

**KAMPALA INTERNATIONAL UNIVERSITY
SCHOOL OF LAW**

**EFFECTIVENESS OF UGANDA'S LEGAL AND INSTITUTIONAL
FRAME WORK TO MEET IT'S REGIONAL AND INTERNATIONAL
ANTI-MONEY LAUNDERING OBLIGATIONS. A CRITIQUE.**

**BY
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LLB / 42982 / 142 / DU**

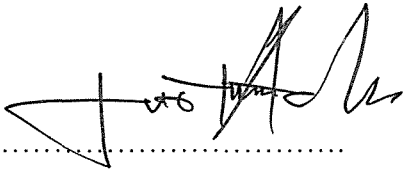
**A RESEARCH SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR AWARD OF BACHELOR
OF LAWS OF KAMPALA INTERNATIONAL UNIVERSITY**

FEBRUARY 2018

DECLARATION

I, **VUNI RONALD**, 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 :.....

5th / 2 / 2018

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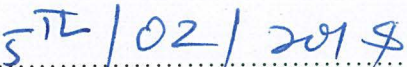
APPROVAL

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 fulfillment for the award of Degree of Bachelor of Laws (LLB) of Kampala International University.

Signature:.....

MR. TUHAIRWE HERMAN

SUPERVISOR

Date :.....

DEDICATION

I dedicate this work first and foremost to my beloved parents, Mr. Sydney Asubo, Mrs. Rose Bako and Mr. Ejoyi Justus, for their unconditional and unwavering support both morally and financially and diligence to see me through my studies. I am greatly indebted to them.

I am specially thankful and humbled to my Dad, Mr. Sydney Asubo and the entire Asubo family. No greater appreciation will pay back what you have made me till this level I am in. You have been, and you are still my source of inspiration and strength, for you lay your belief and trust in me.

ACKNOWLEDGEMENT

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 to accomplish this task and has been my provider throughout the entire course.

I would on the same note wish to extend my sincere appreciation to my Supervisor, Mr. Tuhairwe Herman, for his wise counsel and invaluable suggestions during the course of the study.

I am much grateful to my parents, Dad and mentor, Mr. Sydney Asubo, Mrs. Rose Bako and Mr. Ejoyi Justus for their diligent guidance and an outstanding contribution towards my education, both morally and financially.

My special thanks goes to my friend and Mother, Madam Among Anita Annet for her wise counsel, moral and financial support during my academic stifles and accommodating me as a member of her family. You are such a wonderful and tolerant friend and mother I have ever met.

I would also wish to thank my lecturers, mentors and friends, Dr. Valentine Mbeli (Dean School of law), Ms. Sarah Banenya Mr. AbdulKareem Azeez, Dr. Kasim Balorabe, Mr. Kyazze Joseph, Mr. Evans Ocheng, Mr. Walugembe Tom et al, The list is countless. They have not only taught me in class, but also been my good friends whom I consulted on many academic issues and guided me to succeed during my course of the academic journey.

I wish to thank my brother, Bidongo Bernard for always being there for me time immemorial.

I also extend my sincere thanks to my special friends and colleagues, Ms. Nabimanya Sheila, Akinwunmi John Ayobami (Mr. KIU), Mr. Matovu Daniel, Mr. Bayo Folayan, Ocen Bonny, Muhumuza Steven, Kasingye Stuart, Musinguzi Stephen, Upendo Allan Ignatius, Mr. Andruale Christopher, et al, and all my class mates. You have been a source of my academic success and invaluable friends.

I greatly appreciate their support and I am forever indebted to them.

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4. US v US\$4,255,625.39 (1982) 551 F Supp.314
5. Uganda v Mbeine & 4 Ors (Crim. Case No.01015-2012) [2013] UGHCCRD 14 (4 April 2013)
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2. Bank of Uganda Act
3. Financial Institutions Act
4. The Foreign Exchange Act
5. Micro Finance Deposit-Taking Institutions Act
6. Inspector General of Government Act
7. Anti-corruption Act
8. The penal code Act
9. The Fire Arms Act

STATUTORY INSTRUMENTS/REGULATIONS

- 1) Anti-Money Laundering Regulations
- 2) The Financial Institutions (Capital Adequacy Requirements) Regulations
- 3) The Foreign Exchange (Forex Bureaus and Money Remittance) Regulations
- 4) Financial Institutions (corporate Governance) Regulations of 2005
- 5) Bank of Uganda (BOU) Mobile –Money guidelines on Anti-Money Laundering (AML) and countering of Financing Terrorism (CFT)

LIST OF ACRONYMS

AML	- ANTI-MONEY LAUNDERING.
AMLA	-ANTI-MONEY LAUNDERING ACT.
ARS	- ALTERNATIVE REMITTANCE SYSTEMS
ADF	- ALLIED DEMOCRATIC FORCES.
BOU	- BANK OF UGANDA
BNI	- BEARER NEGOTIABLE INSTRUMENTS.
CTF	- COUNT FINANCING OF TERRORISM.
CDD	- CUSTOMER DUE DELIGENCE.
CTRs	- CURRENCY TRANSACTION REPORTS.
CIID	-CRIMINAL INTELLIGENCE AND INVESTIGATIONS DIRECTORATE.
DRC	- DEMOCRATIC REUBLIC OF CONGO.
DNFBP	- DESIGNATED NON-FINACIAL BUSINESSES AND PROFESSIONS.
DPP	- DIRECTORATE OF PUBLIC PROSECUTIONS.
ESAAMLG	-EAST AND SOUTHERN AFRICA ANTI-MONEY LAUNDERING GROUP.
FBI	- FEDERAL BUREAU OF INVESTIGATIONS.
FI	- FINACIAL INSTITUTIONS.
FIA	- FINANCIAL INTELLIGENCE AUTORITY.
FATF	- FINANCIAL ACTION TASK FORCE
FIB	- FINANCIAL INTELLIGENCE BOARD.
GAFI	- GROUPE D'ACTION FINANCIÈRE.
HT	- HUMAN TRAFFICKING.

IMF	- INTERNATIONAL MONETARY FUND.
KYC	- KNOW YOUR CUSTOMER.
LEAs	- LOCAL ENTERPRISE AUTHORITIES.
LRA	- LORD'S RESISTANCE ARMY.
MDIs	- MICRO FINANCE DEPOSIT-TAKING INSTITUTIONS.
MLCO	- MONEY LAUNDERING CONTROL OFFICER.
MOU	- MEMORUNDUM OF UNDERSTANDING.
ML	- MONEY LAUNDERING.
NPO	- NON PROFIT ORGANISATIONS.
PEPS	- POPULARLY EXPOSED PERSONS.
SR	- SPECIAL RECOMMENDATIONS.
STRs	- SUSPICIOUS TRANSACTION REPORTS.
TF	- TERRORISM FINANCING.
TNOC	- TRANS-NATIONAL ORGANIZED CRIME.
UNSCR	-UNITED NATIONS SECURITY COUNCIL RESOLUTIONS.
UN	- UNITED NATIONS.
US	- UNITED STATES.
WB	- WORLD BANK.

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ABSTRACT.

The study critically appraises the aspect of ML and the legal and institutional frame work of combating ML in Uganda in relation to the regional and international AML demands with the view of assessing the challenges, lacunas, and hindrances faced by the legal and institutional structure.

The major objective of this research is to evaluate the effectiveness and adequacy of the various laws in Uganda to meet the regional and international mandates.

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

First: Whether the presence of a comprehensive law on AML provides for its legal and institutional frame work to adequately combat ML.

Second: Whether, though attempted to be addressed, ML in Uganda can be effectively addressed in all Institutional legal structures.

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

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

The research examines the scope of ML from a domestic, regional and international arena and outlines the negative impact of ML on the social economic, and political sphere of a country and also asses the strength of the law, capacity of the institutions and the adequacy of man power, political will and enforcement policies to curb ML in Uganda.

In conclusion, the study outlines the recommendations on the various ways of tackling ML scourge and in addition, what lacks in the law and the possible ways forward.

CHAPTER ONE. GENERAL INTRODUCTION.

1.0 INTRODUCTION

The Republic of Uganda, is a landlocked country in East Africa, measuring an area of 93,263 square miles¹, with a population estimate of 41,652,938 people² as of 2017 based on the United Nation's estimates. It is bordered to the East by Kenya, to the north by South Sudan, to the west by the Democratic Republic of the Congo, to the south-west by Rwanda, and to the south by Tanzania.

Uganda's AML/CFT regime is relatively new, with the enactment of the AMLA in 2013. As such most of the reporting entities are in the very early stages of designing and implementing the preventive measures prescribed by the AMLA. Prior to the AMLA, the FI Act and the AML regulations issued pursuant to the FI Act in 2010 existed for financial institutions under the direct supervision of the BOU (limited scope) and the regulations did not cover any measures relating to TF. In terms of the AMLA, a wide range of financial institutions are obliged to implement preventive measures³.

The legal and institutional framework of Uganda has remarkably improved since its last assessment in 2005. The AMLA enacted in 2013, ushered in a new legal framework on the criminalization of the offence of ML, preventive measures and international cooperation and the establishment of the FIA. Although the AMLA introduced dissuasive criminal sanctions, the same cannot be said about the regime on administrative sanctions for non-compliance with the preventive measures which is not provided in the AMLA⁴.

The AML/CFT regime is still young and there is still a very low level of effectiveness. Although authorities have started implementing the AMLA, significant work still needs to be done in the assessment of ML/TF risks; national cooperation; collection; analyses and use of financial intelligence; investigations; parallel financial investigations in suspected terrorism cases; prosecution and confiscations involving both ML and TF cases; implementation of preventive measures and supervision; and transparency of beneficial ownership of legal persons and

¹ statistical Abstract, Uganda Bureau of Statistics, 2014

² Worldometres (www.wordometres.info), visited on 8th August 2017.

³ Mutual Evaluation Report on AML and counter terrorism financing measures, of April 2016.

⁴ Ibid.

arrangements. Currently, the assessment of risks pertaining to terrorism is strong but the same cannot be said about TF. In terms of overall effectiveness of AML/CFT systems, there has not been remarkable improvements since Uganda's last assessment⁵

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

Uganda has been racing against time to avoid the possibility of being blacklisted by the Financial Action Task Force on money laundering (FATF), something that would have overriding implications on the economy.

FATF had initially maintained Uganda on the list of countries with "strategic deficiencies" together with Afghanistan, Ethiopia, Iraq, Syria, Vanuatu, Yemen, Bosnia & Herzegovina and Lao People's Democratic Republic, though recently in 2nd November 2017, Uganda registered a tremendous achievement upon its removal on the gray list by the FATF courtesy of FIA.

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

Uganda, for instance, has at least six areas that FAFT has raised the red flag. On top of that list is that Uganda needed to deal with deficiencies like "adequately criminalize terrorist financing" and "implement adequate procedures for freezing terrorist assets in accordance with UNSCRs (UN Security Council Resolutions) 1267 and 1373 and their successor resolutions."

Additionally, FATF wanted the government of Uganda to ensure banks and other financial institutions to put in place proper book keeping requirements and amend the Anti-Money Laundering Act.

Uganda had missed two deadlines on document submissions to FATF in December 2016 and January 2017. This posed a threat for Uganda that stood to be blacklisted by FAFT if it had not complied with the FAFT regulations to submit proper accounting documents by banks and other financial institutions by 2017⁶.

⁵ Ibid.

⁶ Daily Monitor published on Friday, March, 17th 2017.

1.1 BACK GROUND

Uganda's AML/CFT Regime is still very young. The AML/CFT legal framework is still being developed to address some of the outstanding deficiencies. The institutional framework for both AML and CFT needs to be improved to ensure that ML and TF cases are investigated and prosecuted. Uganda's economy is cash based with mobile money transfer services now helping in some way to cut down on the reliance on cash. Banks do not have any special accounts for low income/non banked people. However, such institutions have products tailored to meet the different segments of the market⁷. AML/ML can thus be defined in various forms:

Anti-money laundering refers to a set of procedures, laws or regulations designed to stop the practice of generating income through illegal actions (Money laundering).

Money laundering is defined as including "all activities and procedures designed to change the identity of illegally obtained money so that it appears to have originated from a legitimate source⁸."

It may also mean a process of conversion of the proceeds of criminal activity into apparently clean funds usually financial services.

Equally, Money laundering can be described as the process by which a person conceals or disguises the identity or the origin of illegally obtained proceeds so that they appear to have originated from legitimate sources⁹.

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 Act¹⁰.

⁷ 2nd round-mutual evaluation-report of the republic of Uganda, Published in April, 2016.

⁸ S.130 (2) Financial Institutions Act, 2004.

⁹ UN and IMF Model legislation on money laundering and financing of terrorism, 1st Dec. 2005, www.imf.org/externa

¹⁰ S.1 AMLA, 2013.

Therefore, all these combined, 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 laundering¹¹.

Money laundering is done by disguising the source of money, changing its form or moving the funds to a place where they are likely to attract attention. The example includes; 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 any you wish for yourself, among others.

Uganda joined the East and Southern Africa Anti-Money laundering Group (ESAAMLG), a regional organization coordinating member states in promoting anti-money laundering measures and fighting trans-national organized crime (TNOG) in the region. She signed an MOU drawn by thirteen governments in August 1999. Uganda has since demonstrated a positive effort in fighting Money laundering through two main channels; the law and enforcement institutions. A reasonable chain of legislations have been enacted and amended and as well, a number of institutions have been established to make money laundering a financial crime in Uganda’s domestic legal regime, in harmony with ESAAMLG memorandum, the UN model law, the FATF 40 recommendations and other international legislations that curb Money laundering on the International scale. As a result, the parliament of Uganda passed The Anti-Money Laundering Act in 2013 that established the Financial Intelligence Authority to investigate, Monitor Financial institutions to make them comply with the Act and also report to the DPP for the prosecution of possible money launderers and a success of this has been registered in the case of *Uganda V Sserwamba David Musoke and 6 others*¹².

In the region, the East and Southern Africa Anti-Money laundering Group (ESAAMLG), has been established to combat money laundering on a regional basis.

¹¹ugandabankers.org/fraud-anti-money-laundering

¹²NO.HCT-00-AC-SC -0011-2015

On the international scene, steps taken to combat ML have ushered in the need to enact laws such as the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) 1988*, *United Nations Convention against Transnational Organized crime (Palermo Convention or UNTOC) 2000*., *United Nations Convention against Corruption 2003*, and establishment of institutions to meet the ever changing dimensions of laundering money and to make it adaptable to the ever changing strategies used by Money launderers and Terrorism financiers on the International scale and thus the need for all the member states to make regulations that conform with the FATF International standards, often referred to as “variables” or “determinants” embodied in the normative rules and operating (institutions and actors) structures of the AML/CFT frame work relying essentially on the soft norms that bind many member states¹³. ML is closely associated with terrorism financing and more oftenly, the two match a breathe.

1.2 STATEMENT OF THE PROBLEM

The AMLA lays down an elaborate legal and institutional frame work for combating ML. Many other legislations and subsidiary legislations¹⁴ envisage the same provisions emulated by the AMLA. The ESAAMLG equally lays down 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 regional and International AML legislations, and the enactment of the AMLA-2013, Uganda still faces drastic challenges in the enforcement of the AMLA to conform to the regional and international requirements. The AMLA-2013 establishes Financial Intelligence Authority to act as an independent body with no interference from anybody or authority¹⁵. The major objectives¹⁵ of the institution as per the Act are to enhance the identification

¹³ Navin Beekery, *The International Anti-Money laundering and combating the Financing of terrorism strategy, A critical analysis of compliance determinants in International law*, p. 140, 141.

¹⁴ *ibid*

¹⁵ S.18 AMLA-2013

of the proceeds of crime and the combating of money laundering, ensure compliance with this Act, enhance public awareness and understanding of matters related to money laundering, make information collected by it available to competent authorities and to facilitate the similar offences¹⁶. Notwithstanding this elaborate anti-money laundering legal and institutional framework, 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 and there the effectiveness of this law and the established institution under this law has not picked up momentum of adequately fighting money laundering. Therefore, the purpose of this research is to find out whether the protection is place is adequate and efficient.

1.3 OBJECTIVE OF THE STUDY

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 specific objectives of the study are:

1. To examine the nature, scope and extent of the scourge of money laundering in Uganda.
2. To examine and analyze Uganda's Anti-Money laundering strategies and their efficacy to conform to the regional and International AML obligations.
3. To examine the effect of money laundering to Uganda's economy and the various financial Institutions.
4. To identify the major challenges and project solutions and recommendations to Anti-Money laundering strategies.

¹⁶ S. 19 (a –e), AMLA-2013.

1.4 HYPOTHESIS

Money laundering poses an enormous socio-economic and political threat that needs an urgent remedy to safe guard the economy from related and subsequent offences such as organized crime and terrorism financing.

This study will thus focus on the effectiveness of Uganda's legal regime to fight and combat money laundering while exposing its inadequacies in contrast to regional and international Anti-Money laundering legal efforts.

1.5 SCOPE OF THE STUDY

The research will focus on the Ugandan legal regime and the assessment will dwell on the proceeds of crime and the Anti-Money laundering Act in contrast with the assessment on the law regarding money laundering in foreign jurisdictions of Botswana, United Kingdom, USA, and South Africa.

1.6 LITERATURE REVIEW.

A number of legal scholars, have attempted to define the term "Money laundering".

Ayodeji Oluko and Mahmood Bagheri on **The impact of money laundering on economic and financial stability and on political development in developing countries: The case of Nigeria**¹⁷, discuss in this article that the concept of money laundering is an intentional scourge that undermines stabilities of states. The authors note that as much as ML has been a global phenomenon, developing countries are the most exposed to the dangers of such a crime.

However, the authors limit their discussions to the jurisdiction of Nigeria and do not tackle aspects in other jurisdictions like Uganda.

Tuhairwe Herman; An overview of the Anti-Money Laundering Legal Regime in Uganda¹⁸ points out that In order 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

¹⁷ www.emeraldinsight.com/doi/full/10.1108/13685201211266024, Visited on 2nd Nov.2017.

¹⁸ www.researchgate.net/publication/307476582. Accessed on 8th September 2017.

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.

He equally notes that the Act does not keep the fight against money laundering only in the hands of state organs as is with the “traditional” perspective in the fight against crime. “Accountable persons” are recruited as gatekeepers with stringent Know Your Customer (KYC) and Customer Due Diligence obligations¹⁹. 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. However, the Author did not address the challenges such as inadequate political will to render maximum support to the FIA in order to execute its mandates as required by the international standards. This has posed a serious threat that puts Uganda on a ledge and stands vulnerable to be blacklisted from FAFT membership by 2017 if not complied to.

William R. Schroeder in FBI Law Enforcement Bulletin²⁰, 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

¹⁹ Ibid.

²⁰ Published in USA in May, 2001 pp. 1-7.

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.

Verona Zoppei, Money Laundering: A New Perspective in Assessing the Effectiveness of the AML Regime²¹;

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 measures.

Robert Faturechi; Online gambling, a haven for money laundering. Report warns. Published on April 24, 2014 |

The Author notes in this article that the Internet is rendering obsolete money launderers inside brick-and-mortar casinos. According to a report released on 24th April 2014, the world's criminals are increasingly laundering their ill-gotten gains on pseudo-legal gambling sites. Unlike their brick-and-mortar counterparts, the Web services allow criminals to hide their identities with crypto currencies such as Bit coin, and muddy their whereabouts. Users, for

²¹<http://sgocnet.org/site>, visited on 13th September 2017.

example, can mask their true locations and make it seem to law enforcement that they're located in another state or abroad.

However his publication, the author did not attempt to provide for solutions and remedies on how this can be adequately handled and resolved.

Goredema, in **Trans-national organized crime and Responses to it in East and Southern Africa**²², discusses the concept of **TNOC** and acute corruption tendencies that leave the less privileged masses aidless. He focuses more on the complex nature of transnational crime but also high lights on the **AML** phenomena, east Africa but fails to relate this with Uganda's weak and developing anti-money laundering regime.

Jackson Madzima in **Money laundering and Terrorism Financing Risks in Botswana**²³, attempts to define ML and equally notes that money laundering emanates from organized crime and the two are generally always mentioned in the same breath. Organized crime continues to generate vast funds, which are estimated to constitute between two and five per cent of the global annual income. This has brought to life two significant scenarios. Firstly, criminal formations need to hide the illicit origin of their funds for the purposes of integrating them into the legitimate economic system. Doing this constitutes money laundering. Secondly, there are possibilities for such funds to be used for financing terrorism. He however, notes that fighting AML faces challenges of political unwill which has slow down the fight against ML and has lifted the scourge of ML at the same time²⁴.

1.7 RESEARCH METHODOLOGY

The study involved mainly online and library research. It is qualitative in nature and relies on published literature on online-resources, libraries, interviews with a sample of practicing lawyers and other Government officers.

²²oldsite.issafrica.org, also published In Uganda living law journal, Vol.3, No.2, Dec.2005, p.122.

²³an ISS Paper No.184 published on March 2009 and also presented in Gaborone on 6 February 2007 and in Francistown on 1 August 2007.

²⁴**Jackson Madzima**, Money laundering and Terrorism Financing Risks in Botswana

Various libraries were consulted such as, The Kampala International University–Kampala Main campus Law library, the resource center at DPP’s chambers. The research also included interviews with State Attorneys in the DPP’s chambers.

1.8 SIGNIFICANCE OF THE STUDY

The study provides a paramount background information and important remedial steps for combating money laundering and generally developing the AML legal regime in Uganda. The study will note the inadequacies 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 the weaknesses of the AML regime in Uganda and suggest recommendations in additions to those pointed by previous studies.

1.9 CHAPTERISTION.

1. *Chapter one* – General Introduction
2. *Chapter two* – Nature and scope, Typologies, Predicate offences of ML and consequences of ML in Uganda
3. *Chapter three* – The concept of Anti Money laundering and the impact of AML reforms in Uganda.
4. *Chapter four* – Effectiveness of the International and regional AML regime visa Vis Uganda’s legal regime in combating ML. An appraisal of the regional and International regime in contrast with the challenges facing the domestic regime.
5. *Chapter five*–General conclusion and recommendations.

CHAPTER TWO
NATURE AND SCOPE, TYPOLOGIES, PREDICATE OFFENCES OF MONEY LAUNDERING AND CONSEQUENCES OF MONEY LAUNDERING IN UGANDA.

2.0 Historical Background of Money laundering.

The history of money laundering is primarily that of hiding money or assets from the state either from blatant confiscation or from taxation and indeed, from a combination of both. 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 banking²⁵.

Notably for several thousand years, In "Lords of the Rim" Historian, Sterling Seagrave²⁶ explains how in China, merchants some 2000 to 3000 years BC would 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.

In this way, the offshore industry was born²⁷, and depending on your point of view so was tax evasion. And so were the principles of money laundering to hide, move and invest wealth to which someone else has a claim.

Over the next four millennia, the principles of money laundering have not changed. But the mechanisms have. Parallel Banking is one of the most durable techniques.

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 gangsters²⁸. 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

²⁵ www.countermonylaundering.com

²⁶ Sterling Seagrave, *Lords of the Rim: The invisible Empires of the Overseas, China, Putnam, 1995, p.12.*

²⁷ Ibid.

²⁸ 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.

Capone), one of Americas' most wanted criminals in the 1920s And 1930s, was of course famously convicted for tax evasion²⁹. This Ruling no doubt prompted many others to establish money Laundering operations to conceal their criminal proceeds and complicate any potential prosecutions. Further, ML can also be traced in the aftermath of the *1932 case of Meyer Lansky*³⁰

Meyer Lansky, was a cohort of Al Capone, who came up with a scheme that would be copied in different guises by others in later years. Lansky Established offshore accounts with foreign banks (Swiss bank) where he used to hide the criminal proceeds of Governor Huey Long of Louisiana, and then borrowed from the bank to start up a slot machine in New Orleans for his company Lansky & Co, receiving what looked like legitimate loans (backed by the deposited criminal proceeds)³¹. These loans could even be disclosed to the revenue service, and tax deductions declared.

Another high profile example is the mechanism used by Richard Nixon's re-election campaign³² 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*"³³. "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 [...]"³⁴. 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,*

²⁹ The people Vs. Alphonse (Al) Capone (1931).

³⁰ 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

³¹ Ibid.

³² "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.

³³ Ibid.

³⁴ Carl Bernstein & Bob Woodward, '*All the President's Men*', 1974.

*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 [...]*³⁵. In the 1980s the term gained recognition in American legal System, being referenced in a 1982 court ruling³⁶ 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 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)**³⁷. The Convention recommends its parties to criminalize money laundering and drug trafficking³⁸. 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.

³⁵ Jeffrey Robinson, ‘**The laundrymen**’, 1996.

³⁶ **US v US\$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.”

³⁷ United 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.

³⁸ Ibid, Article (3) (1) (a) and (b)

2.1 Nature and scope of Money laundering in Uganda.

The processes by which criminally derived property may be laundered are extensive. Though criminal money may be successfully laundered without the assistance of the financial sector, the reality is that hundreds of billions of dollars of criminally derived money is laundered through financial institutions, annually. The nature of the services and products offered by the financial services industry (namely managing, controlling and possessing money and property belonging to others) means that it is vulnerable to abuse by money launderers.

Money laundering offences have similar characteristics globally. There are two key elements to a money laundering offence:

1. The necessary act of laundering itself i.e. the provision of financial services; and-
2. A requisite degree of knowledge or suspicion (either subjective or objective) relating to the source of the funds or the conduct of a client.

All instruments³⁹ establish the same *Actus reus*, which include the conversion or transfer of property; the concealment or disguise of the true nature, source, location, disposition, movement, right with respect to, or ownership of property; the acquisition, possession, or use of property; the participation in, association to or conspiracy to commit, attempts to commit, and aid, abet, facilitate, and console.⁴⁰

With respect to *mens rea*, or the mental element of money laundering offences, all instruments create *knowing* or *intent* as an essential element to punish a defendant.⁴¹ It means that the prosecutor must prove the actual knowledge of the defendant that they have known the funds were derived from a specified crime. In the level of implementation, it is recognized that proving

³⁹ The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), article 3(b), The European Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (1990), article 6(1), The European Community Council Directive on Prevention of the Use of the Financial System for the Purpose of Money laundering (2001), Article 1, The United Nations Convention against Transnational Organized Crime, 2000, Article 6(2).

⁴⁰ *Actus reus* is criminal conduct(s) of the defendant that construct the elements of crime as formulated in a legislation. It is the essential elements that have to be proved by a prosecutor before the judge passes a sentence to the defendant.

⁴¹ *Mens-rea* is a criminal responsibility of a defendant that also has to be proved by a prosecutor in a judicial proceeding. Generally, there are two types of criminal responsibility: subjective and objective responsibility. Subjective responsibility consists of three kinds of fault: intention, recklessness and negligence. Objective responsibility describes the fault based on the fact in surrounding the case.

this kind of mental element is not an easy task. Realizing this problem, the *United Nations Vienna Convention of 1988* and the forthcoming international instruments considered ‘knowledge, intent, or purpose may be inferred from objective factual circumstances’⁴².

The act of laundering is committed in circumstances where a person is engaged in an arrangement (i.e. by providing a service or product) and that arrangement involves the proceeds of crime. These arrangements include a wide variety of business relationships e.g. banking, fiduciary and investment management.

The requisite degree of knowledge or suspicion will depend upon the specific offence but will usually be present where the person providing the arrangement, service or product knows, suspects or has reasonable grounds to suspect that the property involved in the arrangement represents the proceeds of crime. In some cases the offence may also be committed where a person knows or suspects that the person with whom he or she is dealing with is engaged in or has benefited from criminal conduct.

2.2 Process of laundering.

The processes are extensive. Generally speaking, money is laundered whenever a person or business deals in any way with another person’s benefit from crime. That can occur in a countless number of diverse ways.

Traditionally money laundering has been described as a process which takes place in three distinct stages; **Placement, layering and integration**⁴³.

Placement, the 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 idea of the placement stage is to transform cash as quickly as possible into other types of assets in order to avoid detection. This stage is aimed at severing the direct association or the nexus between illegal funds and the underlying crime. At this stage, illegally obtained money is

⁴²The United Nations Convention on against Illicit Traffic in Narcotic Drug and Psychotropic Substances (1988), Article 3(3).

⁴³ 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.

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.

Layering, the substantive stage of the process in which the property is ‘washed’ and its ownership and source is disguised. Layering is the second stage of the laundering process. This stage concerns the movement of money out of the country through a series of complex financial transactions.⁴⁴ 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,⁴⁵ shell companies,⁴⁶ or tax havens⁴⁷ in conjunction with offshore jurisdictions⁴⁸ to make it virtually untraceable. These intermediaries are relatively safe from detection by law enforcement agencies because they have weak anti-money laundering legislations.

⁴⁴ William C. Gilmore (2004), *Ibid.*

⁴⁵ ‘Offshore resorts not only fulfill an essential role of tax havens for the globalized economy; typically company law is underdeveloped, company registers are incomplete, registering requirements and supervision is lax. Banking laws make it possible to escape the strict rules on customer identification developed and enforced otherwise, thereby accepting anonymous client. Finally it is part of the definition of the ‘offshore haven’ that mutual legal assistance is difficult to obtain, be it for legal or merely factual reasons. Increasingly it becomes evidence that offshore resorts are the ‘black holes’ of the world economy’; Mark Pieth, “The Harmonization of Law against Economic Crime”, *European Journal of Law Reform*, Vol.1. No.4, 1999, p.529.

⁴⁶ Shell Company is a company not operated for itself: a company that has no independent assets or operations of its own, but is used by its owners to conduct specific business dealings or maintain control of other companies. http://encarta.msn.com/dictionary_1861733097/shell_company.html.

⁴⁷ Tax haven refers to a country of faring very favorable tax laws for foreign businesses and individuals. http://www.investorwords.com/4899/tax_haven.html

⁴⁸ Offshore financial center refers to countries or jurisdictions with financial center that contain financial institutions that deal primarily with nonresidents and/or in foreign currency on a scale out of proportion to the size of the host economy. Nonresident-owned or -controlled institutions play a significant role within the Centre. The institutions in the Centre may well gain from tax benefits not available to those outside the center. <http://stats.oecd.org/glossary/detail.asp?ID=5988>

Integration, the final stage at which the ‘laundered’ property is re-introduced into the legitimate economy. At this stage, the criminal combines the newly laundered funds with that of a legitimate origin, making it more difficult to separate both.⁴⁹ Other techniques in the integration stage include buying letters of credit, bonds, securities, bank notes, bills of lading, and guarantees. 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.

This three staged definition of money laundering is highly simplistic. The reality is that the so called stages often overlap and in some cases, for example in cases of financial crimes, there is no requirement for the proceeds of crime to be ‘placed’.

Money laundering uses the principles of hiding, moving, and investing.⁵⁰ 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.⁵¹ 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.²⁸ 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.²⁹

⁴⁹ William C. Gilmore (2004), *Supra* note 43.

⁵⁰ The United Nation’s International Money Laundering Information Network (IMOLIN), The United Nations, 2006.

⁵¹ 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

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.

2.3 Typologies of money laundering.

Typologies of ML refer to the study of methods, techniques and trends of money laundering and terrorist financing⁵².

ML is an evolving criminal activity in various jurisdictions. As various Government bodies try to formulate up to date modes of curbing this scourge, criminals as well, struggle so hard to invent new modes of legitimizing illegal assets, professionalizing the skills in the process through various sectors of the financial and geographical routes in the economy respectively⁵³.

Criminals are very creative in developing methods to launder money and finance terrorism. ML and TF typologies in any jurisdiction are heavily promoted by the economy, financial markets, and anti-money laundering/counter financing of terrorism regimes⁵⁴. Consequently, as there are no definite methods of laundering money, so is rare to base our on definite typologies of ML and TF.

However, experts from the law enforcement and regulatory authorities of FATF member countries have tried to analyses and thus came up with elaborate money laundering trends and effective counter measures as classified vide:⁵⁵

Underground banking / alternative remittance services (Hawala / hundi etc.): Informal mechanisms based on networks of trust used to remit monies. Often work in parallel with the traditional banking sector and may be outlawed (underground) in some jurisdictions. Exploited by money launderers and terrorist financiers to move value without detection and to obscure the identity of those controlling funds.

⁵²Ibid.

⁵³ <http://www.apgml.org/methods-and-trends/page.aspx?p=a4a11dca-75f2-4dae-9c25-6215103e56da>

⁵⁴ Ibid.

⁵⁵ Report of the Asia Pacific Group (APG) on Money Laundering, the terrorist events of September 2001

Hawala and Alternative Remittance Systems. (“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 funds⁵⁶

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 records⁵⁷.

ARS 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 ARS 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 ARS 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 pass⁵⁸.

Such system can be briefly described as below;

The Originator of the Transfer⁵⁹

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

⁵⁶ Ibid.

⁵⁷ Business Daily, George Ngigi, Monday, April 29th 2013.

⁵⁸ Ibid.

⁵⁹ Report of the Asia Pacific Group (APG) on Money Laundering, the terrorist events of September 2001

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 originator may pay funds directly into a bank account belonging to or controlled by the ARS operator.

The Originator's ARS Service Provider

The ARS provider at the originator's location receives the funds and then sends an instruction for payment to a counterpart at the location of the beneficiary of the transfer. This communication may occur directly or through broker or middleman as well as through different communication channels (for example, fax, telephone, Internet inter-alia).

The ARS Service Provider at the Transfer Destination.

The ARS operator at the destination for the remittance makes the corresponding payment on instructions from the originating ARS operator, to the beneficiary specified by the originator who meets the identification procedure.

The Transfer Beneficiary

The money once received at its destination may be forwarded to the actual beneficiary or the beneficiary sometimes may be called to go the location of the premises of the ARS operator to receive payments. These payments may be in form of local or international currencies, cheques or bank over drafts.

Settlement.

ARS transfers may occur in both directions, that is, the service providers may process both outgoing and incoming transfers at their particular location. Ideally, the transfer amounts should balance out so that neither side has a surplus or deficit both from the sending jurisdiction and the receiving jurisdiction. ARS operations usually balance out between the service providers in two different jurisdictions. The originating ARS operator will accumulate a sum of money, and the destination ARS operator will have a deficit.

Whatever method is used, the ARS service provider also seeks to preserve or enhance profits. Some of the more common ARS settlement procedures are indicated below.

Transfers through Conventional Banking Systems.

The ARS service providers holding the funds may use wire transfers, internet or any other mode to effect payment on the account of the receiving ARS. Such payments involve bank fees and exchange rate costs.

Offset of Remittances.

Settlement by back to back transfers is a preferred method as it is the easiest and the most efficient. In this system each ARS provider is the originating ARS for one transaction and uses the funds to act as the destination ARS for another. No funds need to be moved and two commissions are shared between the two ARS providers. This is the principal on which multi-national franchised ARS operations work, but it is equally the ideal solution for informal systems. This category also includes manufactured offset of remittances. For example, an ARS operator in a country with a high level of migrant remittances may pool the proceeds of multiple transactions in order to use this money to make a single commercial remittance to a third party. This activity is common between Europe and South Asia

Physical Cash Movement.

Cash deposits can be a logistical problem for unlicensed or illegal ARS. Cash couriering and smuggling is a common method of moving value to jurisdictions which have less experienced banks and cash wholesalers operating. It also allows profits to be taken on currencies in high demand by ARS providers.

Cash pooling accounts.

These are a common feature of complex ARS systems. They are used by multinational ARS providers to reduce the losses of currency exchange. Equally, they are used by informal ARS providers to facilitate complex settlements between different countries. The holder of the cash pooling account will have a series of accounts in different currencies. Money is transferred into the cash pooling account from customer transactions and used by the originating ARS provider. The value remains to the credit of the destination ARS provider.

These ARS are further categorized depending on the type of business as follows⁶⁰;

Franchised Multinational Companies.

This category includes ARS products offered by various large and often well-known international corporations that provide money transfer service through franchises. These operators tend to have a high degree of compliance with local legislation, also by providing effective procedures to prevent misuse.

They have sophisticated computer systems to ensure transactions are completed accurately and to prevent fraud against their services. Due to their sophistication, criminals find this as best alternative to through which promotion of money laundering and TF can be accurately carried out without trace⁶¹.

Multi-Premises or Franchised National Companies.

These ARS are the next level in scale after the multinational companies. Within a particular country or community, these businesses are a recognized brand. These operators will often act as franchisees of the multinational companies but will also provide their own rival services. They tend to provide remittances to or through banking channels, making use of electronic transfers or bank drafts. Franchised national companies compete with banks and multinational companies by knowing their market and using economies of scale to provide better exchange rates or cheaper charges. This aids the criminals to launder money easily. Where they offer commercial services they can be abused in large scale frauds, either as the remitting or receiving company.

Signed Shop-Front Premises (one or more premises).

These are familiar premises wherever ARS can operate legally. They generally serve a particular ethnic community and provide it with a cost effective and valuable service. They tend to be family run and are sometimes identified as “Mom & Pop” operations within United States. They can provide a cost effective service by using efficient settlement methods and making economies of scale on bank transfer costs. They may use the services of another ARS to make transfers if this is most efficient. Customers either make cash deposits at the shop-front premises or make payments directly into the ARS provider’s bank account.

⁶⁰ Ibid.

⁶¹ Report of the Asia Pacific Group (APG) on Money Laundering, the terrorist events of September 2001

Overt ARS Operations within another business.

These operators are visible, but do not necessarily advertise their services. This tier of ARS operator can be similar to a shop front ARS operator, with the same risks. In the same way as a franchise agent of a multinational ARS operator, they offer remittance services to local customers in addition to their normal business. The provision of remittance services may complement their normal business activity or be a totally separate venture. Where there is a registration or licensing regime, these ARS operators can be effectively controlled as long as their services are identified. Risks include those generated by possible commingling of funds coming from different activities. That could cause difficulties in the proper application of AML/CFT measures, also breaking the audit trail.

Covert ARS Operations within another business.

Covert ARS operation within another business is the first category where the operator will actively seek to work outside the regulatory regime. A covert ARS operation will be illegal in that it operates without a license or registration. It also violates regulatory provisions by performing ARS operations without carrying out necessary AML/CFT measures, such as identifying customers, recording transactions or reporting suspicious transactions. It is also likely to commit banking offences such as “structuring” where deposits are made below a disclosure limit to avoid identification of the ARS activity. ARS operators in this category tend to serve a particular migrant or ethnic community.

Suspicious transaction reports from banks or referrals from another FIU are the most successful methods of identifying these ARS operators. Information gleaned from the community these operators serve is also valuable. In some cases, this category of ARS operator will be resistant to AML procedures. Their informality is key to their selection by individuals who may be operating illegally or within the “grey⁶²” or “cash” economy.

Covert ARS Operation – No Premises.

A covert ARS operator having no specific premises may operate in the same way as the previous category. They also include criminal money laundering groups who act as purely criminal ARS

⁶²The part of a country's economic activity that is not accounted for in official statistics, This may include income from proceeds of tax evasion, sale of drugs among other illegal activities; Oxford Living Dictionary, [en.oxforddictionaries.com/definition/grey economy](http://en.oxforddictionaries.com/definition/grey%20economy)

operators. These ARS groups will use the services of overt and covert ARS operators to move money within their systems, but they also act as their own network.

Other Typologies of ML may include the following;

Association with corruption (bribery, proceeds of corruption & instances of corruption undermining AML/CFT measures)⁶³: Corruption (bribery of officials) to facilitate money laundering by undermining AML/CFT measures, including possible influence by politically exposed persons (PEPs): For example investigating officials or private sector compliance staff in banks being bribed or influenced to allow money laundering to take place.

Currency exchanges / cash conversion⁶⁴: used to assist with smuggling to another jurisdiction or to exploit low reporting requirements on currency exchange houses to minimize risk of detection for example purchasing of travelers cheques to transport value to another jurisdiction.

Cash couriers / currency smuggling⁶⁵: concealed movement of currency to avoid transaction / cash reporting measures.

Structuring (smurfing)⁶⁶: A method involving numerous transactions (deposits, withdrawals, transfers), often various people, high volumes of small transactions and sometimes numerous accounts to avoid detection threshold reporting obligations.

Use of credit cards, cheques, promissory notes⁶⁷: Used as instruments to access funds held in a financial institution, often in another jurisdiction.

Purchase of portable valuable commodities (gems, precious metals among others)⁶⁸: A technique to purchase instruments to conceal ownership or move value without detection and

⁶³Report of the Asia Pacific Group (APG) on Money Laundering, the terrorist events of September 2001

⁶⁴ ibid

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷Report of the Asia Pacific Group (APG) on Money Laundering, the terrorist events of September 2001

⁶⁸ Ibid

avoid financial sector AML/CFT measures For example movement of diamonds to another jurisdiction.

Purchase of valuable assets (real estate, race horses, vehicles, and inter-alia)⁶⁹: Criminal proceeds are invested in high-value negotiable goods to take advantage of reduced reporting requirements to obscure the source of proceeds of crime.

Commodity exchanges (barter)⁷⁰: Avoiding the use of money or financial instruments in value transactions to avoid financial sector AML/CFT measures For example a direct exchange of heroin for gold bullion.

Use of Wire transfers: to electronically transfer funds between financial institutions and often to another jurisdiction to avoid detection and confiscation.

Trade-based money laundering and terrorist financing⁷¹: usually involves invoice manipulation and uses trade finance routes and commodities to avoid financial transparency laws and regulations.

Gaming activities (casinos, horse racing, internet gambling)⁷²: Used to obscure the source of funds For example buying winning tickets from legitimate players; using casino chips as currency for criminal transactions; using online gambling to obscure the source of criminal proceeds.

Abuse of non-profit organizations (NPOs)⁷³: May be used to raise terrorist funds, obscure the source and nature of funds and to distribute terrorist finances

Investment in capital markets⁷⁴: to obscure the source of proceeds of crime to purchase negotiable instruments, often exploiting relatively low reporting requirements.

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid.,14

Mingling (business investment)⁷⁵: A key step in money laundering involves combining proceeds of crime with legitimate business monies to obscure the source of funds.

Use of shell companies/corporations⁷⁶: a technique to obscure the identity of persons controlling funds and exploit relatively low reporting requirements.

Use of offshore banks/businesses, including trust company service providers⁷⁷: to obscure the identity of persons controlling funds and to move monies away from interdiction by domestic authorities.

Use of nominees, trusts, family members or third parties⁷⁸ etc.: to make the identity of persons controlling illicit funds unclear.

Use of foreign bank accounts⁷⁹: to move funds away from interdiction by domestic authorities and obscure the identity of persons controlling illicit funds.

Identity fraud / false identification⁸⁰: used to obscure identification of those involved in many methods of money laundering and terrorist financing.

Use “gatekeepers” professional services (lawyers, accountants, brokers etc.)⁸¹: to obscure identity of beneficiaries and the source of illicit funds. May also include corrupt professionals who offer ‘specialist’ money laundering services to criminals.

New Payment technologies: use of emerging payment technologies for money laundering and terrorist financing. Examples include cell phone-based remittance and payment systems.

The use of life insurance single premium policies

This typology, which has already been identified in previous typologies reports, is still an often found typology in many jurisdictions. The availability of bespoke policies of this nature enables

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ Ibid.

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ Ibid

the laundering of large sums by making substantial payments into life insurance single premium policies, which serve as a wrapped investment policy. The customer actually does not seek insurance coverage but an investment opportunity. A variation on this is the use of large premium deposits used to fund annual premiums. Such policies, which are comparable to single premium policies, again enable the customer to invest substantial amounts of money with an insurance company

2.4 Predicate offences in Money Laundering.

A “**predicate offence**” is an offence whose proceeds may become the subject of any of the ML offences.

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.

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 drugs⁸².

Armed robbery.

This involves armed individuals who target specific individuals either the purpose of depriving them of their properties⁸³. Such deprivation can sometimes be at the expense of the life of the victim⁸⁴. An example of this is the recent murder of Chinese national called Yang Yesu who was an employee of a steel company called Nile steel Company between the villages of kyegombya and Mbalala in Mukono District⁸⁵. Notably, proceeds of such crime can be invested in a business to guise the proceeds into a legitimate source.

⁸² Red Paper, March 16th 2015.

⁸³ *Uganda v Mbeine & 4 Ors* (Crim. Case No.01015-2012) [2013] UGHCCRD 14 (4 April 2013)

⁸⁴ *Ibid.*

⁸⁵ Sharon Kyatusiimire, Chimp Reports (an online news network), 1st Sept. 2017.

White collar crimes/corporate fraud

This can be done by criminals drawing dummy cheques and routing numbers to pull money out of bank customers' accounts⁸⁶.

Another example of corporate fraud can be virtual currency business. A virtual currency is a digital representation of value that can be digitally traded and function as a medium of exchange, a unit of account or a store of value, but does not have legal tender status in any jurisdiction. Virtual currencies do not have legal tender status. By operating in a virtual world, with no specific jurisdiction, virtual currencies can capitalize on potential regulatory arbitrage and pose a number of risks in economies within which they are used. At the forefront of concerns about virtual currencies, is they can be misused to facilitate money laundering, terrorist financing, tax evasion and other forms of illicit activity. For instance, in May 2017, perpetrators of malicious code ('ransom ware') that affected multiple computer infrastructure across the world extorted ransom payments by Bitcoins⁸⁷.

Proceeds of corruption

This has been the most rampant in Uganda. It connotes the embezzlement of public funds or property for personal gain or for another in return for a favor⁸⁸.

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 ML⁸⁹.

Illicit trading in arms.

Illegal trading in arms is also another avenue for money laundering. It is estimated that over 300,000 fire arms have been smuggled into Uganda and other East Africa countries for the last

⁸⁶Gachev & Ors v Uganda (CRIMINAL APPEAL NO. 155 OF 2013) [2016] UGHCCRD 4 (16 July 2016).

⁸⁷Martin Luther Okech, Daily Monitor 23rd Aug.2017.

⁸⁸S.2 Anti-Corruption Act, 2009.

⁸⁹Uganda v Kazinda (HCT- 00- SC- 0138- 2012) [2013] UGHACD 10 (19 June 2013)

ten years⁹⁰. Proceeds of such sales is thus put into legitimate businesses like bars, investments, buying shares among others to make the source appear legitimate.

Bank frauds

Fraud in the banking sector means an act of deception aiming at personal gain and /or to cause loss to another⁹¹. Fraud here connotes the aspect of failure to disclose full information to the bank concerning transactions made by the banker. The intention of such non-disclosure might be to disguise the proceeds of the defrauded money to a legitimate source.

In the banking sector, fraud can be perpetrated through, wire transfers, fraudulent ATM transactions⁹², fraudulent loans, accounting fraud, illegitimate printing of cash among others.

Puff or Bogus transactions

This normally happens where the criminals withdraw money from banks in the names of another (the account owner)⁹³. This overlaps with bank frauds.

Human Trafficking. (HT)

HT is 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 exploitation⁹⁴. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or

⁹⁰ New Vision report of 8th May 2012, Visited on 2nd Nov.2017,This was revealed by the executive secretary East Africa Action Network on small arms (EAANSA), Richard Mugisha, as he then was.

⁹¹ Ugandabankers.org/fraud-anti-money-laundering, Visited on 2nd Nov. 2017.

⁹²Gachev & Ors v Uganda (Criminal Appeal No. 155 Of 2013) [2016] UGHCCRD 4 (16 July 2016), The three appellants are Bulgarian Nationals who entered Uganda on diverse days and were arrested at Natete Stanbic Bank Branch when the first and second appellants had fixed an ATM skimmer device which is an ATM card reader on the branch's ATM machine capture to PIN numbers from ATM Cards. They were convicted and sentenced to 2 years each.

⁹³Uganda V Serwamba David Musoke & 6 others HCT-00-AC-SC -0011-2015

⁹⁴Article 3, paragraph (a) of the Protocol to control, suppress and punish Trafficking in Persons- 25th Dec. 2003.

services, slavery or practices similar to slavery, servitude or the removal of organs. Those engaged in human trafficking and modern slavery have many sources of income as they provide goods and services for their victims with the purpose of keeping them in endless debt bondage⁹⁵

Terrorism Financing⁹⁶.

Terrorists and terrorist organizations usually sustain themselves and finance their activities with financial aid. The source of funding of such terrorism can normally be gotten in a variety of ways including certain organized criminal groups who engage in drug trafficking, extortion, kidnap for ransom⁹⁷ among others. While terrorists may not greatly be bothered with disguising the origin of the money, they are concerned with concealing its destination and the purpose for which it has been collected. Terrorists and terrorist organizations therefore employ techniques similar to those used by money launderers to hide their money⁹⁸.

2.5 Consequences of Money laundering in Uganda.

ML has drastic effects on the socio-political, economic and moral aspects on the economy of Uganda. If not resolved, might tear apart the economy in the ways among the following;

2.5.1 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.

2.5.2 Without effective safeguards or preventive measures, money laundering can strike at the integrity of a country's financial institutions. The removal of billions of dollars from legitimate economic activities each year constitutes a real threat to the financial health of countries and affects the stability of the global marketplace.

2.5.3 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.

⁹⁵ <http://halht.spcollege.edu/assets/Herrera-MoneyLaunderingHumanTraffick.pdf>

⁹⁶ www.unodc.org/unodc/en/money-laundering/introduction.html

⁹⁷ www.un.org/sc/ctc/focus-areas/financing-of-terrorism

⁹⁸ *ibid.*

2.5.4 Small countries are particularly vulnerable to money laundering⁹⁹. The gains from illegal activities can provide criminal organizations with potentially huge economic power which in turn can give them leverage over small economies.

2.5.5 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.

2.5.6 Money laundering promotes tax evasion. As the proceeds of tax evasion are guised in to 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 is currently undergoing elite defiance where the judges¹⁰⁰, prosecutors¹⁰¹, teachers¹⁰², Doctors¹⁰³ among other professionals are all carrying out sit down strikes due to low salaries.

In conclusion, we can thus trace the history of money laundering in the early 2000 to 3000 years in china. For criminals to successfully, launder and move their money to jurisdictions where they will not be followed, they need to guise such money to make it appear from a legitimate source and illegal activities that can lead to the crime of ML include¹⁰⁴ but not limited to drug trafficking, robbery, corporate crime/fraud, Terrorism financing and interalia.

The consequences of ML are as drastic on to the economy as they affect and undermine the economy socio-economic and politically.¹⁰⁵

⁹⁹ www.emeraldinsight.com/doi/full/10.1108/13685201211266024, visited on 2nd Nov.2017.

¹⁰⁰ Daily Monitor, 28th Aug. 2017.

¹⁰¹ Daily Monitor, 20th June, 2017.

¹⁰² Daily Monitor, 17th July 2012

¹⁰³ Daily Monitor, 11th Oct. 2017.

¹⁰⁴ Ibid. 26.

¹⁰⁵ Ibid.26, 27.

CHAPTER THREE

THE CONCEPT OF ANTI-MONEY LAUNDERING AND THE IMPACTS OF ANTI-MONEY LAUNDERING REFORMS IN UGANDA

3.0 Introduction.

Prior to 2013, Money laundering had no legal frame work. The phenomenon of money laundering was detected way back in 1998 when the central bank of Uganda began to devise means of combating money laundering¹⁰⁶. This phenomenon was associated with general crimes commission such as robbery, corruption inter-alia where such proceeds of crime would be guised into legitimate source.

The spirit to fight money laundering region wise was steered through the East and Southern Africa Anti-Money laundering group, this followed the signing of an agreement at Arusha that established the regional frame work to combat money laundering under the **ESAAMLG** memorandum of 23 African states of which Uganda was among in 1999. This followed the establishment of the Uganda anti money laundering committee which was vested with the duty of formulating a national Anti-money laundering policy. Since then, an AML bill was drafted in 2003 which was never passed and the bill was re awakened in 2009 as AML Bill No.13, yet not passed then into law. It was thus until 2013 that the AML Bill was passed in to law to strengthen the legal frame work of Uganda.

The legal and institutional framework of Uganda has remarkably improved since its last assessment in 2005. The AMLA enacted in 2013 ushered in a new legal framework on the criminalization of the offence of ML, preventive measures and international cooperation and the establishment of the FIA.

The legal and institutional framework of Uganda has been relatively strengthened, however, there are still significant gaps to be addressed. The amended Anti-Terrorism Act which was enacted during the time when the assessors were on-site still does not criminalize TF in line with the requirements of the FATF. In addition, not all predicate offences to ML are criminalized. The AMLA 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

¹⁰⁶ BOU, Annual Supervision report 1999, p.32

of legal persons and arrangements requirements. The AMLA is not clear on the supervision of all reporting entities¹⁰⁷.

3.1 The concept of Anti-Money Laundering (AML)

Anti-money laundering (AML) is defined as a set of procedures, laws and regulations established by a government agency to prohibit criminals from the practice of generating income through illegal means and guise it to legal means within an economy. Anti-money laundering laws establish a limited area of operation but their implication and effect if relatively applied is a fishing expedition in vast criminal behaviors, their implications are far reaching. For example, AML regulations require institutions issuing credit or allowing customers to open accounts to complete due-diligence procedures to ensure their source of incomes are not money laundering activities. The onus to perform these procedures is on the financial institutions, not on the criminals or the government.

Anti-money laundering laws and regulations target activities that include market manipulation, trade of illegal goods, fraud, corruption of public funds and tax evasion, corporate crime, Armed robbery as well as the activities that aim to conceal these deeds.

Money that's obtained through illegal means such as drug trafficking needs to be cleaned. To do so, the money launderer runs it through a series of processes to guise it to appear like it was earned legally. Once there is a record to show how the money was earned through legitimate sources, the criminals anticipate no further suspicion¹⁰⁸.

Financial institutions that issue credit or allow customers to open accounts have a duty to investigate customers to ensure they are not taking part in a money-laundering scheme. They must verify where large sums of money originated, monitor suspicious activities and report cash transactions exceeding \$10,000.

¹⁰⁷ Mutual evaluative report on Anti-money laundering and counter terrorism financing measures in Uganda, April-2016.

¹⁰⁸ 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.

In addition to complying with AML laws, financial institutions are expected to make sure clients are aware of these laws and guide people with them without prior active government orders.

AML rules and regulations rose to global recognition when the Financial Action Task Force (FATF) was formed in 1989, setting international standards for fighting money laundering. The aim of enforcement groups like the FATF is to maintain and promote the ethical and economic advantages of a legally credible and stable financial market.

Since money is a limited resource, money accumulated illegally and with no regulation prevents capital from flowing into socio-economically productive industries. The imbalance in money flow also inevitably leads to further printing of money, harming the purchasing power of a country's currency. If not controlled, this inflation can cripple and erode an economy.

3.2 The impacts of Anti-Money Laundering reforms in Uganda.

Uganda has now come up with a comprehensive law to curb ML. On October 2, 2013, President Museveni assented to the Anti-Money Laundering Act of 2013 (AMLA), bringing into force a law that represents an important first step in preventing money laundering and terrorism financing in Uganda. Before enactment of the AMLA, which came into force in December 2013, Uganda lacked comprehensive AML legislation¹⁰⁹. The AMLA creates a comprehensive legal framework to address AML issues. The AMLA criminalizes money laundering, and the aiding and abetting of money laundering¹¹⁰; prescribes penalties¹¹¹; provides for the seizure¹¹², freezing, and forfeiture of assets linked to money laundering and terrorism financing¹¹³; and includes provisions for the request of mutual legal assistance from other jurisdictions¹¹⁴. It also creates a regulatory framework and establishes preventive measures that should help deter money laundering and terrorism financing through the financial sector.

¹⁰⁹ International Narcotics Control Strategy Report (INCSR), Vol.2 Money laundering and Financial Crimes,2014, www.state.gov/j/ct/rls/crt/

¹¹⁰Part VII of the AMLA, 2013.

¹¹¹ S.136 AMLA, 2013.

¹¹² S.66 Ibid.

¹¹³ Part V Ibid.

¹¹⁴ S.114 Ibid.

The AMLA creates a category of “accountable persons”¹¹⁵ who are charged with undertaking measures aimed at preventing money laundering, including the filing of suspicious transaction reports (STRs) and currency transaction reports (CTRs) with the newly created Financial Intelligence Authority (FIA), Uganda’s financial intelligence unit. The list of accountable persons includes all financial institutions, legal practitioners, executors or trustees, casinos, real estate agents, jewelers, and financial institutions. A range of KYC duties are imposed on every accountable person. These include the requirement to identify clients, customers, beneficial owners, and other persons associated with a financial transaction and to maintain detailed records related to customers and transactions. These records shall be maintained for at least ten years. It also requires financial institutions to monitor transactions and to report any suspicious activity to the relevant authorities.

Finally, the AMLA also creates two related agencies, the FIA and the Financial Intelligence Board (FIB), to coordinate efforts to combat money laundering and to generally ensure implementation of the new law

Notwithstanding the **AMLA 2013**, now as a comprehensive AML measure, Uganda also has a series of Laws (Acts), regulations and policy frame works to combat ML and these inter alia include;

The **Bank of Uganda Act**¹¹⁶BOU 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 Bureaus.

Financial Institutions Act¹¹⁷requires any person operating a deposit-taking institutions or other financial institution business in Uganda to obtain a valid license¹¹⁸ subject to the control and direction of BOU’s mandate which includes inter alia; to supervise, regulate, control and discipline all financial institutions and pension funds institutions under the BOU Act¹¹⁹.

¹¹⁵ S.1 AMLA- 2013, Second Schedule to the AMLA, 2013.

¹¹⁶ Cap 51, laws of Uganda2000 Edition.

¹¹⁷ Act No.2 of 2004

¹¹⁸ S.4 (1) FIA, 2004.

¹¹⁹ S.4 (2) (j).

The Foreign Exchange Act¹²⁰ 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 transactions¹²¹ 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 currency¹²².

Micro Finance Deposit-Taking Institutions Act¹²³ prohibits some transactions by MDIs, 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 Act¹²⁴; Regulates and prohibits corruption and bribery by public officers.

Anti-corruption Act¹²⁵ Imposes an offence of corruption¹²⁶ and bribery¹²⁷ on any public official or a non-public official who solicits, accepts, gives directly or indirectly a monetary value, gift, favor, promise or gratification. Notably, ML in context relates to corruption.

Other regulations (Statutory Instruments) in place to combat ML in Uganda inter alia include

Anti-Money Laundering Regulations¹²⁸ which among many other rules mandates the FIs to establish the office of the Money laundering control officer¹²⁹. The roles of the MLCO include among others to report any suspicious transactions on behalf of the accountable person (The Financial Institution), to set up measures for combating ML and TF, to act as a liaison officer between the accountable person and the Financial Intelligence Authority (FIA)¹³⁰

¹²⁰ Act No.5 of 2004.

¹²¹ S.4 (2)

¹²² S.8 FEA.

¹²³ Act No.5 of 2003

¹²⁴ Act no.5 of 2002.

¹²⁵ Act No.5, of 2009

¹²⁶ S.2

¹²⁷ S.5

¹²⁸ S.I No.75 of 2015

¹²⁹ S.6 AMLR SI No. 75/2015.

¹³⁰ An Institution set up in 2013 to combat ML and TF under the Ministry of Finance and Economic Planning.

The Financial Institutions (Capital Adequacy Requirements) Regulations¹³¹ which mandates and ensures that FIs maintain capital standards recognized internationally as being prudent¹³² as the regulation's objective and also helps promote and maintain public confidence in the Ugandan financial sector¹³³. The rationale for this regulation is that the FIs need to maintain a level of capital commensurate with their risk activities in order to minimize the incidence of failure, provide adequate protection to their depositors and also promote public confidence in the financial systems¹³⁴ subject to the regulatory supervision of the central bank (BOU)¹³⁵, 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) Regulations¹³⁶ 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 businesses¹³⁷.

Bank of Uganda (BOU) Mobile –Money guidelines on Anti-Money Laundering (AML) and countering of Financing Terrorism (CFT)¹³⁸, 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.

¹³¹ Regulation No.42 of 2005.

¹³² S.4(c)

¹³³ S.4 (d).

¹³⁴ S.5 (b).

¹³⁵ S.5(c)

¹³⁶ Regulation No. 10 of 2006.

¹³⁷ S.2 (d).

¹³⁸ BOU, MM guidelines of 2013, s.11.

(c) Suspicious transactions and large cash transactions should be reported to the partnering licensed institution which should in turn report them appropriately.

The penal code Act¹³⁹ prohibits organized crimes, terrorism¹⁴⁰ and terrorism financing, smuggling¹⁴¹, drugs and narcotics trafficking, corruption and embezzlement¹⁴², extortion and bribery, robbery¹⁴³ and aggravated robbery, abduction¹⁴⁴ and kidnapping¹⁴⁵, racketeering fraud transactions in the sale of goods¹⁴⁶. All these are a step to curb ML and terrorism financing all these fall under the predicate offences that promote money laundering.

The Fire Arms Act¹⁴⁷ which prohibits illegal purchase of fire arms and ammunition unless the person has a certificate authorizing him or her to purchase and where the purchaser does not have such a license, he or she may be imprisoned upon conviction to 10 years. Such dealings are usually orchestrated in most gray economies by criminal gangs to make large volumes of money which is later guised in a legitimate source.

Financial Institutions (corporate Governance) Regulations of 2005¹⁴⁸ requires all financial institutions to have in place mechanisms for proper corporate governance control measures and processes. This may equally regulate suspicious transactions within the institution.

In conclusion, the AML/CFT regime is still at infant stages and there is still a very low level of effectiveness. Although authorities have started implementing the AMLA, significant work still needs to be done in the assessment of ML/TF risks; national cooperation; collection; analyses

¹³⁹ Cap 120, Laws of Uganda 2000 Edition.

¹⁴⁰ S.26 PCA cap 120.

¹⁴¹ S.319 PCA cap 120.

¹⁴² S.268 PCA Cap 120.

¹⁴³ S.285 PCA Cap 120

¹⁴⁴ S.241 PCA Cap 120

¹⁴⁵ S.242 PCA Cap 120

¹⁴⁶ S.379 PCA cap 120.

¹⁴⁷ Cap 299 laws of Uganda 2000 Edition

¹⁴⁸ SI No. 47 of 2005.

and use of financial intelligence; investigations; parallel financial investigations in suspected terrorism cases; prosecution and confiscations involving both ML and TF cases; implementation of preventive measures and supervision; and transparency of beneficial ownership of legal persons and arrangements. Currently, the assessment of risks pertaining to terrorism is strong but the same cannot be said about TF. In terms of overall effectiveness of AML/CFT systems, there has not been remarkable improvements since Uganda's last assessment.

CHAPTER FOUR

EFFECTIVENESS OF THE INTERNATIONAL AND REGIONAL AML REGIME VISA VIS UGANDA'S LEGAL REGIME IN COMBATING ML. AN APPRAISAL OF THE REGIONAL AND INTERNATIONAL REGIME IN CONTRAST WITH THE CHALLENGES FACING THE DOMESTIC REGIME.

4.0 Introduction.

The principal initiatives in the development of international law and standards involve the work of the United Nations (UN) and the Financial Action Task Force on Money Laundering (FATF)¹⁴⁹.

While the FATF 40+9 Recommendations do not have the same status as international law instruments such as the UN conventions and the UN Security Council resolutions, and are therefore not legally binding, there are substantial linkages in the themes and underlying policies of the UN instruments and the FATF 40+9 Recommendations¹⁵⁰.

Additionally, there has been significant emphasis on the implementation of the FATF 40+9 Recommendations through their endorsement by more than 170 countries around the world and by the Executive Boards of the International Monetary Fund (IMF) and the World Bank (WB). This is reinforced through the undertaking of mutual evaluations by the FATF and FATF-styled regional bodies and through assessments by the IMF and the World Bank¹⁵¹.

Consequently, in considering AML/CFT international law and standards, it is important to have regard to both UN conventions and UN Security Council resolutions and the FATF Recommendations.

4.1 Development of International AML legal structure and its effectiveness.

The development of the IAML legal structure connotes of the various international instruments and these inter-alia include;

¹⁴⁹ <https://www.adb.org/sectors/governance/aml/background>, visited on 30th Nov. 2017.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention);

Article 3¹⁵² provides for that each state party shall adopt measures as may be necessary to establish to establish criminal offences under its domestic law when crimes intentionally acts of production, manufacture, extraction, preparation, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance. This convention centrally deals with curbing of the spread drugs and the proceeds of drugs. Consequently, the proceeds would thus be prevented from the guise of legit income.

International Convention for the Suppression of Financing of Terrorism (1999) (SFT Convention);

The cardinal objective of this convention is to enhance international cooperation among states in devising and adopting affective measures for the prevention of the financing of terrorism, as well as for its suppression through prosecution and punishment of its perpetrators. Terrorism financing is a typology to ML. Finances got from off shores can thus be used to finance terrorism and thus the desire by the convention to engage various states in fighting TF through ML

Convention against Transnational Organized Crime (2000) (Palermo Convention);

Article 5¹⁵³ provides for that each state party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, such acts may include and not limited to agreeing with one or more persons to commit a serious crime for the purpose relating to directly or indirectly obtaining of a financial or other material benefit and where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group. Human trafficking is one of the typologies of ML and therefore, this convention fore saw the possibility of HT and thus the need to abolish it with all state parties signatory to it. This is captured in the foreword¹⁵⁴ by

¹⁵²United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention)

¹⁵³ United Nations Convention against Transnational Organized Crime and the Protocols thereto (2000) (Palermo Convention)

¹⁵⁴ United Nations Convention against Transnational Organized Crime and the Protocols thereto (2000) (Palermo Convention)

the Former UN Secretary General, Kofi A. Anan, in this convention as noting that “men and women have the right to live their lives and raise their children in dignity, free from hunger and from fear of violence, oppression or injustice”

Convention on Corruption (2003) (Merida Convention);

Article 14¹⁵⁵ provides for measures against ML.

The proviso states Each State Party shall Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

FATF Forty Recommendations on Money Laundering (2003) (FATF 40 Recommendations); and FATF Nine Special Recommendations on Terrorist Financing (2001) (FATF Special Recommendations)

The Financial Action Task Force (on Money Laundering) (FATF), also known by its French name, *Groupe d'action financière* (GAFI), is an international governmental organization founded in 1989 on the initiative of the G7 to develop policies to combat ML. In 2001 the purpose expanded to act on TF. It monitors countries' progress in implementing the FATF Recommendations by ‘peer reviews’ (‘mutual evaluations’) of member countries.

The FATF's primary policies issued are the Forty Recommendations on money laundering from 1990 and the 9 Special Recommendations (SR) on Terrorism Financing (TF).

Together, the Forty Recommendation and Special Recommendations on Terrorism Financing set the international standard for anti-money laundering measures and combating the financing of terrorism and terrorist acts. They set out the principles for action and allow countries a measure

¹⁵⁵Convention on Corruption (2003) (Merida Convention)

of flexibility in implementing these principles according to their particular circumstances and constitutional frameworks. Both sets of FATF Recommendations are intended to be implemented at the national level through legislation and other legally binding measures.

The FATF completely revised the Forty Recommendations in 1996 and 2003. The 2003 Forty Recommendations require states, among other things, to:

- Implement relevant international conventions
- Criminalize money laundering and enable authorities to confiscate the proceeds of money laundering
- Implement customer due diligence (e.g., identity verification), record keeping and suspicious transaction reporting requirements for financial institutions and designated non-financial businesses and professions
- Establish a financial intelligence Unit to receive and disseminate suspicious transaction reports, and
- Cooperate internationally in investigating and prosecuting money laundering.

4.2 Development of regional AML legal structure and its effectiveness.

The regional AML legal structure is mainly strengthened by the ESAAMLG, a regional body that promotes the member states to enforce AML laws in their respective boundaries. Such member states are to enforce their domestic law to curb ML as an obligation to respect the mandate of ESSMLG in the region.

4.3 Development of Domestic AML legal structure, its effectiveness to meet the International and regional standards.

Uganda's legal structure is characterized of various legislations to safeguard the economy against ML¹⁵⁶.

4.4 Challenges encountered by Uganda's AML legal regime.

- a) Competent authorities' use of financial intelligence and other relevant information for ML and TF investigations shows a low level of effectiveness.

¹⁵⁶ Ibid, Chapter three, pp.5-9

- b) The FIA does not have access to commercially held data where appropriate, for example, commercial data held by some of the DNFBPs when such access becomes necessary. Cross-border currency and BNI reports are not yet available. The FIA's main data sources are STRs and large CTRs. The STR database is still negligible, with only 210 STRs having been filed up to the time of on-site visit.
- c) Delays in formal mutual legal assistance, in an interview with Tom Walugembe (Prosecutor with the DPP) in November 2017, he noted that many countries to whom the DPP has sent formal mutual legal assistance requests take long to respond and others do not respond at all. This has made the investigation and prosecution of economic crimes of transactional character very cumbersome.
- d) Lack of non-conviction based legal regime. According to Tom Walugembe, at the moment our laws only permit conviction based asset recovery. Non conviction based asset recovery is only permissible in rare situations; where the suspect has died before the investigations or prosecution and where the suspect has absconded during the investigations or prosecution. Non-conviction based asset forfeiture allows the state to recover proceeds of crime without a criminal conviction. This tool would come in handy in a criminal justice system like ours which is already burdened by a number of challenges. Though the introduction of a law allowing non-conviction based forfeiture has been discussed, little has been done to ensure its passing.
- e) The FIA, which has been in existence since July 2014, does not have analytical and data mining tools to analyze the limited data it has received, especially the CTRs. The FIA does not have adequate and appropriately skilled personnel to conduct analysis and produce quality intelligence reports for use by the LEAs.
- f) The FIA has made approximately 32 disseminations or slightly more since it came into existence in July 2014, with only two of the STRs having been identified as having the potential to lead to ML investigations.
- g) Police units responsible for investigating ML/TF cases do not have specialized training and skills to investigate ML/TF cases.
- h) Uganda does not have a policy of pursuing confiscation of proceeds of crime, instrumentalities and property of equivalent value under the confiscation framework provided by the AMLA. The DPP's office reported that confiscations are sometimes

undertaken arising from convictions for predicate offences, but no statistics were provided in this regard. The Inspectorate of Government's office could only provide statistics showing compensation and refund orders issued. However, the statistics were not consistent.

- i) LEAs and the DPP's office's 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. LEAs in addition, do not undertake parallel financial investigations in almost all of their investigations of predicate offences.
- j) Effective implementation of AML 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.¹⁵⁷
- k) The money laundering tracking system is relatively new, it is not yet implemented effectively. Capacity issues combined with the risk of financial integrity issues affect, to different degrees, the ability of stakeholders to prevent and repress money laundering and terrorist financing in an effective manner.¹⁵⁸
- l) Laxity within the banking sector to comply with the anti-money laundering law is one major loophole. That there are no administrative sanctions, provided under the Financial Institutions Act, 2004 and the Financial Institutions (Anti-Money Laundering) Regulation, 2010, to allow BOU to impose sanctions on financial institutions which compounds the problem. In one reported case, a private bank had not set up an automated system to monitor and report suspicious transactions as required by section 126 (2) of the Financial Institutions Act and BOU circular referenced EDS.306.2 dated February 27, 2013. Although this noncompliance was discovered in November 2015 by the central bank, it only penalized the defaulting bank with a fine of Shs 2,000,000, which was not commensurate with the value of money involved.
- m) Threat situation¹⁵⁹. The report's threat analysis considered offences from two aspects. The first aspect was the domestic threat, and the external threat, which has a transnational character such as human and drug trafficking, smuggling and wildlife offences.

¹⁵⁷ Daily Monitor, published on Tuesday, September 10, 2013.

¹⁵⁸ The National risk assessment report, published by Financial Intelligence Authority, reported by The Observer on 8th November 2017.

¹⁵⁹ Ibid

- n) Real estate, lawyers, commercial farmers, dealers in precious metals and stones and some types of financial institutions present the highest risk to money laundering¹⁶⁰ and some of these seem to be ignored under the AML watch list in Uganda.
- o) 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.¹⁶¹ Terrorist threats are mainly external, emanating from the region of the terrorist groups operating from within the region - Allied Democratic Forces, the Lord's Resistance Army, Al-Shabab, Boko Haram, Al-Qaeda and ISIL - the ones that pose the highest risk to Uganda are: the Al-Shabab and the ADF. The volume of terrorist financing is estimated at \$100 million-total for all terrorist groups in the region," the report reads.¹⁶²

¹⁶⁰ Ibid

¹⁶¹ Ibid

¹⁶² Ibid

CHAPTER FIVE RECOMMENDATIONS AND GENERAL CONCLUSION.

5.0 Introduction.

In this chapter, the researcher will provide for recommendations and an over view of the general conclusions of the study.

5.1 Recommendations.

- a. Provision of AML Monitor software in the AML agencies. AML Monitor software is a reliable solution developed by Summit Consulting Ltd that automates your Anti-Money Laundering (AML) reporting requirements.
- b. The FIA'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 DNFBPs when such access becomes necessary.
- c. The Police needs to be trained and equipped with the basic and substantial information and knowledge on ML so as to carry out quality investigations that can be merged with that of FIA to cause successful prosecution of the launderers.
- d. The Government as a matter of urgency should pass a law on witness protection and commit funds to establish a fully-fledged witness protection authority.
- e. LEAs and the DPP's offices should undertake general and departmental awareness programs on ML. 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.¹⁶³
- f. The financial institutions like banks must employ personnel with adequate knowledge on the AML law to efficiently detect the various modes of ML. This would not only avoid double expenditure on hiring a specialist to train the staff but also retain the 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 dual legal structure; compliance and general legal departments respectively. This can be merged into one with professional employees.

¹⁶³ Daily Monitor, published on Tuesday, September 10, 2013.

- g. Ignored ML avenues like Real estates, agriculture among others must be put in due consideration for compliance. A case example is the Burahya county MP Margaret Muhanga who alleged that she bought the UBC land from the money she got from purportedly selling her cows and goats in her farm¹⁶⁴. Such sectors must equally be regulated.
- h. 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, among others pose a great risk to Uganda. The report indicates that the overall threat of terrorist financing is medium high.¹⁶⁵ Such least checked or completely unchecked financial inflow pose a risk for terrorism financing with the country.
- i. There is equally need for the FIA to carry out country wide and institutional campaigns in institutions of higher learning and other tertiary institutions on the dangers and risks of ML. This can efficiently increase ML awareness country wide. The FIA equally needs to open up regional offices in various regions of the country for efficient and easy access to information. Free Hot lines should also be put in place for anyone to report dubious transactions.
- j. The Government should also step up efforts in ensuring that a law allowing non-conviction based forfeiture is passed expeditiously.
- k. The Government should consider signing as more extradition and mutual legal assistance agreements with various countries in consideration of the threat of financial crimes taking an increasingly trans-national dimension.

¹⁶⁴ Daily monitor, 3rd August, 2016.

¹⁶⁵ Ibid

5.2 General conclusion.

Uganda's legal and institutional AML frameworks are still in infancy stages, with the AMLA only enacted in 2013 and the FIA 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 DNFBP sector. This is worse in the real estate sector where the operations are not subject to AML supervision¹⁶⁶.

BOU conducts risk-based prudential supervision and not risk-based AML supervision. The scope and frequency of prudential supervision is based on perceived prudential risks. However, ML risks are not incorporated to guide AML programs. AML supervision programs ride on the back of prudential supervision. Whilst BOU is aware of its obligations, assessors noted lack of understanding of ML risks, especially in the mobile phone services sector. As for the rest of the financial sector regulators, there is limited understanding of ML risks as well as their AML obligations which has led to poor implementation of the AMLA and compliance by the market players. Furthermore, no serious enforcement has been taken by all regulators against non-compliance with the AMLA requirements. With respect to the DNFBP sector, lack of understanding of AML obligations and ML risks, absence of supervisory activities and remedial action taken by DNFBP regulators have all resulted in the poor implementation of AML obligations in their sectors¹⁶⁷. Uganda has a low level of effectiveness for Immediate Outcome.

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.

Lastly but not least, AML measures are still newly established in Uganda. Uganda is working hard to cope up with the global scale on combating ML. However, this may not be achieved on a silver platter, there is therefore need for the government to support the newly established institution (FIA) by raising its functional budget so as to cope up with the global requirements of FATF.

¹⁶⁶ AML and Terrorism financing measures, Mutual Evaluation Report, April-2016.

¹⁶⁷ Ibid.

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