that the definition of money laundering should go beyond organized crime and financial dealings to include other matters that have financial implications such as divorce proceedings, bankruptcy dealings or even privileged/confidential professional communications. Furthermore, in her article on the effect of professional privilege and confidentiality on AML measures (2006)23 Prof. Itzikowitz assesses the balance between the

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21 Mugwanya, OP cite; note 8,p.38


common law requirements of confidentiality and privilege and AML measures such as know your customer and the requirement to report suspicious transactions.

Madzima in ‘A Police Perspective on Strategies & Mechanisms Against Money Laundering in the East and Southern Africa’\textsuperscript{24} attempts to define money laundering from a police perspective; he states that the Interpol sub-regional bureau’s working definition of money laundering is any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources.” However, it is argued that Interpol is aware of emerging trends in the phenomenon, which challenge the use of the phrase ‘money laundering’ as being somewhat imprecise. There is an increasing inclination of refer rather to ‘asset laundering’ a term that is broader and more encompassing of other significant forms and characteristics of money laundering.\textsuperscript{25}

Cranston\textsuperscript{26} defines money laundering as the process of concealing ill-gotten money to make it appear legitimate. He further assesses the challenges posed by money laundering to the effective regulation and supervision of the banking sector. In particular, he examines regulatory problems posed by terrorist financing in the post 9/11 era and provides an important insight into how developed nations like Britain have combated money laundering. However, his assessment of the AML regime in UK and the European Union may not be helpful to the Ugandan situation since he examines foreign law in the context of a foreign jurisdiction, whose legal and institutional infrastructure is more advanced.

Goredema, in ‘Trans-national Organised Crime & Responses to it in East & Southern Africa’\textsuperscript{27} discusses a general overview of the incidence of the major forms of TNOC in the East African region by highlighting the milestones achieved and the outstanding challenges.

\textsuperscript{24} Published in Taking Action Against Money Laundering, ISS Monograph No. 90, December 2003

\textsuperscript{25} Goredema, Money Laundering I east and Southern africa: An Overview of The Threat, ISS paper No. 6, ISS, Pretoria April 2003

\textsuperscript{26} Principles of Banking Law (2nd Ed.) Oxford, 2005, pp. 73-77

\textsuperscript{27} Published in Uganda Living Law Journal, Vol.3, No. 2, Dec 2005, p.122
However, his analysis focuses more on the nature and hidden character of trans-national organized crime and less on the legal and institutional infrastructure on AML in the region. He makes no reference to the money laundering problem in Uganda or how it evolved and why it still persists. In particular, the author fails to assess Uganda’s response to money laundering through its legal and institutional infrastructure.

Bagyenda, in ‘Role of the Ugandan Central Bank in Combating Money Laundering activities’\(^{28}\) points out that Uganda has taken giant steps towards creating a stable economic environment especially through fighting economic crime like money laundering. She outlines several BOU strategies which include promoting international cooperation, the formation of the UAMLC, the drafting of the Anti-Money Laundering Bill, the issuance of AML guidelines for financial institutions and forex bureau and the efficacy of the Financial Institutions Act 2004. However, no in-depth analysis of the law and the institutional infrastructure on which the aforementioned strategies are intended to work is made. Her work merely glosses over the fundamental concerns of this research.

Edopu in ‘Infrastructure to Detect & Control Money Laundering & Terrorist Funding in Uganda’\(^{29}\) discusses the anti-money laundering policies in Uganda and analyses the capacity of the various institutions in the fight against money laundering. He argues that the main problems facing the fight against money laundering in Uganda’s financial sector include the lack of legislation, which particularly hinders institutions that have attempted to adopt anti-money laundering measures; the financial sector’s confidentiality requirements, which exposes institutions to law suits for breach of trust and confidence for reporting transactions; competition and lack of cooperation within and outside the sectors; failure to implement KYC principles; poor record keeping; corruption; and the problem that Uganda is generally a cash economy. He asserts that under the BOU Guidelines and the Financial Institutions Act, all financial institutions and foreign exchange dealers are required to, among other things, furnish reports of their transactions to BOU and to report any transfer of US$100,000. However, his analysis fails to


critically appraise the current legal regime and institutions and how new and specific institutions will address the challenges. His arguments are only tenable on the presumption that the problem is mainly encountered in the financial service sector, thus he ignores other sectors such as real estate, retail business, casino and gaming sector and the import-export business in Uganda.

Mulindwa in 'The Effect of Money Laundering on an Economy' examines the general subsequence of money laundering activities on the economic life of a country, coupled with his experience as the former head of regulation and supervision at the Central Bank, the article provides a practical perspective on problems posed by money laundering in a developing economy like Uganda’s. However, the author fails to examine the scale of money laundering activities in Uganda and the direct/indirect consequence it has on the law enforcement structures in Uganda.

Kibirango in ‘Corporate Fraud: An Insider Job’ discuses extensively the increasing incidence of corporate fraud in Uganda’s corporate structure. In particular he examines the fraudulent practices perpetrated mostly within organizations or companies that have weak corporate governance adherence. He attributes the scale of massive corporate fraud in Uganda to poor corporate governance mechanisms and institutional in capacity to detect and control fraud in all its forms. However, he fails to establish the vital relationship between corporate fraud proceeds and actual money laundering. While he includes such relationships, he glosses over its effect in the broader context of the fight against money laundering in corporate Uganda.

Emeru in her speech ‘Combating Illicit Money: The Uganda Case’ points out various important aspects that define money laundering in Uganda, such as its scale, historical background, its affects, that define money laundering in Uganda, such as its scale, historical background, its effects, the challenges it poses and several proposals on what should be done to fight money laundering in the country. However, she omits to appraisal in her analysis of the

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30 Published in *Capital Markets Quarterly* Vol.6, No. 2, 2003, p.24

31 Published in *Sustainable Wealth Creation*, Oct-Dec 2005, Institute of Corporate Governance of Uganda, p.6

32 Emeru Ruth, Speech by Director Supervision, Bank of Uganda, delivered at a Business Law and Development Conference, Kampala, 20th July 2004
problem the weaknesses of the various laws and institutions mandated to fight money laundering in Uganda. She proposes that an AML law is desirable without assessing to what extent the existing laws have addressed the problem. She leaves unanswered the question of whether a comprehensive AML is both desirable and urgent. She also, as the BOU Head of Supervision at the time, fails to evaluate the AML measures adopted by BOU imposed on banks and how far they have helped in fighting money laundering.

Mubiru in his LL.M. thesis ‘Money laundering in Uganda: The Quest for Prevention & Control’ discusses a detailed assessment of the nature and extent of the money laundering phenomenon in relation to Uganda and abroad. He examines mainly the effectiveness of the legal institutions, the impact of money laundering and the various ways to curb it. One of the assumptions that form the basis of his study is whether money laundering can be controlled through legal means and in teaching an affirmative conclusion, he argues that legal, political, social and economic strategies are all necessary to combat money laundering. He also critically examines the provisions of the draft Anti Money Laundering Bill 2003. However, he omits to make concrete analysis of the existing laws and AML measures that form the basis of the current AML legal regime. His analysis of the legal and institutional mechanism is not broad and exhaustive. In addition, his work does not adequately examine the capacity of the institutions to fight money laundering in Uganda.

Finally, the Bank of Uganda Annual Supervision Reports of 1999, 2000 and 2005 provide a chronological overview of the anti-money laundering response in Uganda. In particular the reports provide an assessment of the various AML measures put in place and portray BOU at the forefront in the fight against money laundering. However, the reports are inexhaustive and imprecise on the scale of money laundering in Uganda, and often to assess the efficacy of these AML measures in Uganda.

33 LL.M Thesis, Faculty of Law, Makerere University, 2004
1.7 RESEARCH METHODOLOGY
The study involved mainly field and library research. It was qualitative in nature and was based on published literature in libraries and on-line resources, direct interviews with a sample of practicing bankers in the field of compliance, lawyers, journalists, law enforcement officers in the field of economic crime and other responsible Government Officials.
Various libraries were consulted during the study, such as the High Court Library, Makerere University Main Library, Kampala International University – Kampala Campus Faculty of Law Library, Attorney General’s Chambers library (MoJCA) and the resource centres at the Ministry of Finance and the DPP’s chambers. The study also involved various interviews conducted among individuals in certain institutions like the DPP, Ministry of Justice and the Police (CID).

1.8 SIGNIFICANCE OF THE STUDY
The study provides important background information and significant recommendations for the development of an Anti – Money Laundering law in Uganda. The study highlights the weaknesses and inadequacies of the existing legal and institutional structures for combating money laundering. It widens the existing scope of knowledge through a comparative study of the nature, extent and effects of money laundering at a national and international level. The study will add to the existing body of knowledge through an academic and legal appreciation of the state of money laundering activities in Uganda and will involve tentative suggestions that previous studies may have expressly addressed.

1.9 CHAPTERISATION
This Final Report of the study is chapterised as follows:

1. Chapter One – General Introduction
3. Chapter 3: Adequacy of the Legal and Institutional Structures in Uganda
1.10 LIMITATIONS OF THE STUDY

The researcher faced the following limitations during the course of the study:

1. Money laundering is understood to be illegal in society and this may have restricted free flow and genuine expression of information.

2. The legal regime relating to money laundering in Uganda has not been sufficiently developed at both policy and institutional level.

3. Most of the available literature on money laundering in Uganda is on-line and it can be quite hard to physically contact the authors of such works.
CHAPTER TWO
FORMS AND CONSEQUENCES OF MONEY LAUNDERING IN UGANDA: AN
APPRAISAL OF THE PROBLEM

2.1 Historical Background of Money Laundering

The history of money laundering is, primarily, that of hiding money or assets from the state –
either from blatant confiscation or from taxation – and indeed from a combination of both. It is
interwoven with the history of trade and of banking. No one is really sure when money
laundering first began. However, experts believe that it has been going on for several thousand
years. Sterling Seagrave explains how in China, merchants, 2000 years before Christ would hide
their wealth from rulers who would simply take it off them or banish them. In addition, not
hiding it, they would move it and invest it in businesses in remote provinces or even outside
China, thus the birth of offshore trading, tax evasion and so were the principle of money
laundering – to hide, move and invest wealth to which someone else has a claim.34

The preamble of the UN Model Law on Money Laundering and Terrorist Financing35
describes money laundering as a process, with far reaching consequences and with intricate
forms and modes. The term “money laundering” is said to originate from Mafia ownership of
Laundromats in the United States. Gangsters there were earning huge sums in cash from
extortion, prostitution, gambling and bootleg liquor. They needed to show a legitimate source for
these monies. One of the ways in which they were able to do this was by purchasing outwardly
legitimate business and to mix their illicit earnings with the legitimate earnings they received
from these businesses. Laundromats were chosen by these gangsters because they were cash
businesses. Money laundering is called what it is because that perfectly describes what takes
place – illegal, or dirty money is put through a cycle of transactions, or washed, so that it comes
out the other end as legal or clean money.

35 UN Drug and Crime Office/IMF, Preamble to the UN Model Legislation of December 2005
2.2 Stages of the Money Laundering Cycle

Money is laundered through a three stage process, namely Placement, layering and integration. ‘Placement’ is the initial stage, while ‘layering’ involves the separation of illicit profits from their source, and ‘integration’ is the final stage where laundered proceeds are integrated into the economy as if they were ordinary earnings. All these stages can occur during the three dimensions/varieties of the money laundering cycle: namely, internal money laundering, incoming money laundering and outgoing money laundering.

Internal money laundering is characterized by the laundering proceeds, of or assets derived from crime within the country where the crime was committed. Incoming money laundering occurs where the proceeds or assets laundered are derived from crimes committed outside the country, and thereafter introduced into the country. Lastly in outgoing money laundering the proceeds of crimes committed within the country are laundered through exportation to one or more countries.

In the case of internal laundering, all three phases would occur in the same jurisdiction where laundering is incoming, the assets may have been kept out of the formal institutions until their introduction into the jurisdiction in which placement is to occur. The same could apply to outgoing laundering. Subsequent to acquisition of the proceeds of crime, the launderer may conceal them, with a view to smuggling them to a foreign jurisdiction. The concealment per se constitutes laundering, even though it precedes placement in any financial or commercial system.

During the placement stage, the launderer introduces the illegal proceeds into the financial system through deposits, wire transfers or other means. This is usually done by breaking up large

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38 Gorodema, ‘Money Laundering Control in Southern Africa’, op cite; note 37
amounts of cash into smaller amounts that are directly deposited into the bank account or by purchasing negotiable instruments like cheques which are deposited into other accounts.39

During the **layering** stage, launderer engages in a series of conversions or movement of the funds to distance them or separate them from their illegal source. The funds can be channelled through purchases, sales, and investments, disguised payments for goods and services or simply deposits on a series of local or foreign accounts. Lastly, during the **integration** stage funds are then received by the launderer as legitimate funds by using what appears to be a legitimate transaction to transform the proceeds of crime into funds with a seemingly legal source. The common techniques used at these stages include bank transfers, foreign bank drafts, money orders, offshore accounts, front/bogus companies, assets and monetary instruments purchased with cash, false invoicing and each conversion through physical purchases of goods.40

### 2.3 Antecedents of the Fight against Money Laundering in Uganda

The money laundering phenomenon evolved in Uganda as a direct consequence of the incidence of crime41. Money laundering activities in Uganda were detected as early as 1998, the central regulator Bank of Uganda, initiated the drive to combat money laundering in Uganda.42

The drive arose out of the East and Southern Africa Anti-Money Laundering Group, Arusha Agreement of 1999, where 13 African states including Uganda signed a Memorandum of Understanding. Soon thereafter the Uganda Anti-Money Laundering committee (UAMLC) was established, with the goal of coordinating a nation-wide anti-money laundering policy.43

During 2002, there was growing concern in Uganda about the lack of visible progress with the promulgation of an anti-money laundering law, despite indications that possible money

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41 Ibid.


43 Interview with Mr. Bisereko Kyomuhendo, Assistant Registrar Ministry of Justice and Member UAMLC and ESAAMLG; interviewed by Olekwa Abdunassar, Friday April 27th 2007
laundering schemes were present in Uganda. The bankers in particular expressed concern that, in the widespread money laundering tendencies worldwide, there might already be some abusing the country’s banking/financial system on a much larger scale than previously anticipated.\(^44\) As the regulator and supervisor of Uganda’s financial sector, and in pursuit of its orate mission of fostering a sound, stable and competitive financial sector, Bank of Uganda took all possible steps to promote consultations with the stakeholders in order to ensure the establishment and implementation of anti-money laundering measures in due course. As an interim measure, the Anti-Money Laundering Guidelines were issued to all financial Institutions in December 2002. The Guidelines were aimed at countering the misuse of the financial sector for purposes of money laundering and terrorist financing.\(^45\)

In 2006, the ISS carried out a money laundering survey\(^46\) in the region testing the assumptions; namely, that money laundering conceals the link between underlying crime and its proceeds; that proceeds of underlying crime can be concealed by depositing them in institutions; that proceeds of crime are visible as assets of economic value; that they identified during one or other of the stages of money laundering processes; that any committees with economic value can be laundered; that money laundering is not committed as part of organized crime, or by structured crime syndicates. The survey concluded that money laundering is a crime regardless of whether the country in which it occurs has a specific law penalizing its commission.

\(^45\) Ibid.
2.3.1 Common Sources of Laundered Proceeds

2.3.1.1 Bogus sale transactions

This is one of the common modes of laundering money in Uganda. For instance, where a prominent Ugandan businessman was used to execute a transfer of US$5 million from a Kenyan bank to Uganda, however, the transactions were foiled before the transfer of the money after the recipient banks became suspicious and reported the transactions to the Bank and the police. Following investigations, the two Ugandans were briefly arrested and questioned by the police but later released. The transactions were frozen and there were investigations in both Kenya and Uganda. The transfer was the purchase price of ‘bogus’ construction equipment. The sale was later cancelled at the instance of the customer, and the money refunded, less a cancellation penalty of US $40 000.47

2.3.1.2 Drugs and narcotics smuggling

Drug smuggling is one of the main sources of laundered proceeds. Between 2002 and 2004, the Uganda Police with the help of US and British anti-narcotics authorities established that Entebbe Airport was being used by a gang of drug traffickers as the region’s main conduit of narcotics and illegal drugs mainly from south Africa or Nigeria to Pakistan, it was reported that the proceeds of these dealings were the subject of a money laundering scheme in Uganda.48 This led to the arrest of top airport security officials, who were suspected of aiding and abetting the dealers.49 Drug merchants also use legitimate bank accounts of family members or third parties to de-link proceeds from underlying illegalities. In some schemes this is done with the

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47 ISS, *Money Laundering Survey*, op cit; note 46, p.9
connivance of the family member or third party, who allows the criminal to deposit and withdraw money from his or her account.\textsuperscript{50}

2.3.1.3 Armed robbery

Armed robbery is both a crime of violence and a serious economic crime. Motor vehicles account for the bulk of commodities stolen in armed robberies. Stolen motor vehicles have long been regarded in sub-regional criminal circles as an important form of currency, used to pay for or exchanged for cash. Interpol statistics indicate that in 2001, between 96\% and of all vehicles stolen in the sub-region were stolen in South Africa. Evidence from other sub-Saharan African countries shows that robbers find real estate particularly attractive. In Kenya, they usually buy real estate around Nairobi or in small towns, avoiding investing in upmarket property in Nairobi, which might make them conspicuous. Robbers will establish retail businesses that generate a lot of cash. Popular businesses include bars, butcheries and dry cleaning establishments, but by far the most favored business enterprise among robbers is transport, popularly called the \textit{matatu} business.\textsuperscript{51} In Uganda, between 1999 and 2000, there were 3760 reported cases of armed robbery and 3408 cases of motor vehicle theft.\textsuperscript{52}

2.3.1.4 White collar crime/corporate fraud

Proceeds of white collar crime/corporate fraud may be the subject of money laundering. The biggest fraudulent corporate practice is falsification of claims which covers honorable occupations like Medical, Accountancy, Law and Architecture. The \textit{modus operandi} is exaggerated bills, filing false income tax returns, certifying inflated earnings, false invoices as a way of concealment of improper returns, igniting deliberate fires to swindle insurance

\textsuperscript{50} Gorodema, 'Money Laundering Control in Southern Africa', op cite; note 37, p.4

\textsuperscript{51} Warutere, 'Detecting and Investigating Money Laundering in Kenya', Money Laundering Experiences, ISS Monograph No.124, June 2006

\textsuperscript{52} Uganda Police/CID Records, Annual Crime Report 2000, Appendix 1
companies, or perpetrating schemes of fictitious employees to pocket the proceeds. It is believed that corporate fraudsters are usually of more than average intelligence and usually make a complex web of transactions to facilitate their laundering schemes. Donald Cressy, a criminologist, states three factors for white collar crime. These are; Opportunity permitting an individual to commit fraud, conceal it and convert the proceeds, Pressure e.g. inability to pay off ones debts, Rationalization by attempting to recast the action as morally acceptable.

In their 9th Global Fraud study, Ernst & Young identified collusion (20%), misappropriation of assets (14%) and financial statement fraud (10%) as the commonest cases of white collar crime in developing countries.

2.3.1.5 Proceeds of corruption

Money laundering is usually interlinked with corruption. Money laundering empowers public officials who launder bribes; misappropriate public funds and development loans from international institutions. In many African countries, like Uganda these transactions are in the country of origin and overseas. Corrupt officials launder their money through real estate purchases or by depositing it in off-shore bank accounts overseas to disguise the source. It is proposed that there is need to support extradition laws to work in line with anti-money laundering legislation. However, it has been recently reported that Uganda’s corruption record

53 Kibirango Leo, ‘Corporate Fraud: An Insider Job,’ Sustainable Wealth Creation, Oct – Dec 2005, Institute of Corporate Governance of Uganda, p.6
54 Kagugube, Dr. Simon, ‘White Collar Theft’, Sustainable Wealth Creation, Oct – Dec 2005, Institute of Corporate Governance of Uganda, pp. 8 - 10
56 Mubiru, op cite; note 39, p.91
57 Itzikowitz, ‘Money Laundering’, op cite; note 36, p.121
improved from 117th in 2005 to 107th in 2006 out of 163 countries according to Transparency International in their Global Corruption Perception Index Report 2007.58

2.3.1.6 Illicit gun/arms trading and smuggling

The business of illicit arms smuggling and dealing is another avenue affiliated to money laundering. In Uganda, illicit arms as at 2001 were estimated at 100,000 guns, half of which were in Karamoja alone.59 It has been reported that the selling price of illegal guns has risen; that for instance, an AK47 which previously sold at less than shs.200,000/- now sells for over shs. 800,000/- on the black market, while an AK47 bullet previously for shs.300/- is now at over shs.5000/- on the black market; that since May 2006, the President’s disarmament programme has recovered 7,199 guns out of an estimated 100,000 illegal guns in the country.60

2.3.1.7 Bank frauds

Bank frauds account for a large measure of laundered proceeds. They take various forms from alteration and forgery of cheques, credit/debit card frauds and deposit slip scams. The loss of funds as a result of well-organized bank fraud through the financial sector has been enormous.61 Cheque frauds often take the form of forged instruments, counterfeit cheques, altered instruments or cheques drawn on closed accounts. The sources of cheque frauds are believed to include proceeds of armed robbery, counterfeit cheques, bicupuli (fake) dollars and travellers’ cheques.62

2.3.1.8 Human trafficking

Human trafficking is another main source of laundered proceeds. Normally, innocent people are lured into job placement opportunities abroad, fleeced of their money and usually sold into

62 Ibid, p.3
slavery or prostitution abroad. The perpetrators usually launder such proceeds. It was once reported that Uganda Police captured a man believed to be behind a human trafficking racket in Uganda which involved trafficking young men and women to Canada on pretence of getting them employment. Upon getting the money from human trafficking, the perpetrators use the money for some other lawful purpose to disguise the source.

2.3.2 Scale of Money Laundering in Uganda

Measuring the scale of money laundering worldwide is difficult. The clandestine nature of laundering makes it difficult to obtain accurate statistics on its scale and frequency.

Commentators tend to rely on indicators and anecdotal evidence to draw conclusions about the scope and scale of laundering. Some of the indicators identified include the extent of organized economic crime recorded by law enforcement authorities, the proceeds thereof, the proportion of the proceeds likely to be laundered, and where laundering is likely to take place.

IMF estimates the global volume of money laundering to be between US $600 billion per year, roughly the equivalent of the GDP of the ninth largest country in the world, analysts estimate that is enough money to take a half of the population in the third world out of poverty.

In Uganda, there are no official estimates as to the scale of money laundering with the exception of money laundering related to tax evasion, which is well documented by URA. The Sebutinde Commission of Inquiry into URA Corruption and Mismanagement exposed the rot in the tax body by linking it with tax evasion by tax payers which led to an estimated loss of Ush.20 billion between September and December 2001. The combination of corruption and multi-variant schemes of evading import/export controls and customs duty is acute in East Africa. Goods are

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64 Gorodema, ‘Money Laundering Control in Southern Africa’, op cite; note 37, p.4

regularly imported into Kenya or Tanzania free of duty on the pretext that they are destined for landlocked Uganda, Rwanda, Burundi or Zambia. Consignments are subsequently diverted and commodities offloaded into the local market. The sub-regional economy is incurring significant losses of revenue as a result of the smuggling of cigarettes from Kenya. Criminal syndicates, acting in collusion with state functionaries, have been blamed for diverting cigarettes destined for export beyond the sub-region, back into Kenya, or into Uganda. Proceeds of these activities are then laundered back into the domestic economies.\textsuperscript{66}

There are major challenges in computing the scale and assessing the distribution of money laundering in Uganda and in East Africa, even for a limited period. In the case of cross border smuggling, one could rely on the official proportion of recorded trade which is inspected at the border. Contraband intercepted there gives an indication of the size of contraband which is not intercepted. At the same time, a deficiency of this mode of quantification is that it rests on attempts to launder rather than completed acts. Goods in transit, once intercepted and seized, cannot therefore yield funds for laundering. At most therefore, their aggregate value represents the scale of attempts to launder and not the scale of money laundering itself. For instance, in Special Revenue Protection Services branch of URA intercepted various smuggling a few of which were fully executed.\textsuperscript{67} Thus, this does not show the full scale of proceeds in Uganda.

2.4 CONSEQUENCES OF MONEY LAUNDERING ACTIVITIES IN UGANDA
Money laundering activities have serious socio-political and macro-economic ices. Laundered money provides drug traffickers, organized criminal groups, arms dealers and other criminals with the wherewithal for operating and developing their enterprises.
Without effective safeguards or preventive measures, money laundering can strike at the integrity of a country’s financial institutions. The removal of large sums of money from legitimate economic activities each year constitutes a real threat to the financial health of and affects the stability of the global marketplace.\textsuperscript{68} There are several dangers posed by money

\textsuperscript{66} ISS, Money Laundering Survey, op cit; note 45, p.4

\textsuperscript{67} GoU/MoRED/SRP, Report on Anti-Smuggling Operations: November 1999 – March 2000, 8\textsuperscript{th} March 2000

\textsuperscript{68} Preamble to UN Model Law on Money Laundering and Terrorist Financing, December 2005, note 35
laundering, first, on the economic life of a country, and secondly, on the socio-political life of the people in that country. These include the following:

2.4.1 Creates/causes political instability and national insecurity
First and foremost, money laundering can easily present a threat to the political stability security of a country, especially in countries with very weak military/security forces. Laundering is often used in the process of financing of terrorism, insurgency or political rebellion.

For instance, it is highly believed that the defunct Allied Democratic Front (ADF) used money laundering to finance its operations. ISO became active against money laundering and drug trafficking upon getting information that the ADF rebels were using the trade to raise money for their rebellion.⁶⁹

2.4.2 Facilitates crime and criminal networks
Secondly, it is asserted, that money laundering provides the fuel for drug dealers, terrorists, illegal arms traffickers, corrupt public officials, corporate fraudsters and organized criminals to expand their operations.⁷⁰ In other words, money laundering facilitates crime and creates an environment for the operations of criminal networks to thrive.

2.4.3 Destabilizes financial systems/erodes the integrity of financial institutions
Money laundering creates systemic risks for the stability of the financial sector and development; erodes the credibility of financial institutions; reduces public confidence in the financial system; causes volatility in exchange rates and interest rates due to unanticipated cross-border transfer of funds; increases instabilities and risks for asset quality for financial institutions.⁷¹ The integrity of financial institutions heavily depends on the perception that it ions within a framework of high legal, professional and ethical standards. Money laundering may easily erode that integrity; if

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⁶⁹ Edopu, 'Infrastructure to Detect & Control Money Laundering & Terrorist Financing in Uganda', 2004

⁷⁰ Mulindwa, op cite, note 40, p.24

⁷¹ Emeru, op cite, note 65
proceeds of crime can easily be processed particular financial institution, that institution may easily be drawn into active complicity with criminals and become part of the network itself. Erosion of the credibility of a financial institution can affect the very stability of the financial markets, for instance if a bank collapses as a results of organized crime, the way Greenland Bank and International Credit Bank are suspected to have collapsed, the entire financial system of the country or the even the region may suffer.  

2.4.4 Alleviates poverty/binders poverty eradication

The phenomenon of money laundering perpetuates poverty and social deprivation the form of corruption and misappropriation of public and donor funds meant for poverty eradication, prevention of diseases, education, water and rural electrification. There is a connection between corruption and money laundering. Corruption is a significant contributor to money laundering. For instance, the Goldenberg Scandal and the Anglo-Leasing Scandals in illustrate that corruption is part of a trans-national scheme of organised crime. Recently, the Global Fund scandal and the GAVI funds saga that led to the arrest of the former ministers of health in Uganda on the orders of the IGG, when they failed to account for shs. 1.6 billion.

2.4.5 Elevates tax evasion and reduces revenues

Money laundering and tax evasion are closely interlinked. Money that has evaded taxes must be disguised and hidden from tax authorities. This has the negative effect of reducing tax revenues through underground economy, competing with legitimate businesses, damaging financial

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72 Mulindwa, op cite; note 40, pp 24 - 25

73 UN Mode Law, op cite; note 35


75 The New Vision, Wednesday May 23, 2007, pp 1 - 4
systems and retarding economic development.\textsuperscript{76} Activities such as smuggling and other forms of illicit trading further aggravate the situation and easily create a suitable environment for money laundering. A tax officer is reported to have remarked, “Smuggling is criminal and proceeds from this illicit trade can be a source to fund organised crime. Smuggling paralyses economic activity of the country rendering it poor and perpetually indebted and dependant”\textsuperscript{77}

2.4.6 Undermines legitimate businesses
Money laundering undermines the legitimate economy of a country. Honest businessmen compete against those who benefit from proceeds of crime and whose proceeds are so used to finance their ‘legitimate’ businesses. This serves to corrupt the adherence to the rule of law by people who would otherwise be law abiding. Money launderers often have significant business interests and form partnerships with influential government officials. In this way, they can cloak and invest illegally generate funds while remaining untouchable.\textsuperscript{78}

2.4.7 Destabilizes the economy/financial markets
Money laundering undermines international efforts to establish free and competitive and hampers the development of national economies. It distorts the operation of markets transactions, may increase the demand for cash, render interest and exchange rates unstable, give unfair competition and considerably exacerbate inflation in the countries where the criminals conduct their business dealings.\textsuperscript{79} Money laundering distorts the operation of markets; transactions effected for the purpose of money laundering may increase the demand for cash, and render interest rates and exchange rates unstable and exacerbate inflation.\textsuperscript{80} Unabated money laundering

\textsuperscript{76} Mulindwa, op cite; note 40, p.25

\textsuperscript{77} Peter Kaujju, ‘URA Steps up Fight against Illicit Trading’, The New vision, TuesdayMarch 13, 2007: Interview with Enoch Walugembe, Asst. Commissioner Enforcement, Uganda Revenue Authority, March 2007


\textsuperscript{79} UN Model Law, op cite; note 35

\textsuperscript{80} Mulindwa, op cite; note 40, p.25
impairs a developing economy; laundered money flowing into the global financial system undermines the global economy and currencies.\textsuperscript{81}

2.5 Conclusion

The history of money laundering is that of concealing ill-gotten wealth and the practice money laundering has prevailed for a relatively long time. There is no approximate form(s) of money laundering; it takes different forms and is adaptive to changes in legal and institutional structure as well as technology, for instance, the rate of electronic money laundering has increased proportionately due to developments in electronic bank payment systems. As a result, there are many immeasurable consequences of money laundering, from fueling criminal activities to financing of terrorism and rebellions. During the study, the considered view of all respondents interviewed was that it is hard to measure the scale of money laundering activities in Uganda, and as such money laundering persists without an authoritative estimation male and magnitude.

\textsuperscript{81} Mubiru, op cite; note 39, p.96
CHAPTER THREE

ADEQUACY OF THE EXISTING LEGAL AND INSTITUTIONAL FRAMEWORK IN COMBATING MONEY LAUNDERING IN UGANDA

3.0 Introduction

There is no specific law in Uganda that makes money laundering an offence and the government is relying on AML guidelines to commercial banks and forex bureaus issued by BoU, under which banks are required to investigate and report suspicious transactions.) Otherwise, the current regime comprises a number of statutes and regulations that regulate financial sectors and acts that are often affiliated with money laundering, although their legislative authority combined together is thought to possess the only adequate legal response to the threat posed by the money laundering phenomenon.

Similarly, due to an absence of a comprehensive anti-money laundering legislation, the several law enforcement institutions in Uganda find their efforts to combat money laundering and terrorist either inadequate or simply futile. The attempt to control, detect and suppress money laundering activities, in the opinion of one interviewee, is failing because “government has not put in place a carefully thought-out mechanism to coordinate all law enforcement agencies to adequately to the money laundering phenomenon”

3.2 Is the Legal Regime In Uganda Adequate To Respond To The Money Laundering Threat?

Uganda’s capacity to detect and control money laundering is affected by the absence of appropriate legislation. In spite of this, the government, through its main regulatory and law enforcement agencies, is using the available legislation as a starting point for developing an appropriate anti-money laundering framework. Most of these laws are used to fight illicit activities and the financial sector.
It was reported as early as 2002 that the absence of a comprehensive law on money laundering was being exploited by drug dealers, smugglers, fraudsters, organised criminal cartels, *bicupuli* dealers and terrorists to easily launder their ill-gotten proceeds.

There are several laws that are currently used by law enforcement agencies to fight money laundering. But it has often been asked the said laws are adequate or reasonably address the money laundering problem in Uganda at least in the interim. During the study, the efficacy and adequacy of the following laws were investigated.

### 3.2.1 The Anti-Terrorism Act 5 2002

The Anti – Terrorism Act or the ATA came into commencement on June 7th 2002, as result of government policy on fighting national terrorism (like that posed by the ADF rebel group) and also It of the domestication of UN Resolution 13736 passed in the wake of the 9/11 attacks. The Resolution made it mandatory for UN member states to detect and eliminate sources of terrorist. In essence, therefore, the ATA domesticates Resolution 1373. Under s.7 creates the offence of terrorism and under ss.8-9 makes it an offence to aid and abet terrorism or to establish terrorist institutions. Ss.12-17 of the Act generally prohibit terrorist financing, in particular criminalize making contributions to acts of terrorism and to resources of terrorist organizations. Under the institution. Ss. 12-7 of the Act, generally prohibited terrorist financing, in particular criminal making financial contributions to acts of terrorism and to resources of terrorist organizations. Under the **Second Schedule** to the Act, four organizations have been declared terrorist organizations, namely the Resistance Army (LRA), the Lord’s Resistance Movement, ADF and al-Qaeda.

Uganda moved *swiftly* in passing the ATA because an investigation by its Internal Security Counter -Terrorism Section revealed that the ADF rebels fighting to overthrow the Government of Uganda were financing their war using laundered money from drug trafficking and counterfeiting.

The Act was further reinforced by s.25 of the **Penal Code Act Cap** 120 which also outlines provisions outlawing terrorism and terrorist financing.
However, it is often feared that the ATA and allied provisions in the PCA were insidiously at suppressing political opposition and political dissents and that like its sister offence of treason, terrorism is believed by some analysts to be more of political offence which makes the ATA almost irrelevant in the fight against money laundering. The primary objective of the Act is national and not necessarily to combat money laundering. Hence, it may not necessarily help in combating money laundering.

Secondly, the Anti-Terrorism Act does not differentiate between terrorism financed through sources and terrorism financed by illegitimate sources, which is the main subject of money laundering. For instance, whereas it was believed that the ADF financed its operations mainly through J proceeds from drug dealing and bicupuli, intelligence networks failed to classify which of their activities were financed illegally through money laundering and which were financed illegally by sympathizers and other legal sources.

Analysts argue that difficulties arise from applying money laundering legislation that relies on the assumption that all terrorist financing will involve a type of money laundering. This excludes those cases where the money used to finance terrorist activities originated from legitimate sources. It is argued that terrorists are ad hoc clients of the global financial network: their usage of the financial system may be limited to having funds available when needed, while using a laundering to separate the financial backers from an act of terror.

Forensic auditors agree that identifying terrorist funding sourced by apparently legitimate funds will continue to pose a challenge.

3.2.2 Bank of Uganda Act

The Bank of Uganda Act provides guidelines for the regulation, supervision and control of financial institutions including banks, credit institutions and building societies. The Act gives the BoU licensing and supervisory powers over other banks and financial institutions. Under s.5 BoU Act, the function of the Central Bank is to formulate and implement monetary policy at achieving and maintaining economic stability. Though not specifically provided for, the Acts has provisions that BoU can use to combat money laundering. For example, under s.5(2), the BoU is empowered to maintain external assets reserves; to be a clearing house for cheques and
other instruments for financial institutions, as well as to supervise, regulate, control and
discipline financial institutions, insurance companies and pension funds institutions.

The Act has several provisions relevant in combating money laundering. S.11 (f) of the Act
empowers BoU to revoke the licence of a financial institution that is conducting business in a
manner mental to the interests of depositors. S.21 empowers it to check suspicious transactions
by a financial institution, by requiring financial institutions to maintain accounts and records,
which, in .on to showing the clear and correct records of its affairs, should explain its
transactions and financial position to enable BoU to determine whether the financial institution
has complied with the s of the Act. BoU is further empowered under s.28 to inspect financial
institutions, their books and accounts whenever it deems fit. Perhaps the most relevant provision
that the BoU can use to money laundering is s.31 which empowers the BoU to take possession of
a financial institution which is either conducting its business contrary to the Statute or whose
activities are detrimental to the interests of its depositors. Though the Act does not specifically
state what activities are detrimental to interest of depositors, money laundering can also be
considered”

3.2.3 The Penal Code Act

The Penal Code Act is very fundamental in the fight against money laundering. Under the PCA,
several offences are created against crimes the proceeds of which are occasioned suspected of
being laundered. The PCA has important provisions that may be used to combat money
laundering. For instance, the PCA criminalizes terrorist financing; it also provides for offences
against slavery, trafficking and sexual exploitation of children; corruption and bribery; fraud,
false accounting, causing financial loss and receiving stolen goods; smuggling, extortion; piracy;
issuing of false les; forgery and counterfeiting of coins, currency notes, stamps, trademark and
consumer products; murder; aggravated robbery/theft; and kidnap, illegal restraint and hostage
taking.
However, whereas the PCA creates the above offences and thereby contributes significantly to the
against using proceeds of crime through money laundering, the Act is inadequate insofar as it
does not make money laundering a distinct offence in Uganda, nor does it set out the necessary
_mens rea_ for the act of money laundering. Since the PCA does not criminalise money laundering,
no mechanism to detect and control money laundering related offences can easily succeed. For
instance in relation to the proceeds derived from the crimes the PCA creates, authorities/responsible institutions will have no powers of seizure and confiscation of the proceeds, if and when they are due, or freezing of laundered funds in a bank account. Most commercial bankers in the view of interviewee fear that the PCA is insufficient and inadequate in Preventing money laundering unless the Act is amended to make provision for money laundering freezing laundered assets or for arresting suspects.

3.2.4 The Financial Institution Act

The Financial Institution Act provides guidelines for regulation supervision and control of
operation of Financial Institutions including Banks, Credit Institutions and Building societies. Its BoU licensing and supervisory powers over other banks and financial institutions The Act it compulsory for banking officers to comply with the Central Bank on all its inquiries as the activities of that bank. The Act contains significant provisions that are relevant in the fight money laundering. Under S.130 (2) of the Act, ‘money laundering’ covers all activities designed to change the identity of illegally obtained money so that it appears to have originated from a legitimate source.

More significantly, under s.88 of the Act the Central Bank may take over management of a
institution if it is conducting its business in a manner contrary to the Act; the continuation of its activities is detrimental to the interests of depositors; it refuses to submit itself to inspection by the Bank as required by the Act; its licence has been revoked under section 17 of the Act; or it is in or is knowingly facilitating criminal activities.

Furthermore, under s. 1118 the Central Bank may if it has reason to believe that any account held
financial institution has funds on the account which are the proceeds of crime, direct in writing the financial institution at which the account is maintained to freeze the account in accordance
with the direction. Further still, under s.126 (3) a financial institution that fails to comply with the Act commits an offence.

Perhaps the most important provisions in relation to money laundering are Sections 129 and 130. **S.129** provides that a financial institution in Uganda shall-

(a) demand proof of and record the identity of its clients or customers, whether usual or occasional, when establishing business relations or conducting transactions, in particular opening of accounts or issuing of passbooks, entering into fiduciary transactions, renting of safe deposit boxes, or performing large cash transactions;

(b) Together with its directors, officers and employees report promptly to the national law enforcement agencies any suspected money laundering activity related to any account held with the financial institution.

Furthermore under **s.130(1)** a financial institution shall promptly report to the national law agencies any suspected money laundering activity related to any account held with the financial institution. Under subs (3) any financial institution which contravenes the provisions of this commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points.

### 3.2.5 The Foreign Exchange Act

The **Foreign Exchange Act**, which repealed the Exchange Control Act'6, is another bin legislation in the fight against money laundering in Uganda. The Act essentially provides exchange of foreign currencies in Uganda, provides guidelines for the establishment and of forex bureau and the making of international payments and transfers of foreign exchange. In addition, the **Exchange Control (Forex Bureaux)** Order 1993 regulates the buying and of Foreign Exchange in Uganda. Under s.8 of the Act the Bank of Uganda has powers to restrictions on the importation into or exportation from Uganda of banknotes, coins, traveller’s and securities denominated in the currency of Uganda or in a foreign currency: under s.9 (2) all payment in foreign currency, to or from Uganda, between residents and non residents, or
between payments, shall be made through a bank, tinder s.9 (3) every transfer of foreign exchange to or and a shall be through a person licensed to carry out the business of money transfers; s. v issue a search and seizure order of any evidence used in contravening the Act and under s.15 s have powers to retain the seized property.

However, despite the provisions of the Foreign Exchange Act, the rate and scale of money g in the forex exchange sector, especially in forex bureaux persists almost unchecked. For instance the Forex Act does not put a limit on the amount of liquid cash foreigners may be allowed on entering Uganda; an intelligence analyst believes that rogue ‘investors’ enter Uganda with hundreds of thousands of ‘dirty’ dollars in proceeds of crime, buy assets or purchase immovable/movable property with their ‘dirty’ money, then later resale their property, thereby ‘cleaning’ their dirty money. This would not be likely if the Act regulated how much liquid money foreigners can bring into the country Whereas the Exchange Control (Forex Bureaux) Order 1993 provides for controls requiring declaration of foreign exchange at exit or entry points and limits the amount of foreign entering or leaving Uganda for specific transactions to a maximum of US$8,000, this is not being followed in practice. Currently transactions in forex bureaux are not limited and the bureaux are said to the main source of money laundering.

Secondly, the Act fails to provide a proper mechanism to detect and control money laundering forex bureaux. A Forex Bureaux/bureau de change is an institution that carries out retail *Rarige Operations (in cash, by cheque or credit card). It is intended to satisfy the foreign needs of individual tourists, travellers and small-scale cross-border traders. There are two reasons for a central bank to regulate forex bureaux; namely, firstly, there is a need to define their e activities. This is to ensure that bureaux de change remain focused on providing a defined segment of customers. Secondly, there is a need to ensure that their operations are conducted with integrity. Directors and shareholders of these institutions are vetted so that only s of probity are allowed to run them. This requirement for integrity in the operation of bureau de change is even more pronounced in light of the recognition that they are an important link in the laundering chain. Once money has been exchanged it is hard to trace its origin.
3.2.6 The Leadership Code Act and Inspectorate of Government Act

The Leadership Code Act and Inspectorate of Government Act is aimed at combating any kind of corrupt practices. The Leadership Code Act mandates all public officials to declare their wealth every year. If the wealth declared is not commensurate with legitimate income, officials are asked to explain how it was acquired, failing which they will be investigated by the Inspector General of Government (IGG). If the IGG finds officials acquired wealth illegitimately, the property may be ted. The IGG has investigative, prosecution and judicial powers. The Leadership Code also mandate the IGG to freeze accounts while conducting its investigations, which is critical for investigations which is critical for investigations involving money laundering.

However, the Leadership Code Act and Inspectorate of Government Act only apply to servants and not to the private sector, which limits their capacity to combat corruption, money laundering and other illegal acts. This is a serious gap. Given that it is most often the private sector that is largely self-regulating in Uganda, money laundering activities are mainly detected among the private business community.

3.2.7 The Micro Finance Deposit-Taking Institutions Act

The Micro Deposit-Taking Institutions Act (MDI Act) provides for the licensing, regulation and supervision of microfinance business in Uganda. The MDI Act, under s.19 prohibits in transactions without the approval of BoU such as, opening and operating demand cheque accounts. Under s.82 the Central Bank has powers to freeze an account(s) in an MDI where it suspects the account is maintained by proceeds of crime or money laundering or if it has reason to believe that an account held with an institution has funds which are the proceeds of crime, it shall direct in writing the institution at which the account is maintained, to restrict the operation of that account in lance with the direction.

However, there are several shortcomings of the MDI Act that make it an irrelevant weapon in fighting money laundering. First, the Act, like the financial Institutions Act, neither criminalises nor defines the act of money laundering. Secondly, the Act does not attempt to clearly define
what proceeds of crime are the subject of s.82 and thirdly, the Act is silent on a mechanism to
detect and control proceeds of crime that may be laundered in the MDI system. It merely grants
the central bank powers to freeze accounts containing suspected proceeds of crime. This is
glaring lacuna in the law and must be addressed urgently.

3.2.8 The Bank of Uganda guidelines on Anti-Money Laundering

The Anti-Money Laundering Policy Guidelines to Commercial Banks are the BoU’s most
comprehensive response yet to the money laundering phenomenon. Guidelines 5 and 7 require
all financial institutions to design and develop KYC programmes, internal controls and
procedures against money laundering; recruit compliance officers at the management level; keep
records; recognise and report suspicious transactions. Guideline 6 requires financial institutions
not to have or accept nymous accounts or accounts in fictitious names. Guideline 8 requires
financial institutions to that customers disclose their true identity or the identity of the person on
whose behalf the count is opened or transaction conducted. Guideline 10 requires financial
institutions to keep copies customer identification records, such as passports, identity cards,
driving licences, or similar documents, like account files and business correspondence, for at
least 10 years after an account is sed. Guidelines 11 and 12 require financial institutions to
review and properly document the and purpose of all complex transactions and all unusual
patterns of transactions which have no apparent economic or visible lawful purpose. Guideline
13 requires financial institutions not to warn their customers when information on suspicious
transactions relating to them is being reported BoU. Under Guideline 17 banks are required to
sensitize and train their employees on anti-money laundering policies and measures.

The Third Schedule to the Guidelines provides a list of transactions that may be considered
suspicious, which financial institutions should detect. These include outward remittances without
le lawful purpose; inward remittances without visible lawful purpose or without underlying trade
transactions unusual purchases of foreign exchange without visible lawful purpose; unusual
purchases of foreign exchange, whose sources are not satisfactorily established; complex unusual
large transactions and all unusual patterns of transaction, which have no apparent or visible lawful purpose; deposits and any other funds managed or held in trust if there are reasonable grounds to believe that are the proceeds of criminal activities; and all other transactions which the financial institution may consider as suspicions based on reasons which should be cited in the suspicions transaction report.

However, the Guidelines are not sufficient and do not have the force of law. In addition, the guidelines have lots of loopholes; for instance, if a bank freezes a customer’s money, the customers sue the bank, making the banks reluctant to transactions. Banks thus prefer not to report suspicious for fear of civil litigation, making the whole process inadequate. In addition, the BoU guidelines cannot be fully implemented without an enabling legislation. According to one banker, implementation of the BoU Guidelines and their internal guidelines depends solely on the cognition and goodwill of the financial institutions; the problem is that the financial institutions are not tied by any law and run the risk of exposing themselves to lawsuits and money launderers. These arise from the fact that existing laws do not specifically criminalise money laundering, although activities leading to it are criminalised. The existing laws, such as the Financial Institution Act, Bank ganda Act, and the Exchange Control (Forex Bureaux) Order of 1993, only provide for the regulation and supervision of the financial institutions.

3.2.9 National Drug Policy and Authority Act

The National Drug Policy & Authority Act is the primary legislation in the implementation a national drug policy. The act establishes the National Drug Authority criminalises illicit trafficking in narcotic drugs and other psychotropic substances. The Act restricts the manufacture of drugs, the control of transportation, importation or export of drugs without licence; it also criminalises possession of narcotics and the cultivation of plants yielding narcotics.

However, the Act omits to put in place a mechanism to detect, control and trace proceeds of trafficking in drugs. It also fails to empower the National Drug Authority with powers to trace and seize proceeds of illicit trafficking in drugs that has been laundered through the financial system;
the Act does not provide for the freezing of accounts that are suspected of containing laundered proceeds of illicit trafficking. Records show that the main challenge for Uganda in regard to dangerous drugs any psychotropic substance is that it is used as a conduit for traffickers to Europe and North America. In the reviewed period of 2000, 988 people were arrested for drug abuse, 6.1 tones of narcotic substances like cannabis with a street value of shs.6 10 million were seized. 4kgs of heroin valued at shs. 340 million was seized and 2 parcels of cocaine valued at shs.380 million were also seized by police.

3.2.10 The Moneylenders Act Cap 273

The Moneylenders Act regulates activities of moneylenders in Uganda. S.3 makes it mandatory for a certificate to be required for money lenders licences; under s.9 moneylenders are required to give receipts and keep records of every payment made on account of a loan or interest on a loan; s.13 prohibits harsh and unconscionable interest rates. S.14 provides penalties for false statements and misrepresentations made to induce a person to borrow, s.21 does not apply to lending transactions where security for loan repayment is effected by execution of a chattels transfer; any transaction where a bill of exchange is discounted at less than 9% annual interest rate; to is executed by a mortgage.

However, the Moneylenders Act does have provisions that clearly support an anti-money laundering policy in Uganda. The Act does not put in place a mechanism to trace the origin of money lenders’ capital. It is relatively easy to launder money through money lending institutions33; for instance, a drug dealer or armed robber may set up a money lending business with criminal proceeds, the Act does not attempt to trace the origin of his money, then lend money to the public or even his associates, charges the normal interest rate, then comply with s.9 of the Act by presenting receipts the transactions, the principal and interest is repaid, his ‘dirty’ money is cleaned, thereby completing the money laundering cycle.
3.2.1 The Evidence Act

The Evidence Act provides for the legal principles governing the relevance, admissibility, cogency and corroboration of evidence in Ugandan courts. The Act provides, *inter alia*, for the *res w* doctrine, the hearsay rule and exceptions to the hearsay rule, for rules applicable in determining cogency of witness evidence, for rules governing admissibility of documentary evidence, for legal professional privilege and for facts that are judicially noticed. Under the Act, accomplice evidence of money laundering may be admitted and hearsay evidence may also be admitted if it qualifies the statutory exception, including the *res geatae* rule. The Act is crucial especially in the process of freezing laundered proceeds.

However, the Act is inadequate in many respects. First, the Act is outdated and does not provide for electronic aspects of evidence (e-Evidence) and yet today’s money launderers prefer e-commerce and e-banking. The Act does not define the criteria for digital signatures, electronic documents like emails and admissibility of electronic evidence. Secondly, the Act provides absolute privileged to communications to designated professionals like lawyers and yet an effective AML policy requires the duty to report and identify suspicious transactions since lawyers are some of the accountable persons’ under the proposed AML bill.

3.3 An Analysis of the Capacity of Law Enforcement Institution in Responding to the Money Laundering Phenomenon

Experts argue that in Uganda all sectors that are charged with detecting money laundering and activities that result in illicit proceeds are making increased efforts to combat money laundering. However, these efforts are still hampered by the lack of law or policy specifically dealing with money laundering. This is aggravated by the fact that money laundering is not a Specific crime in Uganda.

The following analysis of the capacity of the law enforcement agencies attempts to assess their capabilities and institutional frameworks.
3.3.1 The Uganda Police

The Uganda Police is established under the Police Act. The police have been in the forefront fight against money laundering and organised crime, with some remarkable successes considering their limited resources. They have created specialised units to deal with organised crimes; these are the Anti-Narcotic and Anti-Fraud Units (ANU and AFU). Between 1998 and 2000, the police impounded and destroyed 422 tons of cannabis (marijuana) leaving the country. They also impounded 33 kg of hashish, 9 kg of heroin worth US$ 8.7m and cocaine worth US$1.2 million. In 1999 the ANU arrested 961 people for drug-related offences, of whom 434 were prosecuted and secure conviction. In 1998, 702 persons were arrested and police investigated and prosecuted 634 cases.

To enhance their capacity the police have entered into a Memorandum of Understanding with other institutions to combat money laundering and other illicit activities taking place the postal service, which, according to former head of the ANU, was the main conduit for these activities.

In March 2003 the police successfully investigated a case reported to it by Posta Ltd., involving the transfer of large sums of money from Japan, payment of which was halted he source of the money was investigated and satisfactorily established.

However, the capacity of our police infrastructure is not satisfactory. As a result, one wee believed that our mainstream still police labours under the misconception that there is mal or no money laundering in Uganda. the effect of lack of sensitization about the scale and of money laundering in Uganda. In reality the police systems in Uganda, like those in the is insufficiently developed to establish the existence of the money laundering phenomenon accurately, let alone deal with it. Police agencies in the sub-region are generally sceptical about investigating cases of laundering and laying charges, because of the weaknesses inherent in the of specific anti-laundering legislation.” One senior CID official agreed that part of the problem is the absence of a law on money laundering; he cited many examples of rich individuals who can not satisfactorily explain the dubious acquisition of their wealth, quick high-value financial and capital transfers and other suspicious transactions.
3.3.2 Bank of Uganda

Bou is established under the Bank of Uganda Act as the Central Bank of Uganda and principle regulator of its financial services sector. The BoU contributes to combating money laundering by supervising the regulated activities of financial institutions. Its role is to develop appropriate policies, guidelines and laws on financial management and practice. In exercise of this mandate, it developed, through the UAMLC, a draft anti-money laundering policy in 2001 that is being used to develop the legislative framework, together with the BoU Guidelines mentioned above.

Currently commercial banks are required to report any transfer above US$100,000 to the BoU. Some financial institutions are now reporting suspicious transactions. For instance, in October 2000 Standard Chartered Bank turned back a US$40m transaction when the sender attempted to wire it to Uganda from Boston in the US.

In its role as overseer and supervisor of the smaller banks, BoU has acted hard against banks that do not follow its Guidelines, regulations and banking norms, as well as against those that are lax on money laundering. Between 1999 and 2001 numerous banks such as International Credit Bank and Greenland Bank were shut down due to either insolvency or clandestine transactions. However, one interviewee was of the view that BoU is not doing ‘enough’ to combat money laundering in the financial sector; arguing that the problem with the BoU management system is, first, the old bureaucracy running it that has not yet appreciated the extent of money laundering Uganda and its dangers; that BoU requires ‘fresh blood to run its management.

Mr. Cheeye opinioned that BoU needs a new crop of alternative economists and strategists who may bring into the institution new ideas and alternative policy perspectives.

In addition, BoU does not have adequate technical and qualified human resources to detect and money laundering. The Judicial Commission of Inquiry into the Closure of Banks chaired s Ogoola in August 2001 concluded that the BoU’s supervision department is inadequately BoU does not have the required personnel to inspect all banks but only sufficient to watch over banks in crisis. This is a veiled admission that it has financial constraints and lacks the capacity to the necessary inspection and supervision of all financial institutions in the country.
3.3.3 Inspector General of Government

The Inspectorate of Government is established under article 223 of the 1995 Constitution and institutional functions are operationalised by the Inspector General of Government Act, the leadership Code Act and the Prevention of Corruption Act. The institution of the IGG is very crucial in the implementing a strategy to fight money laundering. The GG has constitutional powers to investigate and prosecute cases involving corruption and abuse of office. Between January-June 2006, prosecuted 34 cases of corruption, of which 5 were appealed against and await judgment. The activities of the IGG include authorization of investigations, issuing of bank inspection to trace proceeds of corruption in bank accounts, issuing of arrest warrants and authorizing prosecutions.

However, the IGG office is faced with various constraints, that limit its effectiveness in corruption in public office. Some of the constraints highlighted in its report to Parliament in 2006 included limited reference materials, hostile witnesses and court delays, corruption and negative attitudes in institutions that are supposed to be partners with the IGG in the fight against difficulties in obtaining evidence to implicate high profile leaders in government, lack of Leadership Code Regional Monitoring desks, and inadequate institutional support in implementation of IGG recommendations.

3.3.4 Internal and External Security Organisations

ISO and ESO are established under the Security Organisations Act and their functions are ally to collect, receive and process internal and external intelligence data on the security of Uganda and to advise the President on what action should be taken in relation to that intelligence data. The ISO and ESO are specialised security agencies, with special training and skills to handle national security matters from both inside and outside Uganda. The two agencies have created special units to deal with terrorism, counter-espionage and economic intelligence and monitoring. The counterterrorism and economic intelligence and economic monitoring sections handle drug trafficking money laundering activities.
However, ISO has at times colluded/collaborated with the culprits- ISOs efforts were foiled by the officers put in charge of counter-terrorism, who started collaborating with the traffickers. What exposed them was that their activities were not co-coordinated with the Anti-Narcotics Unit (ANU), which led the ANU to suspect ISO of aiding the traffickers. In addition, security organisations essentially lack the necessary skills to trace proceeds of crime as they most often employ a militaristic approach with underhand interrogations of suspects. This may deter the fight against money laundering. Only financial intelligence units designed to detect and money laundering are well suited to use intelligence data to fight money laundering.

3.3.5 Uganda Law Reform Commission

The Uganda Law Reform Commission (ULRC) is established under the Uganda Law Reform Commission Act. The Uganda Law Reform Commission is a government institution responsible for coming up with a legal framework that will ensure the removal of bottlenecks that lead to improved efficiency in the justice, law and order sector (JLOS). The main function of the ULRC is to study and constant review of the laws of Uganda with a view of making recommendations for their systematic improvement, modernization and reform with particular emphasis on:

(a). Elimination of anomalies in the law, including repeal of obsolete laws;
(b). Developing new areas in law by making law more responsive to the changing needs of society;
(c). Adopting new and more effective methods of administration of the law; and
(d). Systematically developing and reforming the law.

The ULRC is therefore very instrumental in the legal and policy reform aspects of developing an anti-money laundering legislation and policy framework. For instance, it may review all legislation discussed above and streamline their provisions in relation to money laundering. The ULRC may under its mandate review provisions establishing the act of money laundering as an offence and pose to parliament to re-enact laws establishing coherent institutions to fight money laundering or equip the existing institutions with the powers to control, arrest and prosecute and freeze or confiscate laundered proceeds of crime.

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3.3.6 Directorate of Public Prosecutions

The Directorate of Public Prosecutions (DPP) is established under article 120 of the 1995 Constitution to conduct and control criminal prosecutions in Uganda. The DPP is the responsible prosecuting agency and has established an anti-money laundering unit, which has enabled it to successfully prosecute 434 out of 634 cases relating to organised crime and money laundering. However, the DPP faces serious constraints in terms of capacity and organisation. First, the DPP is not an independent and autonomous institution as it is still under the Ministry of Justice. Secondly, the DPP is ill-financed, ill-equipped and ill-staffed. For instance, in 2000 a recruitment project sponsored by the Netherlands Government was initiated with the target of recruiting 600 State Attorney and prosecutors by 2005, but less than 200 have so far been recruited, as officials cite lack finances. This hinders effective progress in prosecuting individuals suspected of money laundering and other related economic crimes involving proceeds of crime.

3.3.7 Private Financial Institutions

The commercial banks, through the Uganda Bankers Association, believe that money laundering is mostly carried out through the forex bureaux, which are doing very little to develop anti-money laundering programmes and whose operations are currently subject to virtually no checks or balances. For instance, Barclays Bank has developed the Barclays Bank’s 2001 Africa Policy for the prevention of Money Laundering. Standard Chartered Bank has also formulated Anti-Money laundering Guidelines to use in conjunction with the minimum group standards. These regulations are uniform with all other international Standard Chartered bank branches. All staff are trained in anti-money laundering measures and are empowered to detect and report any suspicious transaction. Other international banks such as Citibank and Stanbic have similar internal guidelines for all their branches globally. In addition, through its national association, the Uganda Bankers Associations (UBA), the banking sector has agreed to adopt a common approach to combat money laundering and the transfer of illicit proceeds through the banks. As a first step, UBA has resolved to stop forex bureaux from carrying out telegraphic transfers through any of its members.

From the above analysis it can be concluded that, though Uganda is making progress in combating money laundering, there are still glaring gaps that can be addressed by a
comprehensive policy and legislation to provide a framework for a holistic approach. In addition, there is a general of capacity within the regulating institutions that hinders their ability to carry out their mandate effectively.

3.4 Conclusion

The paramount setback in the fight against money laundering in Uganda is absence of a money laundering law. While the existing legislation has provisions that could be used to control money bring, their implementation has been lukewarm. The existing laws and institutions operating those laws are weak and uncoordinated. Prof Itzikowitz argues that the problem with developing countries is a lack of investment in law enforcement for money laundering and related crimes such as corruption, money laundering and terrorism. However, with the drafting of the Anti-Money laundering Bill 2003 it is hoped that institutional arrangements to combat money laundering and terrorist financing in Uganda will be concise and coherent.
CHAPTER FOUR
CHALLENGES FACING THE ENFORCEMENT AND IMPLEMENTATION OF ANTI-MONEY LAUNDERING MEASURES IN UGANDA

4.1 Introduction
While the Ugandan government attempts to put in place an anti-money laundering law and framework, serious challenges undermine measures being put in place to control, detect and combat money laundering activities in the country. Following the liberalization of Uganda's financial sector became openly exposed to serious negative effects of globalization, particularly the worldwide phenomenon of money laundering. In 2006, BoU's governor Mr. Mutebile noted that money laundering in Uganda posed a serious threat to the financial health of the economy and that the central bank was, through its Anti-Money Laundering Guidelines, trying to meet its many challenges. But this is yet to be seen.

4.2 Factors Undermining Enforcement of Anti-Money Laundering Measures in Uganda
There are several challenges that undermine interim and intended long-term measures to combat money laundering in Uganda. These include the following factors:

4.2.1 Lack of comprehensive legislation
The lack of an appropriate and adequate legal and policy regime has greatly undermined the fight against money laundering. Uganda does not have a specific law against money laundering and it is therefore not an offence. According to a senior CID official, this has an adverse effect on fight against crime. Suspected culprits cannot be arrested for money laundering as it is not yet a criminal offence laundered money in bank accounts cannot be frozen as many authorities, except for the I bank, lack such powers under the law. Financial institutions cannot voluntarily report suspicious transactions of their customers as they risk being sued for breach of common law rules of confidentiality and disclosure. For example, in the Kenyan case of Intercom Services Ltd & Ors v. Chartered Bank a customer successfully sued the collecting bank for its being abnormally suspicious of the source of his transactions, which resulted into the freezing of his accounts by the central bank, after the bank reported/disclosed the customer's confidential
transactions to the central bank and police. The Kenyan High Court held that while banks are bound to make inquiries of suspicious/unusual transactions, they have no duty to be abnormally inquisitive disclosures to third parties without just cause.

Secondly, absence of a law seriously discourages financial institutions from adopting effective internal anti-money laundering guidelines. This is particularly a difficult problem for institutions that have attempted to adopt anti-money laundering measures in their operations, whose have been made impotent. Bank employees are exposed to danger as the people who launder money often either buy off or threaten to kill anybody that hinders their business. Bankers, lawyers’ accountants, who may come across money laundering in the ordinary course of their work, are vulnerable in the absence of an adequate enabling legislative framework. The weaknesses of the current legislative situation were exposed in 2002, when the lack of legislation forced Posta Uganda Ltd to only temporarily delay a suspicious payment from Japan and report the matter to the police, in turn, could not do anything until they got a court injunction to halt payment while they completed their investigation.

4.2.2 Lack of accurate statistics on the scale of money laundering activities in Uganda

Another challenge is the lack of research and statistical data on money laundering activities. There are no national research institutions in Uganda that analyse money laundering typologies. A thorough understanding of domestic money laundering activities requires concerted national research studies of the money laundering typologies commonly practiced in the country. For instance, in the Africa the Institute for Security Studies (ISS) has initiated a number of researches and studies aimed at documenting the extent of money laundering in Africa, especially in the East and Southern Africa. The lack of accurate statistics on the scale of laundering activities in Uganda makes it a serious challenge to law enforcement.

However, the sufficiency and integrity of the statistics provided by international research institute like the ISS, FATF and others is only as good as the national sources supplying the formation. It is, therefore, imperative that national efforts to determine the extent of money
laundering must be improved as these statistics are important for convincing the legislature and executive on the need for an effective money laundering regime. The problem of lack of accurate money laundering statistics in Africa is more challenging to law enforcement in countries where the anti-money laundering fight is only gaining momentum now. It will take some time for Africa to build up accurate statistics on money laundering as this would have to be sourced from actual cases investigated and prosecuted.

4.2.3 Stringent common law requirements of confidentiality and legal privilege

Banks and their operations in common law jurisdictions like Uganda are governed by confidentiality rules. They are thus exposed to the risk of lawsuits for breach of trust and confidence if they breach confidentiality by reporting confidential details of customers’ transactions law enforcement agencies like police and the central bank. Bankers argue that banking is first and foremost a business and that anti-money laundering measures such as KYC sometimes scare off potential or existing customers. In some instances banks are suspicious of certain kinds of activities may fail to enforce appropriate measures because they fear to lose their customers.

The rules of confidentiality are often an obstacle to investigations and compliance. Most contentions of the compliance obligations is the duty to report suspicious and unusual transactions.

This duty is more widely cast and applies not only to accountable institutions but also to persons who carry on business. Advocates, bankers, and accountants will be obliged to report non-privileged confidential information in the circumstances of money laundering. Under the Evidence Act Cap advocates are protected by professional privilege; s.125 prohibits advocates from disclosing any communication made to them by a client in the course of employment. However, this privilege does not extend to communications made in furtherance of any illegal purpose and any fact observed by any advocate in the course of his/her employment as showing that any crime or fraud has been ratted. Under clause 15 of the proposed AML bill a bank’s obligations as to confidentiality, secrecy and other restrictions on the disclosure of information
imposed by law or contract are not an impediment and cannot affect any obligation under the bill to report or furnish information, but this provision does not apply to privileged communications between an attorney and client.

Furthermore, the rules of confidentiality may also inhibit compliance. For instance, in the Intercom Services Case (supra) where it was aptly stated that banks have no duty to investigate funds in a customer's account. In addition, confidentiality often acts as a cloak for criminal networks; drug barons, corrupt politicians and fraudsters have used the banking system to conceal their ill-gotten gains; bank confidentiality has often acted as a barrier to bringing the culprits to book J recover laundered assets; confidentiality may explain how terrorists have transferred their financing around the world without detection.

4.2.4 Insufficient funding and scarcity of trained personnel
Combating money laundering presupposes the existence of capacity and resources at national level. In Africa, this is a real challenge in that there are competing demands with regards to the procurement and utilization of scarce resources. The resources scarcity is more critical in the law enforcement spheres, since most national jurisdictions have less than efficient law enforcement agencies which are in most cases overwhelmed by the demands to enforce other national laws. The institutions combating money laundering in Uganda are not only plagued by lack of finances but also efficient manpower/human resources, lack of or inadequate trained personnel, and insufficient logistics. For instance, the Uganda Anti-Money Laundering Committee (UAMLC) has no independent budget or secretariat, but it is run by officials from the ministries of finance and justice, c of Uganda and Uganda Bankers' Association.

4.2.5 Globalization, technology and sophisticated transnational dimensions of crime
Crime and money laundering is indeed a global problem which requires a concerted global response. The law enforcement agencies the world over are overwhelmed by the sheer size and sophistication that criminals are now employing to perpetrate their illegal deeds. The efforts on crime prevention are now compounded by globalization that has created what one may say is a global economy in which organized crime groups and individuals can and do generate huge sums
of money by drug trafficking, financial crime, corruption, intellectual property crime, terrorism and human trafficking.

Globalization and ICT play a fundamental role in the concealment process of money laundering cycle. In view of the advent of new technology, the cyber revolution and the enhanced fluidity of capital that comes with faster communication systems, African countries are challenged to legislate against money laundering and to continuously review the legislation they pass to keep pace with changes in criminal trends.

4.2.6 Absence of regulation/poor regulation in some sectors in the economy

While the financial services industry is the most regulated sector by anti-money laundering dogs, the government has failed to adequately regulate certain markets in the economy that are fast becoming conduits for money laundering. These include the real estate, retail commerce and gambling/casino sectors. Several factors make these sectors prone to money laundering by reason of their being insufficiently regulated by government.

Real estate purchases, especially in unregulated real estate markets, are frequently used to launder proceeds of crime. Sound property law rights further facilitate the easy sale and purchase of real estate property, easily enabling the laundering of ‘dirty’ money? Uganda’s real estate sector largely self-regulating, often by market forces of demand and supply; property prices and interest on mortgages often inflate due to illegal land speculation and suspicious outright property purchases involving large sums of money are not investigated by authorities; with astronomical explained wealth, some people build large mansions and commercial high rises ‘over-night’ in areas in and around Kampala.

Another unregulated sector in Uganda is the casino/gambling market. Several factors make industry ideal for money laundering. First, casinos/gambling houses in Uganda operate without an appropriate casino/gaming law, which would govern all their operations. Secondly, there is no limit how much money one may place on the gambling floor of Ugandan casinos per day of gambling. Thirdly, there is no proper mechanism to monitor casino operations so as to detect suspicious situations that are linked to money laundering; there is no gaming commission to
monitor and coordinate casino operations with law enforcement agencies. Lastly, as a result of the above factors, casinos in Uganda often facilitate the laundering of black market *bicupuli* (forged) dollars and oilier proceeds of crime, which is a serious challenge to law enforcement.

4.2.7 *Pour record keeping of transactions*

In most of the financial institutions there are either poor records or no records at all that can help in monitoring transactions and tracking cases of money laundering, or records are poorly kept. This is especially true with forex bureaus, the nature of their operations means that records about bureaus, the nature of their operations means that records about customers are not kept. Record-keeping is inadequate in the private sectors, as most businesses are small and medium enterprises (SMEs) and are keen to avoid and evade taxes. In an attempt to tighten the loose ends in the fight against money laundering, the BoU and banks have adopted some unpopular methods regarding forex bureaux operations, such as the Barclays Bank announcement that it had stopped forex bureaux from doing telegraphic transfers through the bank.

4.2.8 *Lack of sensitization*

The Ugandan public is not sensitized about money laundering and its evils; the corrupt are Glorified and rich people are considered successful even when their sources of wealth are uncertain /suspicious, Uganda needs to sensitise and seek the cooperation of professional advisers 'See lawyers, insurers, auditors and accountants; there is need for assistance in the financing of raining, capacity building, and public awareness programmes necessary to implement AM L/C FT measures. For anti-money laundering measures to succeed, government has to assist the financial and commercial sector in sensitizing the public about the dangers that money laundering poses to both individuals and the economy and by informing the public how they can contribute to fighting against it.

4.2.9 *Political interference/lack of political commitment*

The fight against money laundering: In Uganda is often undermined by the lack of political commitment among policy makers with moral and legal obligations to fight economic crime.
This takes the form of political interference by corrupt high profile government officers who use their influence to meddle with investigations or prosecutions, by 'sitting' on the files or refuse to give clearance for their investigation/prosecution.

The Zimwe Case is a good illustration of the extent of political interference in money laundering cases involving 'we 11-connected' people. The facts were that, in 2004 Andrew "Zimwe" Kassaga, a prominent businessman, in collusion with corrupt officials in Standard Chartered Bank in Kenya wanted to defraud a UN account of US$1 million by wiring it across an account in Stanhope Uganda, a financial services provider, but the transaction was detected and reported by bank officials ISO before the money could enter the placement stage in the money laundering cycle. Mr Teddy Seezi Cheeye, a director in ISO, one of the officials who was in charge of investigating the case, believes that the case eventually stalled because of political interferences from the Attorney-General Dr. Khiddu Makubuya. According to ISO intelligence, the AG has refused to clear the file for further investigation or grant an extradition request by the Kenya authorities, particularly the Kenyan A-G Mr. Amos Wako. This is considered a serious setback in the fight against money laundering in Uganda and the East African region.

4.2.10 Corruption

Corruption is a major impediment to enforcement rules and practices of good governance and certainly to the fighting of economic crime. Last year Uganda ranked 105th out of 163 least corrupt countries by Transparency International. The IGG has started investigations into alleged corruption by the Attorney General and by the Minister of finance. Most people interviewed for this study relieved that money launderers can go to any lengths to get their way and can use large sums of money for bribes, which may be difficult to resist by officials responsible for detecting and controlling money laundering. Mr. Cheeye, for example, pointed out the Zimwe case as an example: I how corruption can undermine efforts to fight money laundering. This problem is worsened by poor remuneration, especially in the public sector, which opens the way to officials being tempted, or money laundering to be fought effectively there is therefore a need to not only combat corruption but also to increase the remuneration of officials who are involved in implementing anti-money laundering measures.
4.2.11 The problem of a cash economy

The prevalence of a cash economy undermines the fight against money laundering and makes it difficult to detect when money laundering is taking place. Uganda has a cash economy and this takes the monitoring of suspicious transactions difficult. Ugandans prefer using cash for all forms of transactions including the purchase of high-value items such as real estate and motor vehicles cause of a lack of trust and a fear that cheques will bounce. This makes detecting the source of money difficult. The widespread use of cash is perhaps the biggest handicap to detecting and controlling money laundering. Banks find it impossible to trace the origin of cash in Uganda as people refuse cheque payments, even when transactions involve millions of shillings. Buyers simply go to their banks, withdraw cash and pay for all kinds of transactions in this way. The problem of a cash economy makes it difficult for banks to distinguish between "clean" and 'dirty' money.

4.3 Likely Challenges upon the enactment of the Anti-Money Laundering Bill

Several challenges may be faced once the law has been enacted. First, the public does not understand the dangers of money laundering. Sensitization of professional advisors, insurers, buyers, and accountants is in its infancy. It is hard to tell how long it will take to sensitize these mother professionals and enlist them in the fight against money laundering. One way of achieving this is by organizing workshops and seminars specifically on anti-money laundering.

Secondly, there is no universal national citizen identification system in Uganda, so the know-your-customer concept is difficult to implement. We do not have unique street addresses, either, so financial institutions cannot reliably identify citizens by addresses. This may pose a serious challenge since the proposed law does not adequately define all necessary identification processes and techniques. Lastly, there are budgetary constraints in the fiscal sector, so it will be difficult to adequately finance the implementation of anti-money laundering measures introduced by Part 3 of the proposed anti-money laundering law.

4.4 Conclusion

In nutshell, the challenges facing the institutions fighting money laundering in Uganda are diverse. Some challenges are socio-political like corruption, while others are regulatory and
fiscal/economic. The enactment of an anti-money laundering law, in itself, does not necessarily
scan the foregoing challenges will diminish. A viable AML/CFT regime is dependent on many
others such as adequate law enforcement training, constant review and update of legal and
regulatory structures to match changes in technology and time, political commitment to fighting
money laundering as well as coordinated international cooperation with other countries.
Otherwise, i view of the foregoing challenges to the AML/CFT regime in Uganda, it is hard to.
sec how measures undertaken by the stakeholders will reduce or control money laundering.
CHAPTER FIVE

RECOMMENDATIONS AND GENERAL CONCLUSION

5.1 Introduction

During the interviews that formed the basis for this study, several interviewees proposed measures that should be taken to enhance the performance of the law enforcement institutions in the fight against money laundering in the financial, commercial and other sectors in Uganda. Some recommendations were legislative, others administrative and others were institutional measures; however, no attempt has been made to classify the following recommendations in such categories. The following recommendations are aimed at supplementing or modifying the numerous AML measures and strategies government and regulators have taken in creating a stable environment detecting and fighting money laundering, such as promoting international cooperation formation of the UAMLC, the drafting of the AML bill and the AML guidelines for financial institutions' and other measures like identification and reporting requirements².

5.2 Recommendations

The following recommendations are proposed:-

5.2.1 Enact/pass the Anti-Money Laundering Bill promptly

All the respondents in the study agreed that an anti-money laundering legislation is long overdue and the main recommendation was that the proposed Bill should be passed promptly. Some agreed with the Bill's provisions entirely, while others recommended that the law be passed with some modifications to its current form. Some respondents agreed that any other serious recommendations are only practical if the law were actually in existence.

To this end the first pre-requisite for combating money laundering is to have in place appropriate national legislation. Appropriate national legislations have to be crafted with local circumstances in mind while recognizing the need for taking into account the international
dimensions of money laundering. However, anti-money laundering experts warn that the statutory anti-money laundering legislation should identify problems specific to their individual countries and in all circumstances avoid legal transplant of legislation from other countries/jurisdictions. Prof. Itzikowitz further argues that in enacting anti-money laundering legislation, countries should ensure that they:

1) Make realistic form requirements specific to their situations and also know their customer requirements well enough.
2) Support extradition laws and other international laws to work in line with anti-money laundering legislation.
3) Create a duty of disclosure within the law to protect institutions from the breach of confidentiality.
4) Select either a risk or rule based approach for identification and verification of customers.
5) Make legislation that provides for instances where the crime transcends national borders.
6) Propose legislation that provides for both an administrative framework and penalty provisions.
7) Make legislation that proposes ways of dealing with and handling the proceeds of the crime of money laundering.

It is important to note that legislative wins that may exist at international and national levels will be exploited by the money laundered and may make national anti-money laundering regimes ineffective. In line with the need to formulate appropriate national legislation, there is a need to formulate standards for anti-money laundering practices and institutions that should provide maximum effectiveness both at national and international levels. The G7 created Financial Action 'ask Force (FATF) that has crafted 40 + 9 recommendations aimed at providing international standards for anti-money laundering, improving national systems for combating money laundering. Strengthening the role of financial systems and for strengthening international co-operation.
5.2.2 Criminalize money laundering and affiliated offences

To combat money laundering, the act of money laundering must be made a crime. It must be noted that the term 'money laundering' is at times misleading and ambiguous. The responsible authorities need to be given interim powers under emergency regulations, since there is no law yet, to trace, detect, seize and ultimately confiscate assets/proceeds derived from crime. In addition, a framework should be built which permits the agencies involved to exchange information among themselves and with counterparts in other countries. The law must also set out the necessary mens rea for the offence of money laundering and accord banks protection in case they freeze an account on suspicion of money laundering. It also proposed that the law must extend the category of predicate offences to include all serious crimes.

5.2.3 Improve and strength airport and border security

It is proposed that security along the Ugandan borders should be improved and strengthened. This is aimed at, first, cross border movements of cash, cubing smuggling and illicit trade that may be the subject of money laundering, and secondly, to address drugs and human trafficking that may be the subject of trans-national organized crime. As one of the measures to step up security in Uganda, police acquire better-trained sniffer dogs and equipment to screen all cargo at Entebbe Airport for drugs. All entry points should be equipped in the long run. In addition, police, together with URA and Posta Uganda Ltd., have put checkpoints in place to crack down on trafficking through international mail, although they lack a unified system. The police have broadened their investigation to cover investments, because they believe that most of these investments are acquired with money that has been laundered.

The proposed AML law has adequate provisions to address this. Under clause 11 of the Anti-Money Laundering Bill, the Customs and Excise Department of URA is enjoined to report to the financial information authority all cross movements of people transporting, sending or carrying more than 1500 currency points in local or foreign currency. Similarly, under the Immigration
Act prohibits any person unlawfully entering or exiting Uganda carrying or transporting any currency more than 2000 currency points without authority.

5.2.4 There should be a formidable partnership between government and private sector

Money laundering can be addressed effectively through combined efforts by government, law enforcement agencies, the business sector as well as the public. The success of any anti-money laundering policy requires the commitment of all involved legislators, regulators enforcement agencies and the financial sector, who should forge a partnership among themselves. Professions and businesses dealing in cash, such as casinos, lawyers, notaries and accountants, an-not yet required by law to detect money laundering or report any suspicion thereof in Uganda. There must be continuous interaction between the actors in the financial institutions and the law enforcers. It is also proposed that AML regulations be extended to unregulated sectors in Uganda (like gambling, betting and casinos).

5.2.5 International/regional mutual legal and technical assistance/cooperation

Mutual legal assistance should occur in countries/governments which should get interested in this process otherwise they will continue to be used as conduits for money laundering activities. States should commit themselves to offering mutual legal assistance to each other on issues concerning money laundering and dedicate themselves to following the prosecution of money laundering cases through to the end.

The combating of money laundering should revolve around ensuring the ability of national and international agencies to find, freeze and the forfeiture of laundered money. This presupposes the existence of appropriate national and international laws and the capacity for implementation of those laws. In addition, the wide scope of affected stakeholders in anti-money laundering efforts requires an unprecedented level of co-operation both at national and international levels.

Anti-money laundering international instruments are essential for ensuring that the international community acts to money laundering as a global problem. The
international instruments provide a forum for bringing national efforts on money laundering into the international loop. To mention but a few, the following are some of the important international instruments that the international community have crafted: the Basel Declaration 1988; the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; FATF 40+9 Recommendations, 1990, with numerous revisions; UN Convention against Transnational Organized Crime, 2000; UTS! Convention against Corruption; UN International Convention for the Suppressing of the Financing of Terrorism.

These are but only a few of the various international instruments that are critical to the success in the fight against money laundering. In addition, various multilateral organizations have been instrumental in advancing the cause for the fight against money laundering. The IMF and the World Bank have been very active in providing resources for capacity building and technical expertise. National jurisdictions are encouraged to ratify the international instruments as they provide the basis for ensuring appropriate national anti-money laundering laws and international cooperation. Critical to the international cooperation is the attendant national legislations pertaining to extradition of criminals who operate cross border money laundering schemes. Without having robust extradition laws, the criminals would have loopholes in the global sphere that would allow them to evade law enforcement agencies in a particular jurisdiction.

5.2.6 Establishment of financial intelligence agencies

A financial intelligence unit (FIU) is a central national agency responsible for receiving, analyzing and disseminating of financial information concerning suspected proceeds of crime in order to counter money laundering. A good example of an FIU is the Financial Information authority to be set up under the proposed bill. FIUs provide a government-wide, multi-sources intelligence and analytical network to support the detection, investigation and prosecution of domestic and international money laundering. To fulfill this mission, the FIU maintains a large database of financial and other information available to law enforcement authorities.

The creation of necessary anti-money laundering institutions such as the Financial Intelligence Centers is an issue that each of the African authorities are busy working on.
Financial Intelligence Centers are important for the detection of money launderers by linking the money flows to the perpetration of specific crimes.

The Anti-Money Laundering bill establishes under Part 4 the Financial Information Authority, as the central FIU in Uganda. Clause 19 establishes the FIA as a body corporate with perpetual succession; clause 20 outlines the objectives of the FIA; clause 21 outlines the functions of the FIA some of which include the processing, analyzing and interpret information, monitor and maintain comprehensive statistics on suspicious transaction reports received and disseminated, amongst others.

5.2.7 Serious political commitment to fighting economic crime

Another important ingredient for the effective combating of money laundering is the need for political commitment, as well the support from affected industries and general populace. All political elements in the establishment in the justice and law sector, criminal justice reform and law enforcement agencies must ensure commitment to the attainment of the objectives under the Anti-Money Laundering bill. There is need for government to provide political goodwill by giving public officials instructions to take steps against money laundering and to mainstream them in their operations.

5.2.8 Harmonize common law requirements of confidentiality

The confidentiality laws in Uganda should be reviewed to assess the extent to which the permit the disclosure of records by financial and non-financial institutions, business and professions that provide financial services, to competent authorities. The review should also aim at relaxing or removing any confidentiality impediments to efforts related to prevention, investigation and punishment of money laundering.

Measures should be put in place in the Non-Governmental Organization (NGOs) law, such as strict disclosure requirements and more effective reporting and monitoring procedures, to ensure that NGOs are not used by terrorist organizations as conduits for financing or concealing or obscuring the clandestine diversion of funds intended for legitimate purposes. This is should
done through reform of the Non-Governmental Organizations Statute, which is already underway. There is a need to review confidentiality laws in Uganda with a view to removing any confidentiality impediments or giving legal protection to banks who breach confidentiality as part of implementing anti-money laundering policy.

5.2.9 Ratify existing international/regional protocols/instruments

Most analysts agree that Uganda should conclude and implement ratified treaties to facilitate the efficient prosecution of money laundering offences. In particular, Government should ratify the 1999 UN International Convention on the Suppression of Terrorism. Uganda should negotiate and implement unilateral and multilateral legal assistance and treaties to facilitate the exchange of evidence and information in cases of money laundering and should co-operate in investigations and prosecutions as well as in the identification, seizure and forfeiture of proceeds and property resulting from money laundering and related crimes.

In an effort to combat money laundering and terrorist financing, a number of regional and international instruments need to be domesticated. These include the Nairobi Protocol for the Prevention, Control & the Reduction of Small Arms & Light Weapons, the East African Police chiefs Cooperation Organization (RAPCCO) Agreement, the ESAAMLG Memorandum of Understanding (Anisha Agreement) 1999, the African Union Convention against Corruption 2003, the UN Model Law on Money Laundering and Financing of Terrorism 2005, the UN Global Convention against Corruption 2003, the UN Convention against Transnational Organized Crime, the UN Security Council Resolution 1373, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, the FATF 41 Recommendations and the UN Convention for Suppression of Financing of Terrorism 1999.
5.2.10 A comprehensive policy framework should be put in place

A comprehensive policy for combating money laundering should be enforced, in addition to the BoU Anti-money laundering Guidelines 2003. The policy framework should consider the following:

1) Criminalize money laundering and make possible the identification, seizure and forfeiture of the proceeds and instrumentalities of such crimes

2) Enhance Uganda's ability to combat laundering from within and without;

3) Corporate governance and corporate management control mechanisms; corporate governance is defined by the Financial Institutions (Corporate Governance) Regulations 2005 as the 'process and structure used to direct and manage the business and affairs of a financial institution with the objective of ensuring its safety and soundness and enhancing shareholder value and shall cover the overall environment in which the financial institution operates comprising a system of checks and balances which promotes a healthy balancing of risk and return.

4) Enhance the performance of the Financial Information Authority;

5) Provide internal controls, internal audits, good human resource management, regular updates, and security reviews;

6) Encourage whistle blowing by guaranteeing whistleblowers anonymity, allowing forensic investigations and ensuring a reliable law enforcement system;

7) Protect financial institutions, their directors and employees from criminal and civil liability for breach of any customer confidentiality if they report their suspicions in good faith regardless of whether an illegal activity did or did not occur;

8) Require financial institutions to file Suspicious Activity Reports (SARS) to alert regulators and law enforcement officers of potential money laundering activity by customers.

9) Regulate other sectors prone to money laundering such as asset management, real estate, gaming and casino sector, procurement, clearing and forward etc.
10) Ensure legal and assistance and cooperation with the international community, including ensuring updating of extradition laws.

(ll) Approve the use of investigative techniques such as undercover police operations and electronic surveillance to facilitate the identification and prosecution of all members of criminal organization and the forfeiture of the proceeds of their criminal activities;

12) Require and empower financial institutions to provide authorities charged with combating money laundering with information about the identity of their customers' account activity and any other financial transactions and at the same time permit the sharing of such information among different countries for the investigation and prosecution of money laundering crimes.

5.2.11 Comprehensive law reform and sensitization

Government should carry out comprehensive law reforms to determine the adequacy of a Uganda's laws and regulations that relate to entities that can be used for money laundering and financing terrorism. The BoU Guidelines should be made into regulations to have legal effect. The Governor of the BoU should make the regulations in terms of his or her powers in the Financial Institutions Act or the Bank of Uganda Act. Uganda should integrate anti-money laundering courses in its Faculty of Law and Business School courses. This would enable students of law and financial courses to study the problem.

Government, through the UAMLC and in collaboration with financial institutions and forex bureaux through their respective associations, should embark on extensive awareness campaigns to combat money laundering. The sensitization should also clearly allay fears about information being given to the URA. As an interim measure pending law reform, government should set up a core unit within the BoU to co-ordinate action against money laundering in Uganda. The reforms should aim at establishing a financial intelligence authority that should be adequately equipped to investigate, detect and enforce anti-money laundering measures.
5.2.12 Institutional and administrative measures

Government and financial institutions should collaboratively arrange programmes for exchange and training of law enforcement officers and financial sector officials in anti-money laundering matters. Regular refresher training courses should be given to bankers, regulators, police, prosecutors and judicial officers designed to improve their knowledge of money laundering and the means to prevent it.

Uganda should conduct and implement extradition treaties to facilitate the efficient prosecution of money laundering offences. There should be a deliberate policy towards greater collaboration and coordination in anti-money laundering measures and activities, not only among the institutions and sectors, but also between government and the private sector. Sniffer dogs and scanners should be put in place at all entry points to detect illicit substances. Efforts should be made by government and the financial sector to develop or acquire automated systems to improve efficiency and remove uncertainties.

5.1.13 Identification of Customers & Screening Suspicious Transactions:

Financial institutions should require proper identification of their customers and other clients when entering into a business relation. This will help the organisation to assess the risk it faces in doing business with the client. Where a formal credit rating agency exists, it is advisable to get in touch with them. Letters of reference, financial statements etc are all useful sources of information.

Financial institutions should put in place mechanisms and systems that check suspicious transactions such as unusual cash deposits by individuals who normally deposit cheques, sudden increase in deposits in an account which is then quickly taken out, customers whose deposits contain counterfeit notes or forged instalments etc. They should also have clear instructions on how staff should handle such cases. Where the case could be reported to authorities outside the banks, one should be mindful of the confidentiality requirements and exceptions to the rule.
5.3 General conclusion

Uganda still lacks the necessary legal and institutional framework and the resources to effectively fight money laundering. However, it has used the existing institutions and laws available to make important strides towards developing and enforcing anti-money laundering measures, it has, through the Central Bank, developed AML Guidelines for financial institutions and forex bureaux operators. Effective enforcement of anti-money laundering measures requires the accurate and timely identification of people's accounts and of commercial transactions suspected of criminal activity. The development in technology means the collection and analysis of such information can be done in a timely fashion. Uganda must move away from manual systems towards more technologically appropriate and efficient systems.

However, it is very difficult at present to apprehend and prosecute money launderers due to inadequacies in the legislation and in the relevant institutions. Fighting money laundering requires enforcement institutions to employ or train personnel with the skills and knowledge of how this offence is committed. The investigators have a duty to sharpen their detection skills by updating their knowledge of the methods used to launder cash. Prosecution of money laundering requires training and understanding of certain intricacies surrounding this offence. Designated investigators and prosecutors should be trained in the various aspects of money laundering.

The study therefore concludes that an effective AML regime requires cohesive and relentless implementation of AML measures, including enacting and constantly updating an anti-money laundering law. To achieve these goals it is necessary to consider establishing financial intelligence units for the collection, sharing and analysis of all relevant information related to money laundering. Under the coordination of an FIU, the police and other investigation agencies can be brought together and trained to conduct investigations into money laundering typologies, asset tracing and the operation of domestic and international financial institutions. The need for this authority is justified by the fact that the present enforcement structure is faced with a number of impediments, such as unfamiliarity with money laundering techniques and a lack of expertise in conducting complex financial investigations and asset tracing. Any reforms that Uganda
undertakes must thus explore the possibility of establishing a central authority to effectively deal with money laundering to avoid the current problems Uganda faces.
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APPENDIX: Questionnaire

1. What is your understanding of money laundering?

2. To what extent has money laundering affected Uganda’s economy?

3. What is your take on the Anti Money Laundering Bill? Do you think it will sufficiently help to combat money laundering?

4. Do you think enough has been done to create awareness and sensitisation among the business community on the challenges of money laundering?

5. How has your institution been affected and what measures have you put in place to help combat this phenomenon?

6. What recommendations would you give to help in the fight against money laundering in Uganda?