

**THE EFFECTIVENESS OF LEGAL REGIME ON MONEY LAUNDERING IN
UGANDA**

BY

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DECLARATION

I, NABIMANYA SHEILLAH, declare that this dissertation is my original work and has never been presented to any other University for the award of any academic certificate or anything similar to such. All sources and authorities have been duly acknowledged. I solemnly bear and stand to correct any inconsistency.

Signature:.....



Date

:.....th
29 June 2019

APPROVAL

I certify that I have supervised and read this study and that in my opinion, it conforms to the acceptable standards of scholarly presentation and is fully adequate in scope and quality as a dissertation in partial fulfilment for the award of Degree of Bachelor of Laws (LLB) of Kampala International University.

Signature: 

MR . BASAJJABALABA BRIHAN

SUPERVISOR

DEDICATION

I dedicate this work first and foremost to my beloved Guardians, Mr. Twesigye Nicholas and his family, and the family of my great grandfather, the late Mr. and Mrs. Ephraim karindiriza, to my sisters for their unconditional and unwavering support both morally and financially and diligence to see me through my studies. I am greatly indebted to them. May the Almighty God reward you abundantly.

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No Idea can be said to be entirely original for every novel idea may have been developed countless times before. This dissertation is merely an expression of the knowledge experienced and skills acquired during the author's lifetime of association with comrades et al.

My sincere gratitude first goes to the God Almighty who has given me strength, wisdom and zeal and this task and has been my provider throughout the entire course.

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LIST OF ACTS

Anti-money laundering Act of 2013

Others

Anti-corruption Act No.5, of 2009

Inspector General of Government Act No.5 of 2002.

Bank of Uganda Act cap 51, laws of Uganda 2000 edition

Financial Institutions Act NO.2 of 2004

The Foreign Exchange Act No.5 of 2004.

Micro Finance Deposit-Taking Institutions Act (MDIs) No.5 of 2003

LIST OF CASES

Uganda v Sserwamba No. HCT-00-AC-SC-0011- 2015(2017)

US V US\$4,255,625.39 (1982) 551 F supp.314.

The people vs Alphone (Al) Capone (1931)

Tulsa Investments limited \$ another vs Attorney General \$ another (2016)

LIST OF ABBREVIATIONS

AML	-Anti-Money Laundering
AMLA	-Anti-Money Laundering Act
BoU	-Bank of Uganda
CDD	-Customer Due Diligence
CFT	-Count Financing Terrorism
DNFBP	-Designated Non-Financial Business and Profession
ESAAMLG	-East and Southern Africa Anti-Money Laundering Group
FAFT	-Financial Action Task Force
FIA	-Financial Institution Act
FIA	-Financial Intelligence Authority
KYC	-Know Your Customer
MDI	-Micro Finance Deposit -taking Institutions
TNOC	-Trans-National Organized Crime

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ABSTRACT.

The study critically appraises the legal and institutional frame work of combating money laundering in Uganda in relation to the Anti- Money Laundering demands with the view of assessing the challenges, lacunas, hindrances and mile stones faced by the legal and institutional structure.

The major objective of this research is to evaluate the effectiveness and adequacy of the various laws and capacity of the various institutions in Uganda to meet the regional and international mandates to fight money laundering in regards to regional and international demands.

The study attempts to address four major Questions. And these are;

First: Whether the presence of a comprehensive law on anti-Money laundering provides for its legal and institutional frame work to adequately combat Money laundering.

Second: Whether, though attempted to be addressed, Money laundering in Uganda can be effectively addressed in all Institutions.

Three: Whether Money laundering in Uganda can be addressed on both a regional and international mandate demand.

Lastly: Whether the massive Public ignorance on Money laundering and inadequate awareness stimulates Money laundering in Uganda.

The study gives the background and financial mishap caused by money laundering in Uganda, attached with proceeds of laundered money. The research equally examines the scope of money laundering from a domestic, regional and international arena and outlines the consequences of money laundering to the legal regime.

The study critically asses the strength of the law, capacity of the institutions and the adequacy of man power, political will and enforcement policies to curb money laundering in Uganda.

In conclusion, the study outlines the challenges that affects the legal regime to combat money laundering and possible recommendations on the various ways of tackling money laundering scourge and in addition, what lacks in the law and the possible ways forward.

CHAPTER ONE

1.1 INTRODUCTION

Uganda is a country without a sea coastline. It's commonly known as a land locked country in East Africa. It is bordered to the west by the Democratic Republic of Congo, to the south west by Rwanda, to the south by Tanzania, to the east by Kenya and to the north by south Sudan¹, with a measuring area of 93,263 square miles². Uganda is a presidential republic, in which the president of Uganda is both head of state and head of government³. Uganda is governed by a multi-party political system⁴. Executive power is exercised by the president⁵.

The legal and institutional framework of Uganda's Anti-Money laundering regime has improved since its last assessment in 2005. The enactment of Anti-Money Laundering Act in 2013 ushered in a new legal framework on the criminalization of the offence of Money Laundering, preventive measures and institutional cooperation and the establishment of the Financial Intelligence Authority⁶.

The legal and institutional framework of Uganda has been relatively strengthened, however there are still significant gaps to be addressed.

The Anti-Money laundering Act provides for a strong framework for confiscation and investigative powers to law enforcement but there are still major weaknesses with the transparency of beneficial ownership of legal persons and arrangements requirements. The Anti-Money Laundering Act is not clear on supervision of all reporting entities.

The institutional framework is generally weak, with most of the agencies lacking the expertise and resources to start implementing the requirements and obligations set out in the Anti-Money Laundering Act.

Uganda's Anti-Money Laundering regime is relatively new. As such most of the reporting entities are in the very early stages of designing and implementing the preventive measures

¹ Alan Foreman, vehicle dynamics engineer 1998-present. <https://www.quora.com/why-is-Uganda-called-land-locked-country>.

² Statistical abstract, Uganda Bureau statistics, 2014.

³ https://en.wikipedia.org/wiki-politics_of_Uganda, Article 98(1), The Constitution of the Republic of Uganda, 1995, as amended.

⁴ <https://www.google.com/search?q>.

⁵ Article 99(1), Ibid.

⁶ Mutual Evaluation Report on AML and counter Terrorism financing measures ,of April 2016

prescribed by the Anti Money Laundering Act. Prior to the Anti-Money Laundering Act, the Financial Institution Act and the Anti-Money Laundering regulations issued pursuant to the Financial Institution Act in 2010 existed for financial institutions under the direct supervision of the Bank of Uganda but with the limited scope and the regulations did not provide any measures relating to the Terrorism Financing⁷

While the assessment team was able to determine that the understanding of Money Laundering risks in Uganda is still very low, the team is also of the view that vulnerabilities likely to increase ML risks are quite high given that Uganda has a huge *informal sector* and most of the transactions are carried out in cash which makes them difficult to trace. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 methodology. It was based on the information by Uganda and information obtained by the evaluation team during its onsite visit to Uganda from 15-26 June 2015⁸

The Anti-Money Laundering legal framework is still being developed to address some of the outstanding deficiencies. The both institutional framework of Money laundering needs to be improved to ensure that Money Laundering and Terrorism Financing cases are investigated and prosecuted.⁹

Money laundering is posing a serious threat that Uganda has to address due to global economic pressure.

Uganda has been battling against time to avoid the possibility of being blacklisted by the Financial Action Task Force [FATF], something that would override implications on the economy.

FATF had initially maintained Uganda on the list of countries with “strategic deficiencies” together with Iraq, Yemen, Bosnia ,Syria and among others, though recently in 2nd November 2017, Uganda registered a tremendous achievement upon its removal on the gray list by the FATF courtesy of Financial Intelligence Authority (FIA).

⁷ ESAAMLG- mutual- evaluation report on AML and counter Terrorism financing measures of April 2016

⁸ *ibid*

⁹ *ibid*

Uganda was maintained on that list after it adopted proposals on amending laws by the time of the FATF meeting in January 2017.

Furthermore, FATF required the Ugandan government to ensure banks and other financial institutions to put in place proper book keeping requirements and amend the Anti-Money Laundering Act.

Uganda missed two deadlines on document submission to FATF in December 2016 and 2017 January which posed a threat to Uganda that stood to be blacklisted by FATF if it had not complied with the FATF regulations to submit proper accounting documents by banks and other financial institutions by 2017¹⁰

The FIA revealed that, despite recent reforms in the existing law, Uganda continues to be high-risk theatre for money laundering.¹¹

The money laundering and terrorism financing national risk assessment report tabled before cabinet on 4th August 2017, says the country suffers from a low money laundering combating ability. The national risk assessment report says there are system flaws diminishing Uganda's capacity to fight Money Laundering¹²

The merging mobile money business has ushered in a new challenge for Uganda as it does not have proper legal framework to support AML supervision of mobile money service providers¹³

Between 2014 and 2016, only three related cases of ML were taken to court out of those reported to the Crime Intelligence and Investigation Directorate according to information at the Directorate of Public Prosecutions. Most of the reported cases, however, are based on suspicious and do not go for full trial. In 2015, united bank for Africa reported a Shs 5bn suspicious transaction. Other transactions involving billions of shillings were reported by KBC Bank [U] Ltd, Diamond trust bank and Post Bank Uganda Ltd. All investigations have stalled for over two years due to lack of evidence or inefficient system capacity.¹⁴

¹⁰ Daily monitor published on Friday ,march 17th 2017

¹¹ Suleiman kakaire, The observer, 8th November (2017).

¹² ibid

¹³ ESAAMLG-mutual-evaluation-Uganda (2016)

¹⁴ ibid

1.2 STATEMENT OF THE PROBLEM

The AMLA lays down a legal and institutional frame work for combating, prohibiting and preventing ML. There are other legislations, subsidiary legislations and regulations which provide the same provisions emulated by the AMLA. The ESAAMLG also stipulates an elaborate legal frame work for combating ML at a regional basis which conforms to the 40 (forty) plus 9 (nine) recommendations of FAFT.

Notwithstanding the enactment of the AMLA-2013, Uganda still encounters challenges in the implementation and enforcement of the AMLA to conform to the regional and international requirements.

There are number of factors which provide breeding ground for money laundering in Uganda¹⁵.

They include corruption, weak enforcement structures and poor regulatory and supervisory framework, non-ratification of requisite treaties for instance Uganda has not yet ratified the *Convention of Suppression of Financing Terrorism*, adopted by UN General Assembly which has received ratification from only 26 countries

The AMLA-2013 establishes Financial Intelligence Authority to act as an independent body with no interference from anybody or authority¹⁶. The major objectives and functions of the institution are provided for under the same Act respectively.

However, notwithstanding this elaborate anti-money laundering legal and institutional frame work, there is a challenge of ill financing and staffing of the institution and thus undermining the efficient and effective execution of duties of the institution in regards to its objectives to meet up with regional and international AML obligations.

Currently, though the parliament has just recently enacted the law against money laundering, there is still doubt that money laundering still poses a big threat. Therefore, the purpose of this research is to find out whether the protection in place is adequate and efficient to fight money laundering.

¹⁵ The Anti-Money laundering Risk assessment report released on 6th March, 2019.

¹⁶ S.18 AMLA-2013

1.3 OBJECTIVE OF THE STUDY

The main objective of this research is to evaluate the adequacy, effectiveness of the Anti- Money Laundering Act of 2013 and other relevant laws in support of prohibition of money laundering and the capacity of Financial Intelligence Authority and other relevant institutions to fight and combat money laundering in Uganda.

The specific objectives of the study are;

- i. To examine the nature and scope, techniques and consequences of money laundering in Uganda.
- ii. To identify the offence of money laundering and strategies/measures to combat money laundering as per the Anti-Money Laundering Act of 2013 and other Acts, Regulations and Policies
- iii. To examine the effectiveness of Anti-Money Laundering Act of 2013 and the capacity of Financial Intelligence authority efforts to combat money laundering in Uganda.
- iv. To identify the major challenges and possible recommendations to combat Money laundering in Uganda

1.4 RESEARCH QUESTIONS

- a. What is the nature scope, techniques and consequences of money laundering?
- b. What is the offence of money laundering and strategies/ measures to combat money laundering as per the Anti-Money Laundering Act of 2013 and other Acts Regulations and policies
- c. What is the effectiveness of the Anti-Money Laundering Act and the capacity of the Financial Intelligence Authority to fight and combat money laundering?
- d. What are the major challenges and possible recommendations to combat money laundering in Uganda?

1.5 HYPOTHESIS

Money laundering poses a serious social, economic pressure and political threat that need urgent solution to protect and shield the economy from related offences such as organized crime and terrorism financing.

This study shall focus on the effectiveness of Uganda's legal regime to fight and combat money laundering.

1.6 SCOPE OF THE STUDY

The research shall be a library research and shall focus on the Ugandan legal regime and the examination will be on the proceeds of crime and the enforcement Anti-Money laundering Act 2013 in contrast with other laws regarding money laundering in other countries like Kenya, Tanzania and shall consist of library research

Further the research is focused on the development of the policy on law formulation and institutional capacity to combat money laundering in Uganda.

Time scope. Further, I am committed to do this research with in three month from now (March to June)

1.7 LITERATURE REVIEW.

Different legislations, some institutions and scholars have attempted to define the term "Money laundering";

The **Anti-Money Laundering Act of 2013**, defines ML as the process of turning the illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under section 116 of this Act¹⁷.

The Handbook of Anti-Money Laundering¹⁸. The idea of money laundering is simple in principle. The person who has received some ill-gotten gains will seek to ensure that they can use these funds without people realizing that they are the result of inappropriate behaviour. To do this they will need to disguise the proceeds such that the original source of the proceeds is hidden

¹⁷ S.1 AMLA, 2013.

¹⁸ <http://www.amazon.com/Handbook-of-Anti-Money-Laundering-Dennis-cox/dp/0470065745>

and therefore the funds themselves appear to be legitimate. Given that it is often in cash that needs to be disguised, the criminals will often seek out legitimate cash-based businesses to enable them to disguise the source of the illegitimate cash. *Money laundering* refers both to the use of a cash business such as a launderette to facilitate the mingling of legal and illegal funds and also to the generic process of disguising the original proceeds of the funds, a process more normally referred to as layering. By mixing legitimate and illegitimate funds, the entire amount could potentially appear to be legitimate and would therefore have been laundered, achieving the objectives of the money laundering.

It's also important to recognize that there are two main styles of money laundering, that is professional and amateur. The professional money laundering will take the advantage of any perceived weakness in the systems of control operated by a financial institution or regulatory structure. Amateur money laundering takes the opportunity and does not really cover its tracks very well, leaving obvious cause for concern which are easy to identify either by employees being diligent or through modeling systems. It is normally the latter that is detected by the law-enforcement agencies. The professional one is always much harder and therefore more expensive to identify.

Clearly, organized criminals are able to take advantage of any number of cash based businesses to disguise illegal proceeds. The following are just few of the types businesses which have been subject to abuse by money launderers; launderettes, Casinos, Insurances, Assets management, property, Antiques. Bars and food restaurants

The Uganda Bankers' Association¹⁹; defines Money laundering as a process of conversion of the proceeds of criminal activity into apparently clean funds usually financial services. They further argue that When one obtains money from criminal activities like drug trafficking or corruption, they have to 'clean' the money to appear as if it was obtained through legitimate means. The process of doing this clean-up is called money laundering. They give examples of ML to include fraud which is an act of deception intended for personal gain or to cause a loss to another party. Corruption which can be defined as paying bribe for the benefit of a contract or

¹⁹ <http://ugandabankers.org/fraud-anti-money-laundering>, visited on 5thth April 2019.

any you wish for yourself, among others. The UBA further goes ahead put up regulations for AML for financial institutions to include;

- Financial institutions shall not keep fictitious or anonymous accounts that they cannot identify the true owner.
- Clear customer acceptance policies and procedures, which describe the type of customers, that is likely to pose higher than average risk to financial institution.
- Financial institutions should not open up an account for a customer where problems of verification and identity arise.
- Financial institutions shall keep records on every customer, Identification including copies or records on official, identification documents like passport, identity cards among others.
- Financial institutions shall maintain a minimum of ten years all necessary records to enable to comply with any information request.
- As a customer of a financial institution, you have the responsibility to provide all the requested information to ensure compliance with the anti-money laundering regulations.

Mr. Herman Tuhairwe, Gave an overview of the Anti-Money Laundering Legal Regime in Uganda²⁰ points out that In order for Uganda to fulfill its international obligations, Uganda enacted the Anti-Money Laundering Act 2013 to provide for the prohibition and prevention of money laundering. The offence of money laundering is created as an offence separate from other offences. The Act further creates the Financial Intelligence Authority as the body to spearhead the fight against money laundering activities. In line with international standards, the Act imposes duties upon various legal persons who might be used as conduits for money laundering. Property that is obtained from the proceeds of money laundering is dealt with in line with the provisions of the new law. Whereas the Act is in tandem with acceptable international standards in the fight against money laundering, as the paper will show, there is need for improvement. International standards should be suited to the needs of Uganda.

²⁰ www.researchgate.net/publication/307476582. Published by Mr. Herman Tuhairwe on 8th September 2017.

“Accountable persons” are recruited as gatekeepers with stringent Know Your Customer (KYC) and Customer Due Diligence obligations²¹. However he notes that challenges are bound to arise regarding the role of accountable persons. They have been given quite a lot of work to do which should be done by other government agencies such as the Police and Intelligence Services. Whereas these standards are in line with international agreements, they will be quite a burden to various accountable persons. Many of the accountable persons prescribed in the Act are private businesses whose perspective is profit maximization and will find it cumbersome to institute new mechanisms to help the state.

William R. Schroeder in FBI Law Enforcement Bulletin²², MONEY LAUNDERING: A Global Threat and the International Community; He notes in this publication that a new era of globalization has emerged, and it is shrinking the world and shaping domestic politics and international relationships.¹ Globalization involves the international integration of capital, technology, and information in a manner resulting in a single global market and, to some degree, a global village. This integration enables individuals and corporations to reach around the world farther, faster, deeper, and cheaper than ever before. However, the same aspects of globalization that have expanded opportunities from free-market capitalism also have resulted in new risks. Globalization has turned the international financial system into a money launderer(s) dream, siphoning off billions of dollars a year from economies around the world and extending the reach of organized crime. He further notes that this unintended consequence of globalization presents a serious challenge to law enforcement agencies and financial regulator because globalization represents an overarching international phenomenon, the international community(s) response to the challenge posed by money laundering has to address the financial, legal, and enforcement issues in a universal manner, through harmonization of remedies. Understanding the global threat of money laundering and the international community(s) response will assist investigators pursuing the evidentiary trail of a launderer by identifying the enforcement tools and techniques developed to overcome obstacles encountered when crossing international boundaries

²¹ Ibid.

²² Published by William R Schroeder in USA in May, (2001) pp. 1-7.

Verena Zoppei, Money Laundering: A New Perspective in Assessing the Effectiveness of the AML Regime²³; in this article, she notes that this offers a critical perspective on Anti-Money Laundering (AML) laws. It debates the issues posed by the continuing and widening criminalization of Money Laundering (ML) and examines whether the crime of ML threatens the core of the financial system. The focus is mainly on the way national legal cultures and enforcement practices in the European Union (EU) have responded to conduct which has been criminalized as ML. The underlying hypothesis is that the AML regime plays a symbolic role, while ML has been tolerated as the collateral effect of a deregulated financial system. She however observes that At a national level, especially in countries with strongly embedded criminal law principles, the versatile use of the offence of ML to tackle ever new emergencies has raised legal challenges that, far from being purely dogmatic, may hinder the effective implementation of such measure

Prof. Itzikowitz in Money Laundering²⁴, 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 dealings, bankruptcy dealings or even privileged / confidential communications. Furthermore, in her article on the effect of professional and confidentiality on AML measures (2006)²⁵ prof. Itzikowitz assesses the balance between common law requirements of confidentiality ad privilege and AML measures such as know your customer and the requirement to report suspicious transactions

1.8 RESEARCH METHODOLOGY

The study is doctrinal in nature and comprised of online and library research. It is qualitative in nature and is based on published literature, on online-resources, libraries, and printed resources in the field of economic crime.

Various libraries were consulted such as, The Kampala International University–Kampala Main campus Law library, Uganda Christian University library- Mukono.

²³ <http://sgocnet.org/site>, visited on 13th April (2019).

²⁴ Published By Prof. Itzikowitz n Uganda living journal , volume 3, No, 2, Dec (2005) ,p.121

²⁵ Itzikowitz, "legal professional privilege/intermediary confidentiality; The challenge for Anti-Money laundering measures"(2006) *money laundering Experience*

1.9 SIGNIFICANCE OF THE STUDY

The study gives a paramount historical background information and important steps for preventing money laundering and developing the AML legal regime in Uganda. The study shall highlights the inadequacies, inefficiency, weaknesses and gaps in AML law and institutions. It expounds on the existing nature, scope, and view of ML to gage it on the same platform with regional and international AML obligations hence pointing at the weaknesses and lope holes of the AML regime in Uganda and suggest possible recommendations if need be.

The study will add on the existing knowledge through academic and legal appreciation of the money laundering activities in Uganda

1.10 CHAPERISATION

This study shall comprise of five chapters, which include;

Chapter one, is a research proposal which consists of General Introduction and the background of the money laundering in Uganda, statement problem, objectives of the study, research questions , hypothesis, scope of the study, literature review, research methodology, significant of the study, Chapterisation, conclusion.

Chapter two will generally discuss the nature scope, techniques and consequences of Money Laundering in Uganda.

Chapter three will discuss the offences of money laundering and the strategies/ measures to combat Money laundering Act as per the Anti-Money Laundering Act and other Acts, Regulations and Policies

Chapter four will discuss the effectiveness of the Anti-Money Laundering act of 2013 and the capacity of Financial Intelligence Authority to fight and combat Money Laundering in Uganda.

Chapter five will finally, discuss the challenges that affects Uganda's legal regime to combat money laundering and the possible Recommendations and general conclusion.

1.11 CONCLUSION

Uganda's legal and institutional Anti-Money Laundering framework is still young²⁶ and in development stages, with the Anti-Money Laundering Act only enacted in 2013 and the Financial Intelligence Authority subsequently established in 2014²⁷. Measures and steps taken by the regulators are still inadequate to combat money laundering in Uganda.

Lack of funds, expertise to speed up the implementation of AMLA, is still the major hindrance to combat money laundering.

The limited understanding of Money Laundering risk has contributed negatively to the implementation and enforcement of the Anti-Money Laundering Act. Furthermore, no serious enforcement has been taken by the regulators against non-compliance with the Anti-Money Laundering Act requirements. With respect to the DNFBP sector, lack of understanding of Anti-Money Laundering obligations and Anti-Money laundering risks, absence of supervisory activities and remedial action taken by DNFBP regulators have resulted in the poor implementation of Anti Money Laundering obligations in their sector²⁸.

Since Anti-Money Laundering measures are still new with a new legislation and institutions in Uganda, the government of Uganda need to put a hand to support FIA financially so as to compete with the global requirements of FATF

²⁶ Mutual evaluation report on Anti-Money laundering and counter terrorism fincing measures of April 2016

²⁷ ibid

²⁸ Anti-Money Laundering and Terrorism Financing measures ,mutual evaluation report ,April 2016

CHAPTER TWO

NATURE AND SCOPE, TECHNIQUES AND CONSEQUENCES OF MONEY LAUNDERING IN UGANDA.

2.0 INTRODUCTION.

This chapter will discuss nature, scope, techniques and consequences of money laundering. This chapter examines the history of money laundering, (this will help us to understand how and when money laundering started), cycle (stages) of money laundering (this will examine the stages through which criminals use to legitimize the illicit funds) once criminals get such dirty money they have to disguise the source of such money and they have to do all it takes to legitimize such money. Money laundering is the instrument for connecting the informal illegal economy to the formal/legal economy. It has the cycle it passes through. Techniques/ typologies this includes the methods or modes of how money is laundered. Criminals have methods they use to launder money. Further these are complex and salient features of money laundering that launderers used to perfect their dealings. Finally shall be the consequences of money laundering. Being the evil act, it is having a financial implication on the economy which is negative. Criminals are capable of using their positions to destabilize the financial economy of the country by splashing money.

2.1 NATURE AND SCOPE OF MONEY LAUNDERING

Historical Background of Money laundering.

Before looking at the nature and scope, techniques and consequences of money laundering, it's prudent to first look at the history of money laundering in a general perspective.

The history of money laundering is basically that of concealing money or assets from the state either from blatant confiscation or from taxation and indeed, from a combination of both. And of course from those seeking to enforce judgments in civil cases or to follow the money that results from other crimes. It is interwoven with the history of trade and of banking²⁹.

Money laundering has been there since time immemorial as no one can truly and clearly tell when it first began or started, notwithstanding this, I agree with Sterling Seagrave in "Lords of the Rim" Historian³⁰ explains how in China, merchants some 2000 to 3000 years BC would

²⁹ www.countermonylaundering.com

³⁰ Sterling Seagrave, *Lords of the Rim: The invisible Empires of the Overseas, China, Putnam, 1995, p.12.*

hide their wealth from rulers who would simply take it off them and banish them. In addition to hiding it, they would move it and invest it in businesses in remote provinces or even outside China.

The term money laundering is said to have its origins from mafia's ownership of laundromats in US in the 1920's and 1930's. Organized criminals were making so much money from extortion, Prostitution, Gambling, and bootlegging, they needed to show a legitimate source of money. One way in which they could do this was to purchase outwardly legitimate businesses and to mix their illicit earnings with the legitimate earnings from those businesses. Laundromats were chosen because they were cash businesses. Al Capone used this method in Chicago. Journalist Geoffrey Robinson regards the tale that money laundering came from this as a myth. He states; money laundering is called what it is because it 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. In other words, the source of the illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income³¹

Notwithstanding the above, tracing back in the 20th century, the term “money laundering” is often said to have originated during America's Prohibition era and from the activities of gangsters³². Searching for a way to disguise the origins of large amounts of cash (often in Small denomination coins) generated by the illegal import and sale of alcohol and other activities such as gambling and prostitution, they struck on the idea of running cash intensive businesses such as Laundromats. These could be used to disguise the proceeds of Crimes as revenue generated by legitimate business activities without raising suspicion. Alphonse Capone (also known as Al Capone), one of Americas' most wanted criminals in the 1920s And 1930s, was of course famously convicted for tax evasion³³. This Ruling no doubt prompted many others to establish money Laundering operations to conceal their criminal proceeds and complicate any potential

³¹ Trinidad money laundering presentation.

³² Peter W. Schroth, “Bank Confidentiality and the War on Money Laundering in the United States”, the American Journal of Comparative Law, Vol.42, 1994, p.375. Also Daniel C. Richman and William J. Stuntz, “Al Capone's Revenge: An Essay on the Political Economy of Pre-textual Prosecution”, Columbia Law Review, Vol.105, 2005, p.583.

³³ The people Vs. Alphonse (Al) Capone (1931).

prosecutions. Further, ML can also be traced in the aftermath of the *1932 case of Meyer Lansky*³⁴

Another high profile example is the mechanism used by Richard Nixon's re-election campaign³⁵ to avoid the disclosure of financial contributions (either from donors who wished to remain anonymous, or illegal contributions from Corporations and other impermissible donor groups). Cash was collected and deposited into a bank which did not allow the US Government to subpoena their records in this case Banco International, and these funds could then be withdrawn into Cashiers cheques and easily moved around. In fact, Miami Dade County chief investigator Martin Dadis, who uncovered one such Cheques in the possession of one of the burglars of the Democratic National committee headquarters in Washington's Watergate Building, explained *"it's called laundering"*³⁶. "You set up a money Chain that makes it impossible to trace the source. The mafia gangs do it all the time. So does Nixon [...]"³⁷. Other theories about the origin of the term focus on how the Money laundering process was described by various authors; *"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. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate Income [...]"*³⁸. In the 1980s the term gained recognition in American legal System, being referenced in a 1982 court ruling³⁹ before being outlawed in the eponymous 1986 money laundering control Act. Indeed, the Act described it as the "process by which one conceals the existence, illegal source, or illegal application of Income, and then disguises that income to make it appear Legitimate." Since then, money laundering has been

³⁴ Abdullahi Shehu, "Money-Laundering: The Challenge of Global Enforcement", 2000, p.2. See also Wilmer Parker, "Black/Parallel Markets: When is A Money Exchange A Money Laundering?" Dickinson Journal of International law, Vol.13, 1995, p.423

³⁵ "A burglary turns into a constitutional crisis". CNN. June 16, 2004. Retrieved May 13, 2014, en.wikipedia.org/wiki/Watergate_scandal, site visited on 29th Oct. 2017.

³⁶ "A burglary turns into a constitutional crisis" CNN. June 16, 2004. Retrieved on May 13 2014, en.wikipedia.org/wiki/Watergate_scandal. Site visited on 4th April 2019

³⁷ Carl Bernstein & Bob Woodward, *'All the President's Men'*, 1974.

³⁸ Jeffrey Robinson, *'The laundrymen'*, 1996.

³⁹ *US v USS\$4,255,625.39 (1982) 551 F Supp.314*. This matter involved a forfeiture case, where it was decided that over US\$4mio in cash currency plus the balance on a bank account in Miami of more than US\$3.6mio could be seized, as a "substantial connection" between the money and narcotics transactions was established. The court in its judgment mentioned the fact that "Miami has become a Centre for drug smuggling and money laundering."

defined by different Bodies from all over the world; including the UN, the Financial Action Task Force (FATF), , The IMF and the World Bank; to name but a few. As criminals have become more adept in attempting to conceal the true origin and ownership of the proceeds of criminal activities, so too have definitions become more precise and detailed.

Money laundering was put onto the world stage through the adoption of the **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter: the 1988 UN Vienna Convention)**⁴⁰. The Convention recommends its parties to criminalize money laundering and drug trafficking⁴¹. The Convention is acknowledged as the most important step in the internationalization and criminalization of money laundering activities.

The Convention also played a significant role in introducing the concept of ‘money laundering’ worldwide. From this international initiative, the term ‘money laundering’ spread to the rest of the world through the enactment of domestic legislations and regulations.

Antecedents of the fight against money laundering in Uganda.

Money laundering activities in Uganda were detected as early as 1998 .the central bank of Uganda, initiated the drive to money laundering in Uganda⁴². The battle for fighting money laundering started when Uganda signed a memorandum of understanding with East and southern Africa Anti-Money Laundering Group (ESAAMLG). Soon after Uganda established a committee called Uganda Anti-Money Laundering Committee (UAMLC) with a common goal of coordinating a nation –wide Anti-Money Laundering policy⁴³. In 2002, there was growing concern in Uganda for lack of visible progress or promulgation of Anti Money laundering law. In December during the same year, the bank of Uganda issued the anti-money laundering guidelines as interim measure to all financial institutions⁴⁴ . In 2006, the ISS carried out a money laundering survey which concluded that money laundering is a crime regardless of whether the country in which it occurs has a specific law penalizing its commission. In 2013. **The Anti-Money**

⁴⁰United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, open for signature in Vienna, Austria in December 1988 and enter into force in November 1990.

⁴¹ Ibid, Article (3) (1) (a) and (b)

⁴² Mulindwa, the effect of money laundering on an economy ‘Capital market quarterly. Vol .6. No 2 ,(2003) p.24

⁴³ Interview with Mr.Bisereko Kyomuhendo , assistant registrar minister of justice and member UAMLC and ESAAMLG; interviewed by Olekma Abdunnasir , Friday April 27th 2007)

⁴⁴ Bank of Uganda , annual supervision report(2002)

Laundering Act was enacted as the law which makes the money laundering as the crime and the respective penalties are specified. The same Act establishes the **Financial Intelligence Authority under section 18** *discussed in chapter one*

2.1.1 Money laundering cycle

Money laundering has cycle through which it takes place, the cycle has three stages; **Placement, layering and integration**⁴⁵.

The initial stage is **placement**, at this stage the launderer disposes of his “dirty money”. The launderer attempts through placement to put the money into financial system unnoticed. This is commonly done by asking a number of people to make small deposits or by physically taking the money out of the jurisdiction⁴⁶. This is a stage at which criminally derived funds are introduced in the financial system. Placement refers to the process of transferring the proceeds of crime into a financial system. The rationale of the placement stage is to move cash as fast as possible into other types of assets in order to escape detection.

The illicit cash at this stage is manipulated into a less suspicious form. This could be done by depositing illegal cash directly into a financial institution, or by purchasing expensive goods that are resold with payments via cheques, and then investing them in financial institutions. Another method is by using front companies through operating restaurants, hotels, or casinos. The perpetrators can also use other tools such as an insurance agent, travel agency, the security sector, real estate agency, or the underground banking system to conceal the illicit sources of funds. Through these methods, the illicit funds can be integrated with clean money before placing them in the financial institution. This stage is the riskiest for the criminals because it is easy to detect through a paper trail.

The second stage is **layering**, this occurs by conducting a series of financial transactions that, by the reason of their frequency, volume or complexity resemble legitimate financial transaction.

⁴⁵ Almost all books and articles that elaborate the process of money laundering activities which involve placement, layering, and integration. For example, William C. Gilmore (2004), *Ibid*, p.29.

⁴⁶ Trinidad money laundering presentation

The aim here is to make it extremely difficult to trace the funds back to the crime.⁴⁷ This is substantive stage of the process in which the property is 'washed' and its ownership and source is disguised. This stage concerns the movement of money out of the country through a series of complex financial transactions.⁴⁸ Such transactions are designed to disguise the audit trail and provide anonymity to blur the origin of the proceeds. In other words, through this stage, the perpetrators separate the proceeds from its sources through complex financial transactions. To achieve this purpose, the perpetrators use offshore banks,⁴⁹ shell companies,⁵⁰ or tax havens⁵¹ in conjunction with offshore jurisdictions⁵² to make it virtually untraceable. These intermediaries are relatively safe from detection by law enforcement agencies because they have weak anti-money laundering legislations

Integration is the final stage at which the 'laundered' property is re-introduced into the legitimate economy. Here the launderer integrates the illicit funds into economy. He does this by making it appear that funds have come from a legitimate source⁵³. At this stage, the criminal combines the newly laundered funds with that of a legitimate origin, making it more difficult to separate both.⁵⁴ The common techniques used at this stage include bank transfer, foreign draft, money orders, offshore accounts and among others⁵⁵.

Through this step, the illegal funds are introduced into the mainstream legitimate economy. After reaching this stage, the criminals are free to use the funds in various ways. The proceeds could be reinvested into a criminal enterprise and then used for conducting other crimes such as terrorism. The illicit funds could also be used to make investments in the legitimate economy

Accordingly, the above cycle of money laundering can occur during three dimension/s namely: *Internal, incoming and outgoing money laundering.*

⁴⁷ *ibid*

⁴⁸ William C. Gilmore (2004), *Ibid*.

⁴⁹ Mark Pieth, "The Harmonization of Law against Economic Crime", European Journal of Law Reform, Vol.1. No.4, 1999, p.529.

⁵⁰ http://encarta.msn.com/dictionary_1861733097/shell_company.Html.

⁵¹ http://www.investorwords.com/4899/tax_haven.html

⁵² <http://stats.oecd.org/glossary/detail.asp?ID=5988>

⁵³ Trinidad money laundering presentation

⁵⁴ William C. Gilmore (2004), *Supra* note 43.

⁵⁵ Mulidwa. 'The effect of money laundering on an economy', capital markets quarterly, vol 6. No. 2. (2003) p., 24

Internal money laundering happens by laundering the proceeds, of or assets derived from the crime within the country where the crime was committed. Then incoming money laundering occurs where the proceeds laundered are derived from crimes committed outside the country. Finally outgoing money laundering the proceeds of the crimes committed within country are laundered through exportation to one or more countries.⁵⁶

Money laundering uses the principles of hiding, moving, and investing.⁵⁷ First, the money is hidden from the direct association of the crime. It then is moved through financial and non-financial institutions to other jurisdictions. Finally it is invested into legitimate businesses so that it can be used just like any other form of capital. Another expression for describing money laundering activities is: get it out, cover it up, and bring it back to the legitimate economy in order to take maximum advantage of it.

Money laundering is also used as an instrument for connecting the informal/illegal economy to the formal/legal economy.⁵⁸ Here in this context, criminals launder the ill-gotten gains, and then, moving them into the formal economy. However, this kind of conduct could also be done by means of capital flight and tax evasion in which the money is derived from legitimate sources. This is to say; the sources of funds laundered can be obtained not only from illegal assets such as drug trafficking or corruption, but also from legal assets such as capital flight or tax evasion.

A common theme to all money laundering offences is that they relate to the conversion, transfer, concealing or disguising, movement, arrangement, acquisition and possession of the proceeds of crime

To this effect, the nature and scope described by the international instruments can justifiably be used to describe the nature and scope of ML in Uganda.

⁵⁶ Goredema, money laundering, Uganda living law journal, vol.3, No 2 Dec(2005), p.121

⁵⁷ The United Nations International Money Laundering Information Network (IMOLIN), The United Nations, (2006).

⁵⁸ Kris Hinterseer, *Criminal Finance: The Political Economy of Money Laundering in a Comparative Legal Context*, (The Hague-London-New York: Kluwer Law International), (2002). P.11. See also Antoinette Verhage & Paul Ponsaers, "Power-seeking crime? The Professional Thief versus the Professional Launderer", *Crime, Law & Social Change*, (2009), p.401.

²⁸ Kris Hinterseer (2002).ibid p.1

2.2 TECHNIQUES OF MONEY LAUNDERING

These refers to the typologies, methods and trends of money laundering. The money laundering techniques are complex and salient features of money laundering. There are many techniques of money laundering, however some of the commonly used are discussed below;

2.2.1 Cash smuggling⁵⁹, this is one of the oldest methods used for general smuggling of currency. The bulk shipments of cash hidden in cargo are driven across the border, though it is illegal to export a bulk amount of cash. Every country has its limits of carrying cash legally across the border like us restricts the currency of \$10000 without filing a report under international transportation of currency or other monetary instruments. Regardless of such restrictions, criminal have been known to purchase of shipping business to transfer cash hidden in the goods

2.2.2 Black salaries, a company may have unregistered employees without written contracts and pay them in cash salaries. Dirty money might be used to pay them ⁶⁰

2.2.3 Offshore accounts (shell banks)⁶¹. Offshore accounts are often used by criminals to obscure the audit trail as many different countries in the world offers strictly law for bank secrecy to attract money in their countries. In respect of this law, the country can also refuse to assist international authorities in revealing the information of customer. Many of these countries also attracts clients by selling shell banks which means a bank which is incorporated in jurisdiction in which the bank has no physical presence and also unaffiliated with the regulated financial institution. These kinds of banks, shell banks are generally developed in a financial haven country for providing the appearance of legitimacy.

A customer only needs a false name to open an account in these kinds of banks which provides the customer complete secrecy and protects the customer from investigations and possible prosecutions and after establishing the shell bank the customer may gain advantage of payable though or pass through accounts.

2.2.4 Shell Company this is another method or technique of money laundering which criminals use. It means that the criminals will open an account as a corporation rather than opening an

⁵⁹ <https://piie-com-publications/chapter-preview/3813iie3705>

⁶⁰ " underground economy issues. Ontario construction secretariat " archived from the original on 16th Dec (2010)

⁶¹ [http:// www.austrac.gov.au/sa-brief-real-estate-ml-methods](http://www.austrac.gov.au/sa-brief-real-estate-ml-methods).

offshore account as an individual. Usually it is essential for the company to have participated already in the legal business dealings to develop an arena of legitimacy. And once Shell Company developed, it can be easily to transfer huge amount of money to the offshore haven and at the same time avoiding the taxes and registration regulations.

The criminals owing that shell company may transfer the ownership of the company to a trust in order to difficult the investigation and the actual control of the company still remains with the criminal though it has been transferred in the name of a trust and the clients have full access to the assets of the company.

2.2.5 Underground banking. The criminals consider this as the safest way of laundering money and also one of the most common method used for the purpose. Basically there are *two types of* underground banking systems which are known as *hawala/ hundi* and *chitti/chop* banking (Trehan 2002). The term hawala in Indian and in Pakistani language means reference and in Arabic it means transfers related to money where as Hundi means trust. Chitti means a mark whereas chops are the seals used to ease the money transactions. These methods were introduced in order to avoid risk of carrying large amount of money by the traders. The idea behind these concepts was that a trader would show a letter of credit or a symbol to the distant banker and that foreign distant bankers would be the representatives of the traders locals bankers and then foreign bankers would honor the letter or token(trehan 2001)

2.2.5 Hawala and Alternative Remittance Systems⁶². (“ARS”). The two terms overlap each other. The word “Hawala” comes originally from the Arabic language and means transfer or remittance. Hawala provides a fast and cost-effective method for worldwide remittance of money or value, particularly for persons who may be outside the reach of the traditional financial sector. In some jurisdictions, for instance Kenya, hawala is illegal as the very features which make hawala attractive to legitimate customers (mainly expatriates remitting money to relatives in their home country), as it comprises efficiency, anonymity, and lack of a paper trail also make the system attractive for the transfer of illicit funds

⁶² [https://www.treasury.gov/resource-center/terrorist-illicit-finance/pages/Hawala and alternative remittances.aspx](https://www.treasury.gov/resource-center/terrorist-illicit-finance/pages/Hawala-and-alternative-remittances.aspx)

Hawala is associated with money laundering, in that it does not conform to the legal regulations of money transfer and movement. However, hawala is also used to transfer money where individuals cannot send money to family and friends in countries, due to lack of western –style banking, the definition of hawala is an informal money system that does not transfer actual funds between countries.

In Hawala transactions, the sender of the money gives the cash to the remitting agent who notifies a corresponding counterpart in the country or location of the recipient, giving them instructions to release an equivalent sum of money to the intended recipient. The transaction cannot be traced back as Hawala operators do not keep records⁶³.

Alternative Remittance System is defined as any system used for transferring money from one location to another and generally operating outside the banking channels. Such channels are not registered and thus difficult to be regulated by the central banks in various jurisdictions.

ARS services range from those managed by large multinational companies to small local networks and can be of a legal or illegal nature and make use of a variety of methods and tools to transfer the money.

The use of Alternative Remittance System for criminal purposes starts with a simple transaction designed to dispose of criminal cash and the auditing in a bank account becomes unclear. The investigation of these operations from the entry of the funds into the Alternative Remittance System to the final beneficiary can, however, be characterized by a high degree of complexity. This level of complexity is mostly due to very complicated systems used and number of jurisdictions through which a transfer could pass⁶⁴. Such system can be briefly described as below;

2.2.6The Originator of the Transfer⁶⁵

Transactions begin by the payment or handing over of money by the originator to the ARS operator. At this point, the originator also specifies the recipient or beneficiary for the transaction along with his or her location. The funds can be paid in cash, cash equivalent, cheques, and other monetary instruments or in stored value cards. In certain situations, the

⁶³ Business Daily, George Ngigi, Monday, April 29th 2013.

⁶⁴ Ibid.

⁶⁵ Report of the Asia Pacific Group (APG) on Money Laundering, the terrorist events of September 2001

originator may pay funds directly into the bank accounts belonging to or controlled by the alternative remittance system operator

2.2.7 Structuring⁶⁶ .often known as *smurfing*, this is method of placement whereby cash is broken into smaller deposits of money, used to defeat suspicion of money laundering and to avoid anti-money laundering reporting requirements. A sub- component od this is to use smaller amounts of cash to purchase bearer instruments such as money orders , and then ultimately deposit those , again in small amounts

2.2.8 Round-tripping⁶⁷, here money is deposited in a controlled foreign corporation offshore, preferably in a tax haven where the minimal records are kept, and then shipped back as a foreign direct investment, exempt from taxation. A variant this is to transfer to a law firm or similar organisation as funds on account of fees ,then to cancel the retainer and , when the money is remitted , represent the sums received from lawyer a legacy under a will or proceeds of litigation

2.2.9 Bank capture⁶⁸. In this case, money launderers or criminals buy a controlling interest in a bank, preferably in a jurisdiction with weak money laundering controls, and then move money through the bank without scrutiny

2.2.10 Cash intensive businesses⁶⁹. In this method, businesses typically expected to receive large proportion of its revenue as cash uses its revenue as cash use its accounts to deposit criminally derived cash. Such enterprises often operate openly and in doing so generate cash revenue from incidental legitimate business in addition to the illicit cash –in such cases the business will usually claim all cash received as legitimate earnings. Service businesses are best suited to this method, as such enterprises have little or no variable costs and/or a large ratio between revenue and variable costs, which makes it difficult to detect discrepancies between revenues and cost. Examples are parking structures, strip clubs , tanning salons , car washes , arcades , bars , restaurants, and casinos

⁶⁶ <https://legal.dictionaty.net/money-laundering>.

⁶⁷ <https://www.business.dictionaty.com/dictionary/round-tripping>

⁶⁸ <https://legal.dictionaty.net/money-laundering>.

⁶⁹ *ibid*

2.2.11 Use of third parties⁷⁰. To avoid direct involvement in the money laundering process, criminals may seek to buy property in the names of a third party or family member as the legal owner. Criminals provide illicit funds to a third party to purchase the real estate on their behalf or criminals may use third party's account to deposit and withdraw illicit funds to buy property or they may use the third parties to transact on their behalf

2.2.12 Purchase of real estate to facilitate other criminal activity. Criminals may buy property using illicit funds with the intention of conducting criminal activity at the property, for example, cultivating cannabis or producing synthesis drugs. Funds generated from this criminal activity may then be used to buy additional properties. By investing illicit funds in real estate, criminals aim to disguise the original source of the funds⁷¹

2.2.13 Manipulation of property values⁷². Manipulation of property values criminal buying and selling real estate at a price above or below market value. Buyers sellers and/or third parties (for example, real estate agents) collude to under or overestimate the value of a property.

2.2.0 Predicate offences.

Also it's important to understand how money laundering is committed or nature of the offences that aids the commission of money laundering. Such offences are called predicate offences.

2.2.0 Background of money laundering predicate offences

2.2.0.1 Introduction

Money laundering as a crime only attracted interest in the 1980's, essentially within the drug trafficking context. It was from an increasing awareness of the huge profits generated from this criminal activity and a concern at the massive drug abuse problem western society.⁷³

Governments also recognised that criminal organisations, though the huge profits they earned from drugs, could contaminate and corrupt the structures of the state at all levels⁷⁴.

As a 1993 UN report noted;

⁷⁰ <http://www.austrac.gov.au/sa-brief-real-estate-ml-methods>

⁷¹ <http://www.austrac.gov.au/sa-brief-real-estate-ml-methods>

⁷² *ibid*

⁷³ Trinidad money laundering presentation

⁷⁴ *ibid*

The basic characteristics of the laundering of the proceeds of crime, which to a large extent also mark the operations of the organized and transnational crime , are its global nature , the flexibility and adaptability of its operation, the use of the latest technological means and professional assistance , the ingenuity of its operators and the vast resources at their disposal

Article 1 of the draft European communities (EU) Directive of March 1990 describes money laundering as; the conversion or transfer of property , knowing that such property is derived from serious crime , for the purpose of concealing and disguising the illicit origin of the property or of assisting any person who is involved in committing such offence or offences to evade the legal consequences of his action , and the concealment or disguise of the true nature , source, location, disposition , movement , rights with the respect to , or ownership of property is derived from serious crime⁷⁵

2.2.0.2 Predicate offences of Money Laundering.

A “**predicate offence**” is an offence whose proceeds may become the subject of any of the ML offences. The offence of money laundering is intrinsically linked to the predicate offence that created the criminal property

The financial Action force makes the following recommendations; countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by the reference to all offences or to a threshold linked either to category of serious offences or to the penalty of imprisonment applicable to the predicate offences (threshold approach) or to a list of predicate offences, or a combination of these approaches.

Where countries apply a threshold approach , predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by maximum penalty of more than one years imprisonment or for those countries that have minimum threshold for offences in their legal system , predicate offences should comprise all offences , which are punished by a minimum penalty of more than six months imprisonment.⁷⁶

⁷⁵ ibid

⁷⁶ Trinidad money laundering presentation

Such offences include the following;

Drugs and Narcotics smuggling

Proceeds of drug sales is one of the major sources of laundering. Its level of circulation in Kampala has hit alarming levels recently prompting the Police to do an operation in Kisenyi in down town Kampala, a notorious hub of drug trade.

Between 2002 and 2004⁷⁷, the Uganda police with the help of United States and British anti-narcotics authorities established that Entebbe airport was being used by a gang of drug traffickers as the region's main conduct of narcotics and illegal drugs mainly from south Africa, Nigeria to Pakistan, it was further established that the proceeds of such dealings were subject to money laundering scheme in Uganda.⁷⁸ This led to the arrest of the top security officials⁷⁹. Who were suspected of aiding and abetting the dealers.

According to *Detective Superintendent of police Tinka Zarugaba* who is also the deputy in charge at the Directorate of Narcotics police department at Kibuli CIID headquarters as he then was, the department carried out a massive raid in the Kisenyi area after a tipoff and they arrested many buyers and sellers of drugs⁸⁰.

Armed robbery⁸¹. This is a serious crime and can permanently traumatize its victims, both physically and psychologically. This is both crime of violence and serious economic crime. This involves armed individuals who target specific individuals either the purpose of depriving them of their properties⁸². Such deprivation can sometimes be at the expense of the life of the victim⁸³. An example of this is the recent murder of Chinese national called Yang Yeshe who was an employee of a steel company called Nile steel Company between the villages of kyegombya and Mbalala in Mukono District⁸⁴.

⁷⁷ John Kanya, Uganda is a victim of drugs, the new vision, Thursday, march 7th 2002 p,19

⁷⁸ ibid

⁷⁹ Edward Ojuulu, 'Uganda police tighten noose on drug dealers'. The East African, Monday July 8th, 2002. P.1

⁸⁰ Red Paper, March 16th 2015.

⁸¹ [https://Britannica.com-topic-armed robbery](https://Britannica.com-topic-armed-robbery)

⁸² Uganda v Mbeine & 4 Ors (Crim. Case No.01015-2012) [2013] UGHCCRD 14 (4 April 2013)

⁸³ ibid.

⁸⁴ Sharon Kyatusiimire, ChimpReports (an online news network), 1st Sept. 2017.

In Uganda , between 1999 and 2000, there were 3760 reported cases of armed robbery and 3408 cases of motor vehicle theft. Notably, proceeds of such crime can be invested in a business to disguise the proceeds into a legitimate source⁸⁵.

Corruption⁸⁶. Corruption is the abuse of entrusted power for private gain. Money laundering is interlinked with corruption. Corruption and Money laundering are like day and night as one follows another⁸⁷. Money laundering is the most rampant crime in Uganda closely linked to Uganda's endemic public corruption⁸⁸. It connotes the embezzlement of public funds or property for personal gain or for another in return for a favor⁸⁹. Corruption is major threat to the economy. Between 2014 and 2016 three money laundered cases as result of corruption were taken to court according to the information at the directorate of public prosecutions⁹⁰.

Criminals who engage in swindling public funds usually obscure the proceeds of such crime by either buying assets; (For example estates) or investing such money into legitimates businesses to disguise its original source. Many criminals have been convicted of corruption, which act is usually associated and leading to Money laundering⁹¹.

Bank frauds⁹². This is the use of potentially illegally means to obtain money, assets, or other property owned or held by a financial a financial institution, or to obtain money from depositors by fraudulently posing as a bank or other financial institution. Bank frauds account for a large measure of money laundering. Fraud means an act of deception for personal gain or to cause loss another party. And this is a general criminal offence. One knowingly makes a false representation of material fact.

⁸⁵ Uganda police / CID Records. Annual crime reports 2000. Appendix 1

⁸⁶ [http://www.transparency.org.what is corruption.](http://www.transparency.org.what%20is%20corruption)

⁸⁷ <https://www.igg.go.ug>

⁸⁸ <https://www.issp-cgcc-joint-baseline-study-on-anti-money-laundering-and-counter-terror-terror-ism-in-the-igad-subregion>

⁸⁹ S.2 Anti-Corruption Act, 2009.

⁹⁰ [https://www. Observer.ug](https://www.observer.ug) November 8, 2017

⁹¹ Uganda v Kazinda (HCT- 00- SC- 0138- 2012) [2013] UGHACD 10 (19 June 2013)

⁹² [http://en/Wikipedia.org,wiki,bank-fraud](http://en.wikipedia.org/wiki/bank-fraud)

There are different kinds of fraud that takes place in the banks, such include wire transfer fraud, accounting fraud, illegal printing of cash fraudulent loans, fraudulent ATM transactions⁹³

Also according to the interview, the executive director of financial institution Authority, Mr. Sydney Asubo spoke to the independents Agnes E Nataba that *“banks remain the major channel of money laundering”*.⁹⁴ He continued and said that, from the national risk assessment, *“we were able to track problem areas. For instance the main channel that launderers use is the banking industry although there are also other money remittances like the forex, non-regulated or under regulated businesses like the real estate sector”*⁹⁵

Fictitious or Bogus transactions. This is where the criminals withdraws money from the bank in the name another one of the common modes of money laundering⁹⁶. This bogus transaction overlaps with bank frauds. A person fraudulently misrepresents the bank that he is the owner of the account and withdraws money from the bank account of another person. Case example a prominent businessman was used to execute a transfer of US\$5 million from Kenya 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 both in Kenya and Uganda. The transfer was the purchase price of bogus construction equipment. The sale was cancelled at the instance of customer and the refunded, less a cancellation penalty of US\$40,000⁹⁷.

Normally happens where the criminals withdraw money from banks in the names of another (the account owner)⁹⁸.

Illicit guns/ arms trading, the business of illicit arms, arms trading is another avenue affiliated to money laundering. In 2001, illicit arms were estimated at 100,000 gun in Uganda, half of which were in karamoja.⁹⁹ In 2007, the selling price of illegal arms was high for instance, an AK47 previously was at or less than 200,000shs, but the purchase price was increased to

⁹³ <http://ugandabankers.org/fraud-anti-money-laundering>.

⁹⁴ The independent , business magazine interview , may 16, (2018)

⁹⁵ ibid

⁹⁶ Uganda v Kazinda HCT-00-SC-0138-2012(2013) UGHACAD10(19 JUNE 2013)

⁹⁷ ISS, Money laundering survey ,op cite ; note 46, p.9

⁹⁸ Uganda V Serwamba David Musoke & 6 others HCT-00-AC-SC -0011-2015

⁹⁹ 'Uganda lowers on corruption scale'. The new vision , Wednesday June 6, 2007, p.1

800,000shs on the black market, while QK47 bullet was increased to 5000shs on the black market from 300shs. Since 2006 the president's disarmament program recovered 7,199 guns out of estimated 100,000 illegal guns in the country (2007)¹⁰⁰

Smuggling ¹⁰¹this is illegal transport of goods, especially across borderlines. Smuggling is engaged in to avoid taxation or to obtain goods which prohibited in a certain region. Items that are often that are often involved in smuggling include alcohol, tobacco, illegal drugs, and arms and even immigrants.

Criminal networks that smuggle human beings for financial gain increasingly control the flow of migrants across borders. Usually the travelling conditions are inhumane, the immigrant overcrowded in trucks or boats and fatal accidents occur quite frequently. After their arrival in their destination country, the illegal status of the migrants puts them into the mercy of their smugglers, which often force them for years to work in the illegal labor market to pay off the debts incurred as a result of their transportation. As the result when smuggling takes place, the proceeds of which are referred to as money laundering

Human Trafficking¹⁰². Human trafficking is the action or practice of illegally transporting people from one country or area to another typically for the purposes of forced labor or sexual exploitation. This is also defined as the trafficking in Persons as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation¹⁰³. This is selling of people from one country to another. People are persuaded in the name of getting for them jobs abroad and as the result the return is the other way around where they are exploited. Such

¹⁰⁰ Frank Nyakairu, prices of illegal Guns Up', the daily monitor, Monday June 2007, pp 1-2

¹⁰¹ Smuggling law and legal definition / USLegal,inc

¹⁰² [https://www.google.com/search/redir-esc=\\$client=tablet-unknown\\$hl=en-NL\\$safe=images\\$oe=utf-8\\$q=human%20trafficking%20definition\\$source](https://www.google.com/search/redir-esc=$client=tablet-unknown$hl=en-NL$safe=images$oe=utf-8$q=human%20trafficking%20definition$source)

¹⁰³ Article 3, paragraph (a) of the Protocol to control, suppress and punish Trafficking in Persons- 25th Dec. 2003.

Exploitation include, prostitution or other forms of sexual exploitation, forced labor exploitation or for other forms of slavery or practices similar to slavery, servitude or the removal of organs.

In 2007, it was reported that Uganda police captured a man believed to be behind human trafficking racket in Uganda. He was trafficking young men and women to Canada on pretense of getting them employment¹⁰⁴. And as the result upon getting such money from trafficking people, the criminals use such money for lawful purpose to disguise their source.

2.2.1 Money laundering can be detected in the following ways, namely

Reluctance to provide information¹⁰⁵. Once such huge amount of money is deposited or transacted and the client cannot explain or becomes reluctant to explain and to provide detailed information about the source of such money (disclosing the business), this can be the alarming ground to detect money laundering. According to the financial action task force, the red flag of money laundering can be by proved by failing to disclose who the client is, who the beneficial owner is, or to provide the information, data or documents usually required to enable the transactions execution.

Incomplete or inconsistent information¹⁰⁶. According to the lowers risk group, accountants should be on the lookout for documents that cannot be verified, multiple tax IDs, and the clients who try to shield the identity of beneficial business partners or owners as well as a reluctance to provide business information. The FATF adds that incomplete or false documentation is another red flag.

Unusual money transfers or transactions¹⁰⁷. Money changing hands in unusual ways should raise the concerns of accountants working with the client. The CCAB advises the accountants to be aware of the funds transferred to and from location of concern as a possible red flag

Complex group structures without obvious explanation¹⁰⁸. The CCAB warns that criminal schemes are often very sophisticated, with complicated structures designed to disguise the true

¹⁰⁴ Carol Natukunda, Reuben Olita , 20 years Old man arrested over human trafficking , the new vision , Thursday June 7th , (2007) , p3.

¹⁰⁵ [https://www.telegraph.co.uk/momey/criminal-actiesties/money laundering](https://www.telegraph.co.uk/momey/criminal-actiesties/money%20laundering)

¹⁰⁶ ibid

¹⁰⁷ ibid

source and ownership of money and other assets even from expert's eyes. As a result. If the group structures is set up in an odd way, and there is no proper explanation for this, it should warrant investigations

2.3 CONSEQUENCES OF MONEY LAUNDERING IN UGANDA.

Money Laundering has corrosive effect on country's economy, government and social well-being. Without effective measures, money laundering may tear apart the economy and can also strike the integrity of country's financial institutions.

The activities of powerful criminal organizations can have serious social consequences. Laundered money provides drug traffickers, organized criminal groups, arms dealers and other criminals with the courage for operating and developing their enterprises.

The following are the consequences of money laundering;

2.2,1 Money laundering undermines international efforts to establish free and competitive markets 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 rise to unfair competition and considerably promote inflation in the countries where the criminals conduct their business dealings. The criminals becomes the heart of the businesses in which they have interests because of their positions and as the result it becomes difficult for the businessmen to compete favorably with money launderers (criminals) in the market.

Money laundering transfers the economic power from the government, citizens to criminals. This yields corruption levels to the pick as the superstructure is prone to compromise by the criminals. An example is the Katosi road where fraudulent criminals embezzled public funds meant for the construction of the road.

Money laundering promotes tax evasion. As the proceeds of tax evasion are guised into legitimate private money, the economy's tax base is undermined and hence low tax rates. This further raises secondary effects such as low salaries for Civil servants and poor health, Education and infrastructure status due to inadequate finances to cater for all there in. For example, Uganda

¹⁰⁸ ibid

is currently undergoing elite defiance where the judges¹⁰⁹, prosecutors¹¹⁰, teachers¹¹¹, Doctors¹¹² among other professionals are all carrying out sit down strikes due to low salaries.

Money laundering facilitates crime and criminal networking. It facilitates crime in the sense that such criminals have access to equipments for conducting crimes such as guns, booms and among others. It also empowers criminals to network easily for instance terrorists, kidnapper's drug dealers, terrorism, illegal arms traffickers, and corrupt officials to expand their operation.

It destabilizes financial system. Money laundering creates systematic risks for the stability of the financial sector and development as it erodes away the credibility and integrity of financial institution; reduces public confidence in the financial system, causes violability in exchange rates and interests rates due to unanticipated cross- border transfer of funds, increases instabilities and risk for assets quality for financial institutions¹¹³

It creates political instability. Money laundering can easily destabilize the political and security of a country, especially in countries with weak military forces, laundering is often used in the process of financing of terrorism, insurgency or political rebellion. For instance , its highly believed that the defunct Allied Democratic Front (ADF) its operations through money laundering; 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 rebellion¹¹⁴

Reduction in government revenue. Money laundering also reduces tax revenue as it becomes difficult for the government to collect revenue from related transactions such as human trafficking, smuggling and others which frequently take place in the underground economy. The consequences of Money Laundering are as drastic on to the economy as they affect and undermine the economy socio-economic and politically.¹¹⁵

¹⁰⁹ Daily Monitor, 28th Aug. 2017.

¹¹⁰ Daily Monitor, 20th June, 2017.

¹¹¹ Daily Monitor, 17th July 2012

¹¹² Daily Monitor, 11th Oct. 2017.

¹¹³ Emeru, op cite , note 65

¹¹⁴ Edopu, infrastructure to detect and control money laundering and terrorism financing in Uganda 2004

¹¹⁵ Ibid.26, 27

In conclusion, money laundering is not a new crime, it has been there since time immemorial as no one can truly tell when it first began. However we can thus trace the history of money laundering in the early 2000 to 3000 years in china. Money launderers have to move their money from one country to another or from one count to another where they will not to be followed, they need to disguise such money to make it appear from a legitimate source through various modes as discussed above. Predicate offence that can lead to the crime of Money Laundering include¹¹⁶ but not limited to drug trafficking, robbery, corporate crime/fraud, Terrorism financing and interalia

¹¹⁶ |bid. 26.

CHAPTER THREE

3.0 THE OFFENCES OF MONEY LAUNDERING AND STRATEGIES / MEASURES TO COMBAT MONEY LAUNDERING AS PER THE ANTI-MONEY LAUNDERING ACT AND OTHER ACTS REGULATIONS AND POLICIES.

3.1 INTRODUCTION

Previously Uganda had no any regulation in place that was criminalizing money laundering as an offence not until 2013 when Uganda promulgated the Anti-Money Laundering Act which strongly criminalized money laundering as an offence and with specified penalty. It is important to understand the nature of offences that aids money laundering. Most of the serious offences are predicable offences of money laundering as discussed in chapter two. Money laundering is an offence which is needs to be dealt with, with strong strategies and measures and the Anti-Money Laundering Act of 2013 stipulates mechanisms to combat money laundering in Uganda. The Anti- Money Laundering Act of Uganda is supplemented with other Acts to combat money laundering and also such Acts as shall be examined spells some strategies or measures that should be read together with those stipulated under the Anti-Money Laundering Act in order to give effective combating of money laundering.

According to the **Anti- Money Laundering Act**, Money laundering is the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under section 3 of this Act¹¹⁷. Also it refers to the practice of recycling the proceeds of money obtained through criminal or unlawful means so as to break the connection between the proceeds and the crime. **Money Laundering** now is regulated by the Anti-Money laundering of 2013 which is the mother law for curbing this vice of Money Laundering in Uganda.

The Anti-Money Laundering Act also creates two related agencies, the Financial Intelligence Authority (FIA) and the Financial Intelligence Board (FIB), to coordinate and combine efforts to combat money laundering and to ensure implementation of the law is in place.¹¹⁸

¹¹⁷ S 1 (interpretation section) of Anti-Money Laundering Act 2013

¹¹⁸ S.18 ibid

The Anti-Money Laundering Act provides and establishes the offence of Money Laundering as a separate crime from other crimes established by other laws of Uganda and a suspect may be convicted for the offence even if the he or she has used the proceeds of laundered money to commit one of the notorious crimes established and provided and prohibited by other laws of Uganda¹¹⁹.

The Financial Institutions (Anti-money laundering) Regulations 2010 (FIAMLR)¹²⁰ define money laundering as “all activities and procedures designed to change the identity of illegally obtained money so that it appears to originate from the legitimate source.

3.2 THE OFFENCES OF MONEY LAUNDERING.

The offences of money laundering (criminalization of money laundering) in Uganda.

Money laundering activity may range from a single act for instance being in possession of one’s own crime, to complex and sophisticated schemes involving multiple parties and multiple methods of handling and transferring the criminal property as well as concealing it and entering into arrangements to assist others to do so¹²¹. The objective of the criminalization of money laundering is to take the profit out of crime. The rationale for the creation of the offence is that it is wrong for individuals and organisations to assist criminals to benefit from the proceeds of their criminal activity or to facilitate the commission of such crimes by providing financial services to them¹²²

In the last assessment¹²³, Uganda was rated as a non- compliant on the requirement of having legislation to criminalize money laundering. The main technical deficiency was that Uganda had not criminalized the offence of money laundering, later this was addressed with the enactment of the Anti-Money Laundering Act of 2013 and this subsequently qualified Uganda to be removed on the list of the blacklisted economies where Money Laundering poses a great threat. Although, some concerns have been raised with new law it meets most of the requirements of

¹¹⁹ S.5 Ibid.

¹²⁰ S1 ibid

¹²¹ Anti-money laundering guidelines

¹²² <https://www.int-comp.org/careers/a-career-in-aml> visited on 16th /May/ 2019

¹²³ ESAAMLG-mutual-evaluation-Uganda -2016

recommendation. The Act provides for the criminalization of money laundering¹²⁴ and provide the standard of proof¹²⁵.

According to the Anti-Money Laundering Act of 2013¹²⁶, it is an offence to carry on activities that are prohibited under S.3 (criminalization of the laundering of proceeds of crime) of the same Act. Such prohibited activities include the following;

(a)To convert, transfer, transport or transmit property knowing or suspecting such property to be the proceeds of crime, for the purposes of concealing or disguising the illicit origin of the property or assisting the person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions or

(b)Conceal ,disguise or impede the establishment of the true nature , sources, location, disposition ,movement or ownership of or rights with respect to property ,knowing or suspecting that such property to be proceeds of crime; or

(c)Acquire, possess, use or administer property, knowing, at the time of receipt, that the property is the proceeds of crimes; or

(d)Act to avoid the transactions reporting requirements provided in part 3 of the Act or

(e)Assist another to benefit from known proceeds of crime; or

(f)Use the known proceeds of crime to facilitate the commission of crime; or

(g)Participate in, associate with, conspire to commit, attempt to commit, aid or abet, or facilitate and counsel the commission of any facts described above [in (a) to (f);

Upon conviction of the above, one may face imprisonment for a period of up to 15years or a fine not exceeding one hundred thousand currency points or both if its natural person¹²⁷ however the sanction of natural person¹²⁸ and legal person are distinct. For legal person, sanction is a fine not exceeding 200000 currency points¹²⁹

¹²⁴ SS.3, 116 Anti Money Laundering Act.

¹²⁵ ESAAMLG-mutual –evaluation-report-Uganda of 2016 at page 80

¹²⁶ S.116 Ibid

¹²⁷ S 136 (1)(a) of the anti-money laundering act

¹²⁸ S 1 ibid

¹²⁹ S 136 (1) (b) ibid

Further offences of money laundering are stipulated under the act¹³⁰ with the respective penalties¹³¹ and defenses¹³²

It is further an offence to intentionally fail to report to the Financial Institution Authority prescribed information relating in respect of cash or suspicious or unusual transactions¹³³. It is also an offence to fail to report suspicious or unusual transaction is also an offence. The offence of money laundering extends to all types of property, which directly or indirectly represents proceeds of crime, regardless of the value¹³⁴.

The application of section 3¹³⁵ and section 116¹³⁶ are envisaged in the case of **Uganda v Sserwamba and 6 others**¹³⁷,

In analysis of the this case, it can therefore be concluded that money laundering is not a single crime (however it should be charged separately) like any other crime for instance murder but it's a crime which encompasses many of serious offences and can be committed through different ways¹³⁸ according to the Anti-Money Laundering Act 2013. Many crimes like kidnap, Drug Trafficking, Human Trafficking, Prostitution, Smuggling and among others of similar nature are referred to as predicate offences (*already discussed in chapter two at pages 14 to 16*). *Money laundering is intrinsically linked to the predicate offences.*

It's important to note that, the offence of illicit trafficking in narcotics and psychotropic substances is not criminalized as a predicate offence for purposes of money laundering under the Anti-Money Laundering Act of 2013¹³⁹

Like any other offence, before one is convicted, it's prudent also to first establish his or her **state of mind** which include *knowledge, intent*. These two are the major elements of the crime of money laundering¹⁴⁰. The intent and knowledge of money laundering offence can be inferred

¹³⁰ Ss 116-135 ibid

¹³¹ S136 ibid

¹³² S137 ibid

¹³³ Ss 124-126 ibid

¹³⁴ ESAAMLG-mutual-evaluation-Uganda 2016 at page 81

¹³⁵ Anti-Money laundering Act 2013

¹³⁶¹³⁶ Ibid.

¹³⁷ No. HCT-00-AC-SC-0011- 2015(2017)

¹³⁸ S3 and s116 of the Act

¹³⁹ ESAAMLG-mutual –evaluation-uganda-2016 at page 81

¹⁴⁰ S 4 of Anti-money laundering Act

from the objective factual circumstances¹⁴¹. (However the word objective factual circumstances is not defined under the anti-money laundering Act). This provisions appears to be limited to money laundering as criminalized under part II not as Part VII of the Act.¹⁴²

With respect to **mens rea**, or the mental element of money laundering offense, all instruments create knowing or intent as an essential element to punish a defendant¹⁴³. It means that the prosecutor must prove the actual knowledge of the defendant that they have known the funds were derived from specified crime.

The crime of money laundering should be treated as **a separate crime**¹⁴⁴ because of its nature. It's a crime which one commits with the knowledge that that money dirty and with the intention to turn it into legitimate money by disguising its source. Money laundering is the crime which is separate and distinct from and in addition to other crimes under the laws of Uganda, including the crime generating the proceeds subject to the money laundering and may be charged without the person having been convicted of the crime of generating the proceeds of money laundering¹⁴⁵

3.3 STRATEGIES AND MEASURES TO COMBAT MONEY LAUNDERING IN UGANDA.

The Anti-Money Laundering legal frame work with respect to Anti-Money Laundering preventive measures in Uganda is made up of three legislations that is Anti-Money Laundering Act, Financial Institution Act (covering only money laundering) and the Anti-Terrorism Act. The Anti-money laundering preventive measures as provided under the Anti-Money laundering act are largely consistent with Financial Action Task Force standards.

Noteworthy, the Financial Institutions Act only applies to financial institutions under the supervision of bank of Uganda¹⁴⁶

Uganda is still in the process of developing regulations to fully implement the provisions of Anti-Money Laundering Act of 2013. Application of Anti-Money Laundering Act requirements

¹⁴¹ *ibid*

¹⁴² Anti-Money Laundering Act of 2013

¹⁴³ Mens rea is a criminal responsibility of a defendant that also has to be proved by a prosecutor in a judicial proceedings

¹⁴⁴ S5 of the Anti-Money Laundering Act 2013

¹⁴⁵ *Ibid*

¹⁴⁶ ESAAMLG-mutal-evaluation-uganda-2016 at page 50, www.fatf-gaft.org

under the Financial Institutions Act and the Anti -Money laundering Act to mitigate risk varies across the reporting. In terms of implementation, the Anti-Money Laundering Act preventive measures currently being applied by Financial Institutions in Uganda are mostly based on the Financial Institutions Act as read with Anti -Money Laundering regulations.

To a certain degree, foreign owned Financial Institutions, Implement the Anti-Money Laundering policies from the their countries and this has helped in the development and implementation of Anti -Money Laundering preventive measures in these sectors¹⁴⁷

Uganda has deployed significant strategies and measures to combat money laundering.

Although, Previously Uganda passed the Financial Institutions Act of 2002 (FIA), the measures that were established in the Act did not adequately address the core issues of the 40 Recommendations on money laundering¹⁴⁸, not until 2013 when the Anti-Money Laundering Act was enacted which came up with a comprehensive structure on strategies and measures to combat money laundering

3.3.1 Making money laundering a crime. In fighting money laundering as it was a menace to both political and economic stability of the country, Uganda made it a serious offence and with penalty under the Anti-Money laundering Act of 2013¹⁴⁹

3.3.2 Also the banks should monitor the flow of money especially to be vigilant on all the bank accounts with international money transfer on frequent basis and those accounts that pool the money from different sources

3.3.3 Accountable persons are charged with undertaking the measures aiming at combating money laundering

According to Anti-money laundering Act of 2013, in regulating and combating money laundering accountants are made accountable persons. Accountable person is defined to mean

¹⁴⁷ Ibid

¹⁴⁸ Financial Action Task Force-mutual-evaluation -report-2007 at p8

¹⁴⁹ S116 of the Anti-Money Laundering Act 2013

any person listed in the second schedule of the Act¹⁵⁰. They are charged with undertaking measures aimed at preventing money laundering.

“Accountable persons” are recruited as gatekeepers with stringent Know Your Customer (KYC) and Customer Due Diligence obligations. The list of Accountable Persons under the Second Schedule to the Act is rather extensive and includes Advocates, Notaries, Accountants, Trustees, Casinos, Real Estate Agents, Financial Institutions, Insurance companies, Registrars of Land, *inter alia*. These obligations are rather extensive. It is however questionable if they are practical and can be implemented by accountable persons and this can be through;

3.3.4 Account/s should be maintained in the true names of account holder¹⁵¹, an accountable person should maintain accounts in the true names of the account holder and should not open or keep anonymous accounts or accounts which are in fictitious or incorrect names; should not initiate a business relationship or carry out an occasional transaction without undertaking customer due diligence measures to verify the identity of the client.

3.3.5 Client due diligence measure¹⁵² this measure is the key part of the anti-money laundering requirements. They ensure that they know their clients so that they do not accept clients unknowingly who are outside the normal their normal risk of tolerance. Also accountable person should undertake further customer due diligence measures to independently verify the customers’ identifying documents, should undertake enhanced customer due diligence measures to determine the true identity of the client if there is suspicion of money laundering, set up separate systems to deal with politically exposed persons, should in relation to cross border banking gather information about the respondent bank so as to minimize the risk of money laundering. Where the accountable person is unable to comply with these provisions, the business relationship should not be commenced, or the transaction conducted. The accountable persons are mandated to follow know your customer norms and to raise a red alert when a banker finds any suspicious activity in their customer accounts¹⁵³

¹⁵⁰ S1 ibid

¹⁵¹ S6 ibid

¹⁵² www.icpau.co.ug-anti-money-laundering-guidelines, April 2014 visited on February, 22, 2019

¹⁵³ International journal of scientific and research publications volume 7, issue 12, December 2017 www.ijsrp.org visited on 26th may 2019

The Anti-Money Laundering Act of 2013¹⁵⁴ provides the outlines of the required components of client due diligence which the firms or institutions need to ensure that they are integrated into client acceptance processes of the continuing conduct of business relationship.

Client due diligence measures include;

- (i) The identity of the client including true name, address including postal and residential, employment, and occupation;
- (ii) The client's representative capacity, if any;
- (iii) If the client is acting on the behalf of another person, the identity of that other person and the client's authority to act on behalf of that other person
- (iv) If the person is acting on the behalf of client, the identity of that person should be disclosed.

The Anti-Money Laundering Act requires the firm to conduct further due diligence by considering the components below;

-Identifying the client (that is to say know who the client is) and verifying the identity of the client that is confirming that the identity is valid by using reliable, independent source documents, data or information such as passports, birth certificates, driver's licenses

-Information from the source that is independent and reliable

-Information on the purpose and intended nature of the business relationship

Identification and verification of identity procedures should normally be completed before entering into the business relationship. This applies also to occasional transactions. Also identification (ID) procedures are required at other times for example, where there is suspicion of money laundering or terrorism financing or where there are doubts about the sufficiency of identification information already held¹⁵⁵.

If it is conducted and the information held is insufficient, the firm should remedy this as soon as possible. Should the suspicion be developed on client, the firm will need to consider whether

¹⁵⁴ S6 of Anti-Money Laundering Act 2013

¹⁵⁵ www.icpau.co.up-anti-money-laundering, April 2014. Visited on February/22/2019

they are satisfied that the information already held is sufficient and up to date or whether additional or updated information is required in respect of the client in question in order that the information required by the Anti-Money Laundering Act is met¹⁵⁶

The Anti-Money Laundering Act allows client due diligence measure to be carried out on a risk sensitive basis, depending on the type of client and business relationship or transaction.

There are *two categories of due diligence* that is; enhanced and simplified due diligence¹⁵⁷

Enhanced due diligence is required for higher risk categories, in circumstances where there are low risk, reduced or simplified measures may be applied. In any case where suspicion is developed, simplified due diligence can no longer be applied. This is required where are doubts that a client is acting on his or her own behalf, particularly in the case of judicial person who is not conducting any commercial financial or industrial business/ operation in Uganda where it has its headquarters

3.3.6 Clients who are Politically Exposed persons (PEPs)¹⁵⁸ must always be subjected to the enhanced due diligence measures. In addition to the normal due diligence measures, the firm must have appropriate risk management systems to determine whether a client is a politically exposed person and also must take reasonable measures to establish the source of wealth or funds

Politically exposed persons are defined as individuals who are or have been entrusted with prominent function in the country, for example Heads of states of Government, senior politicians, senior government, judicial and military officials, senior executives of state owned corporations and important party officials as well as family members of close associates of such individuals’

3.3.7 Records should be maintained for 10 years¹⁵⁹, the accountable person shall establish and maintain records of the customers’ identity and business transactions for at least ten years. These records should be used to enable the reconstruction of transactions where need be, including the dates, amounts involved, types of currency involved, parties to the transaction and their

¹⁵⁶ ibid

¹⁵⁷ ibid

¹⁵⁸ www.icpau.co.ug-anti-money-laundering.April 2014. Visited on February 22/2019

¹⁵⁹ S7 of Anti-Money Laundering Act 2013

addresses, accounts involved, nature of the transaction, manner in which the identity of the client and the person acting on behalf the client was established, the name of the person who obtained the information, and the documents obtained to verify identity. Such records should be kept in such ways that any review, examination or investigations can be carried out effectively and efficiently by auditors or any other interested person

As laid down in S.11 Anti-Money Laundering Act, the records should be made available to the authorities as and when necessary.

3.3.7 Attention to complex, unusual and large transactions¹⁶⁰ Accountable person should pay special attention to all complex, unusual or large transactions which have no apparent economic or lawful purpose, where the identity of the parties involved has not been established, or the respondent jurisdiction does not have adequate systems to prevent money laundering and terrorist financing. Save for communications between an advocate and a client, obligations of confidentiality, under S.14 are not an impediment to obligations as laid down under the law.

3.3.8 Refraining from doing the business with money launderers¹⁶¹ . Every accountable person shall take such measures as are reasonably necessary to ensure that neither it nor any service offered by it is used by a person to commit or facilitate the crime of money laundering and financing of terrorist activities. Whereas a diligent institution should carry out customer due diligence to guard itself from issues such as fraud, and to minimize risk, requiring that each transaction, even occasional ones be subject to such due diligence measures is laying quite the burden upon them. Given the number of transactions that happens every single day, it would be impractical for such extensive measures to be applied every time a relationship is initiated. Whereas it is understood that it is necessary to identify customers so as to minimize risk, the requirement that no fictitious names should be used to transact will frustrate some innocent customers who wish to transact anonymously. For example, persons who are being unfairly persecuted for political or human rights causes may need to transact without fully disclosing their true identities and other details such as residence. In other cases, there may be no need to hide the identity of the parties involved, but time might be of the essence. Consequently, if a bank is to require a list of documents and then seek to verify them, chances are that the transaction will

¹⁶⁰ S9 Ibid

¹⁶¹ S16 of anti-money laundering Act of 2013

be frustrated. In light of the Act therefore, Accountable persons have a lot of work to do in as regards building up their physical and human resources to ensure that they are able to carry out the required due diligence.

3.3.9 Reporting suspicious transactions. The Anti-Money Laundering (amendment) Act of 2017¹⁶² obliges reporting institutions to submit STRs without delay but not later than two working days. Also it requires the reporting institutions to submit reports on suspicious attempted transactions¹⁶³

3.3.10 Financial intelligence authority as the strategy to fight money laundering. In order to enhance the identification of the proceeds of crime and the combating of money laundering and to ensure the compliance with this Act, the Financial Intelligence Authority was established¹⁶⁴ as the strategy and a measure. The Financial intelligence Authority is empowered with such powers¹⁶⁵ and functions¹⁶⁶ to make sure that money laundering is combated. Financial intelligence authority is independent in the performance of its functions and is subjected to the direction, instruction or control of any person or authority¹⁶⁷. The financial intelligence authority is responsible for the enforcement of the Anti-money laundering Act 2013¹⁶⁸

Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity and take measures to prevent their use in money laundering schemes.

In case of any suspicion or any report brought to its desk relating to illicit transaction or money laundering, the financial intelligence authority can invokes its powers invested in it by the Anti-Money Laundering Act 2013 and carry out any investigation, arrest, search and seizure and this has been manifested in the following scenarios.

¹⁶² S 9(2)
¹⁶³ S 9(1)
¹⁶⁴ S 18 of Anti-Money Laundering Act of 2013
¹⁶⁵ S 21 Ibid
¹⁶⁶ S 20 Ibid
¹⁶⁷ S 22 Ibid
¹⁶⁸ Civil-Society-Organisation- Dialogue-with-Financial-Intelligence-Aunthority-FRep.fatfplatform.org

The offices of ActionAid Uganda¹⁶⁹, great lakes institute for strategic studies (GLISS)¹⁷⁰ and solidarity Uganda¹⁷¹ were raided by police in a cordon and search operation at ActionAid. Staff were prevented from leaving the premises for several hours as police thoroughly searched the premises. Removing documents and confiscating phones and laptops. The search warrant claimed that all three organisations were involved in illicit financial transactions and subversive activities to destabilize Uganda¹⁷². The government through the financial intelligence authority ordered for the freezing of organisational accounts of these organisations¹⁷³.

Also in 2017, the financial intelligence authority and chartered commercial bank frozen the ActionAid accounts. In reaction to the freezing of the accounts, ActionAid in December 2017 petitioned the commercial court¹⁷⁴ seeking the financial intelligence authority and standard chartered Bank in Uganda to unfreeze five organisational accounts which were in different currencies (KAZIBWE, 2018)¹⁷⁵

Nevertheless, the Anti-Money Laundering Act 2013 is supplemented by series of Laws (Acts), regulations and policy framework to combat Money Laundering and these inter alia include;

The **Bank of Uganda Act**¹⁷⁶ Bank of Uganda has the mandate to supervise and regulate the operations of financial institutions in the country. These include Commercial Banks, Credit Institutions, Micro Finance Deposit-Taking Institutions (MDIs), and Forex Bureau.

Financial Institutions Act¹⁷⁷ requires any person operating a deposit-taking institutions or other financial institution business in Uganda to obtain a valid license¹⁷⁸ subject to the control and direction of Bank of Uganda's mandate which includes inter alia; to supervise, regulate, control

¹⁶⁹ A non-Government organisation that has been working in Uganda since the 1980s to the end of poverty and injustice

¹⁷⁰ A policy development organisation working in the great lakes region, with headquarters in Kampala

¹⁷¹ A loose coalition of consultants that provide capacity building to communities in non-violence strategy, movement building and social change

¹⁷² Assistant inspector of police, police spokesperson- Asan Kasingye

¹⁷³ CSO-dialogue with Financial Intelligence Authority. fatfplatform.org 12th February, 2018/Kampala Serena hotel visited on 28 may 2019

¹⁷⁴ Kazibwe, k. (2008). Case on frozen action aid accounts for next year. Retrieved February 10, 2018 from <http://nilepost.co.ug/2017/12.20.case-on-frozen-accounts-for-next-year> visited on 28th may 2019

¹⁷⁵ CSO-dialogue with financial intelligence authority , fatfplatform, at page 70f 30 visited on 28th may 2019

¹⁷⁶ Cap 51, laws of Uganda 2000 Edition

¹⁷⁷ Act No.2 of 2004

¹⁷⁸ S.4 (1) FIA, 2004.

and discipline all financial institutions and pension funds institutions under the Bank of Uganda Act¹⁷⁹.

The Foreign Exchange Act¹⁸⁰ requires any person resident or conducting business in Uganda, whether or not that person is carrying on business licensed under this Act, to furnish details of any or all of his or her foreign exchange transactions or provide returns in a format prescribed by the Bank of Uganda, giving details of that person's foreign exchange transactions¹⁸¹ and also mandates the BOU by regulations to impose restrictions on the importation in to or exportation from Uganda of bank notes, coins, traveler's cheques and securities denominated in the currency of Uganda or foreign currency¹⁸².

Micro Finance Deposit-Taking Institutions Act (MDIs)¹⁸³ prohibits some transactions by Micro finance Deposit- Taking Institutions, limits the percentage of shares an individual or family may have in an MDI. The bank of Uganda Act places a duty on these MDIs to account and disclose to the BOU.

Inspector General of Government Act¹⁸⁴; Regulates and prohibits corruption and bribery by public officers.

Anti-corruption Act¹⁸⁵ Imposes an offence of corruption¹⁸⁶ and bribery¹⁸⁷ on any public official or a nonpublic official who solicits, accepts, gives directly or indirectly a monetary value, gift, favor, promise or gratification. Notably, Money Laundering in context relates to corruption.

Other regulations (Statutory Instruments) in place to combat Money Laundering in Uganda interalia include;

¹⁷⁹ S.4 (2) (j).

¹⁸⁰ Act No.5 of 2004.

¹⁸¹ S.4 (2)

¹⁸² S.8 FEA.

¹⁸³ Act No.5 of 2003

¹⁸⁴ Act no.5 of 2002.

¹⁸⁵ Act No.5, of 2009

¹⁸⁶ S.2

¹⁸⁷ S.5

The Financial Institutions (Anti-Money Laundering Regulations)¹⁸⁸ which among many other rules mandates the Financial Institutions to recognize suspicious transactions and to provide an audit trail of transactions carried out by customers who come under investigations¹⁸⁹. It requires Financial Institutions to submit reports and to disclose information on suspicious transactions¹⁹⁰, and generally analyses Money Laundering involving off-shore international activity¹⁹¹, Money Laundering involving employees and agents of Financial Institutions¹⁹² and Money Laundering through unsecure lending¹⁹³.

The Financial Institutions (Capital Adequacy Requirements) Regulations¹⁹⁴ which mandates and ensures that FIs maintain capital standards recognized internationally as being prudent¹⁹⁵ as the regulation's objective and also help promote and maintain public confidence in the Ugandan financial sector¹⁹⁶. The rationale for this regulation is that the FI need to maintain a level of capital commensurate with their risk activities in order to minimize the incidence of failure, provide adequate protection their depositors and also promote public confidence in the financial systems¹⁹⁷ subject to the regulatory supervision of the central bank (BOU)¹⁹⁸, and for FIs to expand their business internationally, it is of impotence to demonstrate that FIs in Uganda maintain a level of capital that conforms to international standards.

The Foreign Exchange (Forex Bureaus and Money Remittance) Regulations¹⁹⁹ which sets up objectives that envisage transparency of remittance and payment flows in and outside Uganda by ensuring that AML and combating of the financing of terrorism measures are observed in forex bureaus and money remittance businesses²⁰⁰.

¹⁸⁸ S.I No.46 of 2010.

¹⁸⁹ S.3(b)

¹⁹⁰ S.3(c)

¹⁹¹ S.4

¹⁹² S.5

¹⁹³ S.6.

¹⁹⁴ Regulation No.42 of 2005.

¹⁹⁵ S.4(c)

¹⁹⁶ S.4 (d).

¹⁹⁷ S.5 (b).

¹⁹⁸ S.5(c)

¹⁹⁹ Regulation No. 10 of 2006.

²⁰⁰ S.2 (d).

Bank of Uganda (BOU) Mobile –Money guidelines on Anti-Money Laundering (AML) and countering of Financing Terrorism (CFT)²⁰¹, Empowers money service providers to put up measures in place to prevent money laundering and terrorist financing. The mobile money IT system shall have inbuilt mechanisms to identify suspicious transactions. The following measures shall be in place:

- (a) Adhere to international Know Your Customer (KYC) standards at account opening by carrying out Customer Due Diligence (CDD). The entity conducting customer verification should require at least one of the following documents to verify the identity of the customer: a valid passport, driving permit, identity card, voter's card, financial card, and local administration letter or business registration certificates.
- (b) Limits should be set for frequency, volume and value of transactions; and these limits, as well as any revisions thereof, shall be sent to Bank of Uganda for approval.
- (c) Suspicious transactions and large cash transactions should be reported to the partnering licensed institution which should in turn report the appropriately.

Bank secrecy laws should be reconsidered and any restriction on information sharing between the banks and regulatory should be reconsidered and protection should be provided to the banks /bankers who provide support to the regulatory in providing the appropriate information on criminal activities of their customers.²⁰²

Banks and the staff should be given adequate training on modern techniques on identification of money laundering activities and periodically. The training should become a mandatory tool for all the employees of the bank.²⁰³

Further, International coordination between countries should be implemented to monitor the agencies which are working closely on money laundering activities and their reach is global.²⁰⁴

²⁰¹ BOU, MM guidelines of 2013, s.11.

²⁰² International journal of scientific and research publications, volume 7,issue 12 December 2007

²⁰³ *ibid*

²⁰⁴ *ibid*

Countries should implement the stringent laws on money launderers and anti-social elements, whose properties should be seized and forfeited into Government books²⁰⁵

The Financial Intelligence Authority also has the mandate to enter or cause entering in any premises to recover documents necessary for prosecution of the suspects of Money Laundering²⁰⁶.

Notwithstanding, the above measures are not yet in full Implementation because of the following short comings;

Some financial institutions and Designated Non-Financial Business Professions are not able to demonstrate an understanding of their obligation in terms of the Anti-Money Laundering Act and do not have comprehensive understanding of the money laundering risks in their respective sectors. Insurance companies have implemented generic anti-money laundering policies based on guidance received from IRA. The IRA has also recognised the lack of understanding of money laundering risks²⁰⁷

Lack of preventive measures applied in respect of beneficial owners. Most reporting entities interviewed highlighted that they have Anti-Money Laundering policies and or know your customer measures in place, but do not apply to identification and verification of the identity of beneficial owners as their procedure as are directed mostly identifying directors of legal persons. As a result no specific additional measure are applied to the in respect of beneficial owners such as individuals facing targeted financial sanctions which may pose higher risk for money laundering.²⁰⁸

Real estate agents and lawyers who provide services assisting clients with the buying and the selling of property in Uganda. Most of the institutions interviewed during the on-site visit including the Bank of Uganda considered the real estate sector to be vulnerable to money laundering, especially in urban areas like Kampala where residential homes sell in the range of USD 120000 up to USD 500000. Most of these transactions are settled in cash which in absence

²⁰⁵ *ibid*

²⁰⁶ S. 49 Anti-Money laundering Act 2013.

²⁰⁷ ESAAMLG-mutual evaluation-Uganda 2016 at p 52

²⁰⁸ *ibid*

of specific mitigation measures being applied poses a significant money laundering risk²⁰⁹. It's of recently when the officials from land registrar and Financial Intelligence Authority convened to develop the mechanisms of curbing money laundering and counter terrorism financing in the real estate²¹⁰

Mobile money service providers do not have and adequate understanding of the money laundering risks and have not yet designed and implemented risk mitigating measures commensurate with their risk. A good example should be the mobile money service provider's transaction limit of USD4000 as a daily account limit and USD1600 as a daily transaction per e-wallet. These limits are considered to be excessively high and pose significant money laundering risk²¹¹.

In conclusion, money laundering is an offence that is fully criminalized under the Anti-Money Laundering Act of 2013 Laws of Uganda with specified penalty. This act cured the lacuna of being blacklisted by the Financial Action Task Force on money laundering, something that would have overriding implications on the economy²¹². Previously money laundering was not criminalized as an offence which posed serious threat to the economy. Further the measures and strategies stipulated under the Act have been observed by the financial institutions to ensure that money laundering is regulated and combated in the long run. And the fore mentioned Acts that supplements Anti-Money Laundering Act have played fundamental role in combating money laundering.

²⁰⁹ Ibid.

²¹⁰ By David Lumu, New vision Tuesday, June, 4, 2019 pg. 3

²¹¹ Ibid.

²¹² Mutual evaluation report on Anti-Money Laundering and Counter Terrorism Financing measures of April 2016

CHAPTER FOUR

EFFECTIVENESS OF THE ANTI-MONEY LAUNDERING ACT AND THE CAPACITY OF THE FINANCIAL INTELLIGENCE AUTHORITY TO FIGHT AND COMBAT MONEY LAUNDERING.

4.0 INTRODUCTION

In 2013, Uganda enacted the Anti-Money Laundering Act which came up with different provisions aiming at regulating and combating money laundering in Uganda. This Act criminalized money laundering and it stipulated the mechanisms that should be observed by the financial institutions to combat money laundering.

So, this chapter will generally examine whether the Anti-Money Laundering Act of 2013 is effective or not effective in combating money laundering in Uganda, and if not, why is it not effective? Also Anti-Money Laundering Act established the Financial Intelligence Authority and invested it with the capacity to fight money laundering. So the capacity of Financial Intelligence Authority shall be examined adequately and whether the Financial Intelligence Authority is exercising the capacity invested in it to run its duties independently (investigate and prosecute) or not.

4.1 EFFECTIVENESS OF ANTI-MONEY LAUNDERING ACT OF 2013

Prior to 2013, money laundering had no legal framework which steered the increase of the crime as the result Uganda was threatened to be blacklisted by the Financial Action Task Force on money laundering. Something that would have overriding implications on the economy²¹³.

The phenomenon of money laundering was detected way back in 1998 when the central bank, Bank of Uganda began to devise means of combating money laundering²¹⁴. This phenomena was associated with general crimes commission such as robbery, corruption inter-alia where such proceeds would be disguised into legitimate source.

²¹³ Mutual evaluation report on AML and counter terrorism financing measures m of April 2016

²¹⁴ Bank of Uganda, annual supervision report 1999, p.32 visited on 2nd June 2019

Uganda has a system stipulated under the Act²¹⁵ which ensures that money laundering and terrorism financing cases are properly identified, investigated and prosecuted to enable illicit proceeds and instrumentalities of crime to be confiscated²¹⁶.

Case example Ex-Equity Bank manager (Mr. David Serwamba accused) was convicted for over Shs 4.6b theft and was also convicted over money laundering alongside with others²¹⁷

Equally, according to the anti-money laundering act of 2013, the former Bank of Uganda director in charge of commercial banks supervisor Justine Bagyenda would be potentially face 20 years in prison if it would be proved that the “billions” she amassed and hid in different banks was laundered, as noted by Budadri west member of parliament Nathan Nandala Mafabi told journalist²¹⁸.

Uganda’s Anti-money laundering Act of 2013 claimed its first victims in Uganda, when a court issued convictions of money laundering suspects in a landmark case²¹⁹ that analysts say may influence future suits.²²⁰

In the same landmark case²²¹, Justice Margaret Tibulya of the Anti-corruption court found five of seven suspects guilty of embezzlement; causing financial loss; money laundering and conspiracy to commit a felony against Equity Bank Uganda limited in 2015. Two accused- Kavuma Moses and Serwamba Isaac were acquitted on the grounds that they did not participate in crafting the embezzling and money laundering²²²

Also in 2016²²³, KCB Anti-Money-Laundering system detected transactions that indicated money laundering activities involving the two bank accounts and the accused were convicted.

²¹⁵ Anti-money laundering Act of 2013

²¹⁶ Anti-money laundering and counter-terrorist financing measures in Uganda -2016@ ESAA;LG

²¹⁷ <https://www.newvision.co.ug/new-vision/news/1454473/-equity-bank-manager-convict>

²¹⁸ Earthfinds.co.ug/index.php/oil-and-gas/Africa/item/1403-bagyenda-faces-20-years-in-prison

²¹⁹ Uganda v Sserwamba David Musoke and 6 others NO.HCT-00-AC-SC-0011-2015

²²⁰ <https://www.theeastafrican.co.ke/business/Anti-money-laundering-Uganda>

²²¹ Uganda v Sserwamba David Musoke and 6 others NO.HCT-00-AC-SC-0011-2015

²²² *ibid*

²²³ Tulsa Investments limited \$ another vs Attorney General \$ another

According to the Anti-Money Laundering Act of 2013, in regulating money laundering accountants of every institutions are accountable persons²²⁴. This is however limited to sole practitioners, partners or employed professionals within professional firm.

The accountable persons have the special duties which include the following;²²⁵

- (i) To maintain appropriate accounts and records for clients,
- (ii) To undertake client due-diligence measures before initiating any business relationships or carrying out certain transactions on the clients behalf,
- (iii) To develop training programs and other internal policies and controls against money laundering and terrorism financing,
- (iv) To appoint a money laundering control officer,
- (v) To take measures to prevent criminals or holding or being the beneficial owner of a significant or controlling interest or holding a management function in the firm,
- (vi) To maintain required records for at least 10 years
- (vii) To monitor and report suspicious transactions

Accountable person²²⁶ is defined to mean any person listed in the second schedule of the anti-money laundering Act of 2013. And are charged with undertaking measures aimed at preventing money laundering and the act stipulates out the duties they owe as fighting of money laundering is concerned.

Also the **financial intelligence authority** was established under the Anti-Money Laundering Act as machinery for the implementation and enforcement of the Act. Since its establishment in 2014, number of cases have investigated and prosecuted ²²⁷ and some have been successful (accused being convicted)²²⁸ according to the anti-money laundering Act of 2013

²²⁴ www.icpau.co.ug-anti-money laundering guideline-April- 2014 visited on February

²²⁵ ibid

²²⁶ S1 of Anti-Money laundering act of 2013

²²⁷ Tulsa investment ltd and another vs attorney general and another (2016)

²²⁸ Uganda v Sserwamba David Musoke and 6 others .No.HCT-00-Ac-Sc-0011-2015

4.2 CAPACITY OF FINANCIAL INTELLIGENCE AUTHORITY (FIA)

When Uganda was evaluated in 2005, it didn't have a legal framework for the establishment of Financial Intelligence Authority. This lacuna was addressed in 2013, with the coming into force of Anti-Money Laundering Act of 2013, part IV of the same Act provides for the establishment of the FIA and sets out objectives and functions²²⁹.

The Uganda Financial Intelligence Authority (UFIA) is a governmental agency established by the parliament of Uganda to monitor investigate and prevent money laundering in the country²³⁰.

And the mission of Financial Intelligence Authority is to foster the integrity of financial systems through the effective detection and prevention of financial crimes

It is also responsible for the enforcement of Uganda's Anti-Money Laundering laws and the monitoring of all financial transactions inside the country's borders The Financial Intelligence Authority is a body corporate with perpetual succession which may sue or be sued in its corporate name and may do all acts and things as a body corporate may lawfully do²³¹.

The financial institution authority is independent authority²³² which performs its functions and duties independently and is not subjected to the direction, instructions or control of any person or authority.

Also the financial intelligence authority has the board called *Financial Intelligence Authority Board*²³³. And the board have the following functions²³⁴;

-This board is the policy making organ of the Authority. It's responsible with making such policies that guides the FIA in executing its mandate. And further it draft

- a) Also it gives direction to the executive director in connection with the management, performance, operational policies and implementation of the policies of the Authority.
- b) On the recommendation of the executive directors, the board shall approve such organisational structures, terms and conditions of service.

²²⁹ Ibid p.8

²³¹ S18 of anti-money laundering act of 2013

²³² S 22 ibid.

²³³ S 23 ibid

²³⁴ S 24 ibid

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²²⁹ Ibid p.8

²³¹ S18 of anti-money laundering act of 2013

²³² S 22 ibid.

²³³ S 23 ibid

²³⁴ S 24 ibid

- c) Also the board shall prescribe such administrative measures as may be required to safeguard all revenue of the authority.

The financial intelligence has the capacity to enter into the contract while performing its duties. It has the power to enter into the contract with any financial institution/ government agencies or department of government of Uganda and with any person or organisation whether in Uganda or outside Uganda in its own name by signing the agreement or entering into memorandum of understanding²³⁵.

For instance, the Financial Intelligence Authority had a dialogue with executives of civil society organisations (CSOs) in Uganda²³⁶. This dialogue was embarked on “anti-money laundering; from awareness to compliance” on 12th February 2018 at Kampala Serena hotel-Achwa hall. This dialogue was urging all civil society organisations to comply with anti-money laundering laws. The Financial intelligence authority urged the civil society organisations to formulate the laws and regulations to govern them while conducting its duties.

Also, in February 2016 the Financial Intelligence Authority (FIA) and Inspectorate of government signed a Memorandum of Understanding (MoU)²³⁷. The implementation of memorandum of understanding signals the commitment of the two agencies to unite their forces in combating corruption and depriving the criminals from the proceeds of their crime. “Corruption and money laundering are like day and night as one follow the other”, Mr. Asubo said²³⁸.

The Memorandum of Understanding is meant to minimize the bureaucracy associated with government institutions and ease free flow of information between the three government agencies²³⁹

²³⁵ S 39 ibid

²³⁷ [https://www.google.com/search,redir-esc=\\$clients=tablet-unknown\\$hl=en-ug\\$safe=image\\$oe=utf-8\\$g=financial%20authority\\$source=adroid-browser-suggest\\$g%20subts-1559553301576](https://www.google.com/search,redir-esc=$clients=tablet-unknown$hl=en-ug$safe=image$oe=utf-8$g=financial%20authority$source=adroid-browser-suggest$g%20subts-1559553301576)

²³⁸ Executive Director, Financial Intelligence Authority-Uganda.

²³⁹ Anthony Wesaka and Jonathan Adengo 17th Aug. 2016. DPP joins fight against money laundering. Daily monitor Kampala. Visited on 3rd June 2019

The authority executes its mandate through imposing certain duties on institutions and other persons, business and professions who might be used for money laundering and financing of terrorism purposes; among others.

As provided under the Act²⁴⁰, the financial intelligence authority is mandated to register all accountable persons as stipulated in the second schedule to the Anti-Money Laundering Act and as a result, establish and keep a register of all accountable persons which shall be made available to the general public as provided for under Anti-Money Laundering Regulations of 2005

Capacity to investigate. The mandate to investigate has been witnessed in a various cases. For instance, of recently 20 firms probed over money laundering²⁴¹. The police and the financial intelligence authority launched investigations into the shady transactions. It is suspected that the stolen cards could have been used to siphon the money laundering from mainly the United States²⁴². New vision established that authorities involved in the probe have directed United Bank of Africa to immediately halt any funds transfers on the accounts in question. Some of the 20 accounts belong to renowned companies in Uganda²⁴³. As the result, there have been a series of back and forth communication between the police, Financial Intelligence Authority and United Bank African regarding the matter²⁴⁴. The Financial intelligence authority in exercising its mandate enshrined under the Anti-Money Laundering Act (2013) it stated that “In accordance with the Act²⁴⁵, United Bank of Africa is hereby instructed to halt all financial activities on the following accounts, until the origin and purpose of the funds have been authenticated” on October 31 letter from Financial Intelligence Authority²⁴⁶.

In conclusion, the Anti-Money Laundering Act of 2013 is effective according to the fore mentioned discussion because ever since the Act came into place criminals have been tried and

²⁴⁰ Sec 21 (pp) of the anti-money laundering Act of 2013

²⁴¹ By Simon masaba vision reporter, 21st December 2014, 20 firms probed over money laundering visited on 2nd June 2019

²⁴² <https://www.newvision.co.ug/new-vision/1317919/> visited on June /2/ 2019

²⁴³ *ibid*

²⁴⁴ *ibid*

²⁴⁵ Section 21 of Anti-Money Laundering Act 2013

²⁴⁶ <https://www.newvision.co.ug/new-vision/1317919/> visited on June/ 2/ 2019

charged under the same Act. Some have been charged and convicted²⁴⁷. Also the Financial Intelligence Authority has exercised its capacity effectively according to the above discussion.

²⁴⁷ Uganda v Sserwamba David Musoke and 6 others .No.HCT-00-Ac-Sc-0011-2015

CHAPTER FIVE

CHALLENGES THAT AFFECT THE LEGAL REGIME IN CURBING MONEY LAUNDERING AND THE POSSIBLE RECCOMENDATIONS

5.0 INTRODUCTION

Uganda has encountered a number of challenges towards regulating and combating of money laundering. The Anti-Money Laundering Act of 2013 being a new phenomenon of development in combating money laundering, it has encountered challenges which have hindered its effectiveness. And as the result they have left the law of money laundering as a barking dog.

Having all these challenges in place, the legal regime need to establish the solutions to fill up the gaps that are created by these challenges. So, this chapter shall also discuss the possible solutions and recommendations which the legal regime take up to resist the same challenges that are giving the breeding ground to money laundering.

5.1 CHANLLEGES

Notwithstanding the enactment of the Anti-Money Laundering Act-2013, Uganda still encounters challenges in the implementation and enforcement of the AMLA to conform to the regional and international requirements. The following are the challenges that affect the legal regime in curbing money laundering in Uganda

5.1.1 Poorly resourced in terms of manpower Financial Intelligence Authority is not adequately resourced in terms of personnel, training and tools to provide quality intelligence to law enforcement agencies to assist with the identification of money laundering cases.²⁴⁸ As the result of this many cases do not go for the full trial²⁴⁹. Those who are trained are few and with a backlog of what to do according to the Acts that gives them mandate that is to say; Anti-money laundering Act and the Financial Intelligence Authority Regulations. This has widened the breeding ground of money laundering.

5.1.2 Institutions are financially handcuffed to fight with money laundering. The Financial Intelligence Authority, law enforcement agencies and the Director Public Prosecutions office, all

²⁴⁸ Anti-money laundering and counter terrorist financing measures in uganda-2016-ESAAMLG

²⁴⁹ Tulsa Investments limited \$ another vs Attorney General \$ another (2016)

do not have adequate resources (financially)²⁵⁰ This evidenced by the executive director of Financial Intelligence Authority when said that we not have money to fight money laundering-give us money and we fight money laundering in an interview) and training to enable them in investigation and identification of money laundering and terrorism financing cases²⁵¹. This has negatively affected the exercise of their mandate respectively which has provided the breeding ground for the crime.

5.2.3 Most Ugandan Anti-Money laundering Laws are not yet implemented being still new, institutions are still digesting the laws have not yet reduced them in their manuals. The financial intelligence authority stated that “despite recent reforms in the existing laws, Uganda continue to be high-risk theater for money laundering”²⁵². Also the national risk assessment report says there are systems flaws diminishing Uganda’s capacity to fight money laundering. “The (money laundering tracking) system being relatively new, it is not implemented effectively. Capacity issue (combined with the risk of financial integrity issues) affect, to different degrees, the ability of stake holders to prevent and repress money laundering and terrorism financing in an effective manner “report notes²⁵³

5.2.4 Inadequate of public awareness. The public is not aware of money laundering Sydney Asubo²⁵⁴, told The Observer in an interview that “the report approved by the cabined is not available to everyone”.²⁵⁵ And this has effected and hindered the implementation of Act by the Financial Intelligence Authority.

5.2.5 Insufficient evidence to incriminate criminals is also the major challenge to the legal regime because when the criminals infiltrate the system by legitimizing the illicit funds for instance investing in real estate it becomes so difficult for enforcers to trace the originality of the funds. In 2013, Uganda enacted the Anti-Money laundering Act to fight drug trafficking corruption, terrorism and tax evasion. As soon as the Act was enacted, between 2014 and 2016, only three money laundering related cases were taken to court out of those reported to the Crime

²⁵⁰ <https://mobile-monitor.co.ug/business>.

²⁵¹ Ibid p.7

²⁵² [https://observer.ug/news/headlines/55842/why Uganda can't beat money laundering](https://observer.ug/news/headlines/55842/why-Uganda-can't-beat-money-laundering). Visited on 2nd June 2019

²⁵³ <https://observer.ug/news/headlines/55842>. 2nd June 2019/why Uganda can't beat money laundering

²⁵⁴ Executive Director, Financial Intelligence Authority-Uganda.

²⁵⁵ Ibid

Intelligence and Investigations Directorate (CIID) and the rest of the cases were withdrawn for lack of sufficient evidence to pin the suspects, according to information at the Directorate of Public Prosecutions (DPP)²⁵⁶.

5.2.6 Lack of equipped system to track the suspicion transactions has contributed to the increase of money laundering in Uganda. Most cases do not go for the full trial because the financial intelligence authority find it difficult to make follow ups, to investigate and to prosecute. And this has been witnessed in difference situations, for instance, In 2015 united bank for Africa reported a Shs 5bn suspicious transactions, eighteen people were charged in the anti-corruption court in relation to this transaction, later “the charge was withdrawn by the Director of Public Prosecutions for lack of adequate evidence to convict the accused”²⁵⁷

Also in the same period, other transactions involving billions of shillings were reported by KCB Bank U Ltd, Diamond Trust Bank and Post Bank Uganda Ltd. All investigations were stalled for over two years due to lack of evidence or inefficient system capacity.²⁵⁸

Furthermore, in my view, Law enforcement agencies being the first stepping stone particularly police investigators and prosecuting authorities should be capacitated and empowered, through provision of resources and training to identify, investigate and prosecute the money laundering in order to ease the work load of Financial Institution Authority but this is not yet done which in one way or the other way has aided the criminals infiltrate the system leaving the laws of money laundering as just as barking dog. For instance, the police unit responsible for investigating money laundering cases do not have specialized training and skills to investigate money laundering cases²⁵⁹.

5.2.7 No policy/law that deals with confiscating of proceeds of crime Uganda does not pursue a deliberate policy of confiscating proceeds of crime, instrumentalities and properly of equivalent value under the confiscation framework provided by the Anti-Money Laundering Act²⁶⁰.

²⁵⁶ [http://observer.ug/news/headlines/55842/why Uganda can't beat money laundering](http://observer.ug/news/headlines/55842/why-Uganda-can't-beat-money-laundering). Visited on 3rd June 2019

²⁵⁷ *ibid*

²⁵⁸ *ibid*

²⁵⁹ Anti-money-laundering and counter- terrorism financing measures in uganda-2016- ESAAMLG

²⁶⁰ *ibid*

5.2.8 Powers invested is not fully exercised The Anti-Money Laundering Act provides wide powers for both the Financial Intelligence Authority and Local Enterprise Authorities to obtain information and gather intelligence and evidence during money laundering. Both of them have however not sufficiently used these provisions as there has been no meaningful investigation of money laundering cases²⁶¹. Local Enterprise Authorities general lack of awareness, training and resources to undertake financial investigations severely undermine their ability to investigate money laundering cases and to trace and cause confiscation of illegal assets

5.2.9 The Laxity within the banking sector to comply with the Anti-Money Laundering Law is one major loophole.

There are no administrative sanctions, provided under the Financial Institutions Act 2004 and the Financial Institutions (Anti-Money Laundering Regulations) 2010, to allow Bank of Uganda to impose sanctions on financial institutions compound problem. In one reported case, private bank had not set up an automated system to monitor and report suspicious transactions as was required by section 126(2) of the Financial Institutions Act and Bank of Uganda circular referenced EDS.306.3 dated February 27, 2013. Although this noncompliance was discovered in November 2015 by the central bank, it only penalized the defaulting bank with the fine of Shs 2,000,000 which was not commensurate with the value of money involved. Bank of Uganda also imposed low penalties on a bank which ignored its directive to freeze an account linked to money laundering²⁶². It could be prudent for Bank of Uganda to impose such penalty that is commensurate or equivalent to the money alleged to have been laundered. Such low fines, which are usually levied quietly, seem to encourage noncompliance with the Anti-Money Laundering Act

5.2.10 No law that regulates real estate, lawyers and other people that provides aid to the criminals to infiltrated the system.

Real estate, lawyer's commercial farmers, dealers in precious metals and stones and some types of financial institutions presents the highest risk to money laundering²⁶³ and some of these seem

²⁶¹ ibid

²⁶² Anti-money laundering and counter-terrorist financing measures in uganda-2016-ESAAMLG

²⁶³ The national risk assessment report, published by financial intelligence authority, reported by the observer on 8th November 2017

to be ignored under the anti-money laundering watch list in Uganda²⁶⁴. This has given opportunity illicit funds to be legitimized by establishing real estates and other businesses of the similar nature.

5.2.11 Also foreign countries is still a major threat to Uganda for money laundering

The foreign countries threat analysis indicates that transactions emanating from Kenya, India, democratic republic of Congo and south Sudan pose a great risk to Uganda. The report indicates that the overall threat of terrorist financing is medium high²⁶⁵. Terrorist threats are mainly external, emanating from the region of the terrorist group operating from within the region, Allied Democratic Forces, the Lord's Resistance Army, Al-Shabab, and Boko Haram²⁶⁶.

5.2.12 Large informal sector hinders the effective implementation of Anti –Money Laundering Laws.

The effective implementation of Anti-Money Laundering Law in Uganda is barred by the large informal sector in the economy. This poses a difficulty to detect huge amounts of money that launders might deposit in their accounts, since majority of the populace is not well conversant with banking practice²⁶⁷

5.2.13 Mobile money business is the new challenge.

The merging of mobile money business has ushered in a new challenge for Uganda as it does not have proper legal framework to support Anti-Money Laundering /Counter Financing Terrorism supervision of mobile money service providers²⁶⁸ No law in place that regulates money laundering in mobile money business and in my view this could be the reason why they are accumulating day and night.

Uganda has not yet developed an effective system that ensures that money laundering and terrorism financing cases are properly identified, investigated and prosecuted to enable illicit proceeds and instrumentalities of crime to be confiscated. The financial intelligence authority has made 32 dissemination out of the 210 suspicious transaction reports received. Since it came into

²⁶⁴ Trinidad money laundering presentation , visited on 14th June 2019

²⁶⁵ ibid

²⁶⁶ ibid

²⁶⁷ Daily monitor, published on Tuesday, September ,10th ,2013 visited on 14th June 2019

²⁶⁸ East southern of African Anti-Money Laundering –mutual-evaluation-uganda-2016

place in July 2014, only two of the suspicion transaction reports have been identified as having potential to lead to money laundering investigations²⁶⁹

5.2 POSSIBLE RECOMMENDATIONS

The following are the possible recommendations that can be implemented to address money laundering in Uganda

- i) The Finance Institutions Authority's operation field must be widened to allow it get access to commercially held data where appropriate, for example, commercial data held by some of the Designated Non-Financial Business and Professions when such access becomes necessary. The Finance Intelligence Authority's main data sources are Suspicious Transaction Reports and large Currency Transaction Reports. The Suspicious Transaction Report database is still negligible, with only 210 Suspicious Transactions Reports having been filed up to the time of on-site visit²⁷⁰.
- ii) The government through the legislature needs to increase the analytical and data mining tools to analyze the limited data it has received, especially the Currency Transaction Reports. This may be through increase in the budget allocation to the Financial Intelligence Authority for its effective functionality. Such budget increment should also translate into addition of skilled man power to the institution to conduct reliable analysis and quality intelligence that the institution can rely on which information can create a *prima facie* evidence for genuine prosecution.
- iii) The Police needs to be trained and equipped with the basic and substantial information and knowledge on Money Laundering so as to carry out quality investigations that can be merged with that of Financial Intelligence Authority to cause successful prosecution of the launderers²⁷¹.
- iv) The parliament needs to enact a law that strongly protects witnesses (Witness protection law) and asset confiscation in case the suspect has been convicted of Money Laundering. In an event where such suspect has deposited such money in an offshore account or disguised it into a legitimate source, it should then be reverted back to the origin where it's initial origin.

²⁶⁹ Anti-money laundering and counter-terrorist financing measures in uganda-2016-ESAAMLG

²⁷⁰ *ibid*

²⁷¹ Financial Action Task Force-recommendation-report

- v) Local Enterprises Authorities and the Director of Public Prosecutions' offices should undertake general and departmental awareness programs on Money Laundering. The general lack of awareness, training and resources to undertake and advise on financial investigations severely undermine the ability to trace and cause confiscation of illicit assets. This awareness must be extended to a country wide basis to put the general citizenry on the know of the pros and cons of the Money Laundering dangers and risks of not combating it. Effective implementation of Anti-Money Laundering law in Uganda is barred by the large informal sector in the economy. This poses a difficulty to detect huge amounts of money that launderers might deposit in their accounts, since majority of the populace is not well conversant with banking practice.²⁷²
- vi) The financial institutions like banks must employ personnel with adequate knowledge on the Anti-Money Laundering law to efficiently detect the various modes of Money Laundering in the institution and work hand in hand with the Financial Intelligence Authority and also train other staff in the same sector. This would not only avoid double expenditure on hiring a specialist to train the staff but also retain the retain personnel at the same. In an interview with one of the accountants in Bank of Africa, main branch at Jinja road Kampala, on 5th January 2018, he reliably informed me that most banks have merged the Anti-Money Laundering measures to be addressed by the legal personnel who may equally need to be trained on the Anti-Money Laundering law.
- vii) The Financial Intelligence Authority must impose a mandatory role on Real estates, lawyers, dealers in precious metals and stones and some types of financial institutions that present the highest risk to money laundering²⁷³ to report all their transactions periodically and failure to comply must attract drastic punitive measures in accordance with the law. In an interview with one of the lawyers, he disclosed to me that in a bit to dodge the Anti-Money Laundering obligation, they usually advise their clients to resort to some non-accountable sectors such as agriculture to explain the source of their money. A case example is the Burahya county MP Margaret Muhanga saga when she alleged that she bought the UBC land from the money she got from purportedly selling

²⁷² Daily Monitor, published on Tuesday, September 10, 2013.

²⁷³ Ibid

her cows and goats in her farm²⁷⁴. This informal sectors that may be non-accountable must equally now be considered by the Financial Intelligence Authority as a risky avenue and hence regulated.

- viii) Adequate measures must be put in place to check the foreign financial inflow. The foreign countries' threat analysis indicates that transactions emanating from Kenya, India, China, DRC and South Sudan pose a great risk to Uganda. The report indicates that the overall threat of terrorist financing is medium high.²⁷⁵ Such least checked or completely unchecked financial inflow pose a risk for terrorism financing with the country²⁷⁶.
- ix) There is equally need for the Financial Intelligence Authority to carry out country wide and institutional campaigns in institutions of higher learning and other tertiary institutions on the dangers and risks of Money Laundering. This can be efficiently carried out through adequate support of the Financial Intelligence Authority financially to meet up with its objectives.
- x) The Financial Intelligence Authority equally needs to open up regional offices in various places in the country or efficient and easy access to information in various regions of the country that could be inaccessible especially to those who cannot adequately access the main office. Free Hot lines should also be put in place for anyone to report dubious transactions that may not immediately accessed but Financial Intelligence Authority.
- xi) The legal regime should improve ways to identify and block the use of **cash couriers**: Financial Action Task Force's new special recommendation nine directly with this problem and we hope to see all members of Financial Action Task Force and regional bodies apply this recommendation as soon as possible²⁷⁷.
- xii) Similarly, there is a need to **improve financial controls and reporting systems**, particularly by alternative remittance systems deals or hawala as noted in Financial Action Task Force Special Recommendation six. The Financial Task Action Force recommend the countries in this region that have taken the initiative to hold a number of

²⁷⁴ Daily monitor, 3rd August, 2016.

²⁷⁵ Daily monitor 3rd august 2016

²⁷⁶ Anti-Money Laundering and counter terrorism measures in Uganda -2016@ESAAMLG

²⁷⁷ By Anthony Wayne, assistance secretary for economic and business affairs-recommendations to the counter money laundering-February 6 2005 visited on 15th June 2019

conferences on this subject to exchange ideas and best practices. Continuing effort is needed²⁷⁸.

- xiii) Uganda should have **effective financial intelligence units** across the country in order to have money laundering combated. One of the key elements of Financial Action Task Force and regional bodies and the Egmont Group focus on is the establishment of effective financial intelligence units (FIUs). One of the major advantages of Financial Intelligence Units is their ability to rapidly exchange information on suspicious transactions. The more rapidly effective Financial Intelligence Units can be developed and enhanced information sharing can be implemented the better. Broader cooperation should also include, when appropriate, Mutual Legal Assistance Treaties and more routine regional and bilateral exchanges of law enforcement and intelligence related to terrorism²⁷⁹.
- xiv) Also the legal regime should also monitor and control all the funds raised and disbursement by **charitable religious, Non-Government Organisation** and other cover activity: This is also covered in Financial Action Task Force Special Recommendation eight. Each of our countries needs to review its own domestic regulation in light of the threat level and to exchange information on best practices with others in the region and worldwide. For instance Uganda can borrow a leaf from Saudi Arabia. "Saudi Arabia Hosts" have taken innovative measures to assure that charitable and religious donations given by people of good faith and virtuous motives are not hijacked for use by terrorists. I hope that our Saudi colleague can share with us during the discussion some insights on this topic.

In conclusion, these challenges have greatly hindered the enforcement and implementation of the Anti-Money Laundering Act but if the fore mentioned recommendations are put into place and in practice money laundering challenges will be completely controlled and regulated hence widening the gap for the effectiveness of the Anti-Money Laundering Acts

²⁷⁸ ibid

²⁷⁹ ibid

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²⁷⁸ ibid

²⁷⁹ ibid

GENERAL CONCLUSION

In conclusion, the Anti-Money Laundering measures are still newly established in Uganda. Uganda is working hard to meet up with the global scale on combatting Money Laundering. However, this may not be achieved on a silver plate, there is therefore need for the government to support the newly established institution like (The Financial Intelligence Authority) by raising its functional budget so as to cope up with the global requirements of Financial Action Task Force.

Uganda's legal and institutional Anti-Money Laundering frameworks are still in infancy stages, with the Anti-Money Laundering Act only enacted in 2013 and the Financial Intelligence Authority established in July 2014. Measures taken by regulators to prevent criminals or their associates from acquiring significant interest or holding management positions in the financial sector are inadequate. Where the individuals are foreigners, no efforts are taken to identify and verify beneficial owners. Similar weaknesses exist in the Designated Non-Financial Business Profession sector. This is worse in the real estate sector where the operations are not subject to Anti-Money Laundering supervision²⁸⁰.

Bank of Uganda conducts risk-based prudential supervision and not risk-based Anti-Money Laundering supervision. The scope and frequency of prudential supervision is based on perceived prudential risks. However, Money Laundering risks are not incorporated to guide Anti-Money Laundering programs. Anti-Money laundering supervision programs ride on the back of prudential supervision. Whilst Bank of Uganda is aware of its obligations, assessors noted lack of understanding of Money Laundering risks, especially in the mobile phone services sector. As for the rest of the financial sector regulators, there is limited understanding of Money Laundering risks as well as their Anti-Money Laundering obligations which has led to poor implementation of the Anti-Money Laundering Authority and compliance by the market players. Furthermore, no serious enforcement has been taken by all regulators against non-compliance with the Anti-Money Laundering Act requirements. With respect to the Designated Non-Financial Business Profession sector, lack of understanding of Anti-Money Laundering obligations and Money Laundering risks, absence of supervisory activities and remedial action

²⁸⁰ AML and Terrorism financing measures, Mutual Evaluation Report, April-2016.

taken by Designated Non-Financial Business Profession regulators have all resulted in the poor implementation of Anti-Money Laundering obligations in their sectors²⁸¹.

The effort to combat money laundering is never-ending because criminals always seek new ways to move the proceeds of crime. It is a battle that requires constant vigilance, and is not so much a matter of winning or losing, but of just trying to stay current with the latest tactics.

²⁸¹ *ibid.*

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