

Examining the Role of the Law in Curbing Money Laundering in Uganda

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ABSTRACT

This article examines the role of the law in curbing money laundering in Uganda. The article revealed that money laundering continues to be the most common form of financial crime in Uganda. Notably, the advancement in technology has further facilitated money laundering, particularly with the availability of electronic transfers, online gaming, and virtual casinos. Money launderers find it safer to deposit 'dirty money' in other countries to minimize the risk of detection. The availability of private financial institutions, such as high-end financial centres, has also increased the smuggling of cash. On this note, the study calls for regulators to examine the AML framework in light of technological developments that have opened new avenues for money laundering. To achieve this, they should conduct empirical studies to determine the effectiveness of the AML regime as well as assist them in devising new ways to counter money laundering. More importantly, all countries should strive for financial inclusion in order to overcome the challenges associated with implementing AML measures. What is more, achieving an optimal regulatory regime requires the concerned authorities to conduct a cost-benefit analysis of the purported benefits of the regulations against the alternative options. The analysis will assist in eliminating unsuitable and cumbersome legislation. Through conducting a qualitative and quantitative assessment of the cost and benefits of the AML legislation, the regulators can objectively view the impact of the regulations and verify if the benefits outweigh the potential costs to society.

Keywords: Authorities, Financial crimes, Legal provisions, Money laundering, Underdevelopment

INTRODUCTION

Money laundering activities pose a significant threat to global financial markets, national security, and businesses worldwide. They also undermine the financial integrity of jurisdictions, thereby enabling organised criminals to profit from their illicit gains. The United Nations Treaty Collection [1] defines money laundering as the act of converting or transferring an asset from a criminal source, with the intention of concealing its origin or assisting the criminal in committing the crime. Section 1 of Uganda's Anti-Money Laundering Act [2] defines it as 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, as well as any activity that constitutes money laundering. It encompasses a range of multi-faceted transactions aimed at concealing the origin of financial assets, thereby presenting these assets and funds as legitimate outcomes of lawful business operations [2]. Money-laundering is perpetrated in three phases that involve placement, which involves moving funds away from direct association with the crime; layering, which involves concealing the trail to evade detection; and integration, which involves redistributing the money to the criminal networks. Authorities have identified money laundering as a challenging crime to track or identify, as it lacks a victim who can provide information to prove illegal acquisition [4]. Anti-Money Laundering (AML) refers to a set of procedures, laws, and regulations designed to stop the practice of generating income through illegal actions [5]. In Uganda, the anti-money. The major contributing factor in the money laundering process is the recent developments in information and communication technology (ICT). Traditionally, the money laundering process was based on a paper trail, and it

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was possible for financial institutions and regulators to track such laundering activities. However, as ICT has developed, the process has changed. The new trends in money laundering have led to the enactment of many laws, both internationally and locally, in order to curb the vice [6]. The law in Uganda prohibits and criminalises money laundering strictly under the Anti-Money Laundering Act of 2013. In the past, numerous corruption and embezzlement scandals from various government sectors occurred, with the proceeds of these crimes being wired to banks outside the country to legitimize them and conceal their illegal origins [7]. It was therefore necessary to establish a comprehensive system of legislation to combat money laundering. It is important to note that Uganda has numerous laws aimed at curbing money laundering. However, the challenge lies in the poor enforcement of these laws, which has led to the persistence of money laundering. This issue can be attributed to either inadequate enforcement mechanisms, such as poor technology, or the corruption of enforcement institutions, such as the police. Such existing challenges have led to the law's ineffectiveness in combating the vice of money laundering in Uganda. This necessitated the present study, which examines the role of law in combating anti-money laundering in Uganda.

The challenges of implementation of AML measures

The anti-money laundering efforts are commendable. However, their implementation has faced various challenges. AML instruments are critical because they ensure that the international community responds to money laundering as a common global problem. The international instruments provide an agenda for converging national efforts to help fight against money laundering internationally. Nonetheless, it is important to note that various loopholes are present at the international and national levels that hinder the proper implementation of anti-money laundering legislation. The implementation of the AML also faces various challenges that further hinder efforts to combat money laundering. Some of the challenges include:

Technology

The rapid growth of technology has hindered efforts to fight money laundering. Technology has not only improved the money laundering process, but has also provided launderers with new techniques that are difficult to monitor. The speed at which technology is growing does not match up with the laws enforced by the enforcement agencies [8]. The techniques used to launder money evolve quickly, thus making it hard for the institutions to cope. For example, electronic payment systems offer anonymity and convenience for the funds. Bank institutions have not regulated most of the new payment systems available, thereby providing criminals with a wide range of channels to smuggle 'dirty money' into the financial systems. The use of pre-paid cards, mobile payments, and internet payment products means that money can exchange hands rapidly. Criminals may also propagate cyber-attacks that create vulnerabilities that facilitate money laundering. Cyber-attacks that disrupt the banking system have emerged as a new avenue for criminals to launder money [10]. Criminals use online systems during the layering stage to carry out transactions between different countries. These systems' convenience has made them very attractive to money launderers. The existence of online gambling systems with virtual casinos has also provided criminals with ways to launder money. Moreover, the emergence of online games has made it more difficult to combat money laundering. Online games such as Entropia Universe and Second Life provide an opportunity for money launderers to conceal transfers of fraudulent income [11].

Financial exclusion

Financial exclusion is a challenge to effective policies. Financial inclusion refers to the provision of adequate, safe, and affordable financial services to vulnerable groups, including low-income earners, rural people, and undocumented persons who are from the formal financial sector [12]. It is also ensuring that a broader range of financial products are available to disadvantaged groups. Developing countries primarily face this challenge, as the formal financial sector excludes the poor. Today, more than half the world's adult population lacks access to insurance, credit facilities, savings accounts, and other formal financial services [13]. Financial exclusion limits the ability of vulnerable populations to manage their cash flows, build savings and capital, and mitigate economic shocks. Therefore, experts estimate that less than 10% of impoverished individuals have access to formal financial services. Estimates place the number of unbanked adults in developing countries at 2.7 billion, compared to 160 million in developed countries [14]. In developing countries, there is a cash-based and parallel economy where money circulates outside the conventional financial system. These avenues are preferred by financially excluded individuals because they are convenient. However, because the government does not control these channels, money launderers can misuse them. Ideally, the more attractive the underground economy is for legitimate transactions, the more available it is for illegal transactions.

Corruption

Corruption is another challenge the regulators face in the implementation of anti-money laundering (AML) regulations. Corruption exploits the implementation of anti-money laundering (AML) regulations in various

countries, thereby hindering trans-national cooperation in investigating money laundering across borders. Corruption impedes the enforcement of AML measures and also creates confusion among a country's implementing agencies [15]. The wide range of AML regulations brings together treasury departments, financial intelligence units, Attorney Generals, Directors of Public Prosecutions, intelligence operatives, the Ministry of Justice, intelligence operatives, central banks, and revenue authorities, among others. When these institutions are corrupt, they impede the implementation of AML regulations. Corrupt individuals can exploit the leadership of the anti-money laundering structures, thus incapacitating them.

Municipal legal frameworks against money laundering

The Anti-Terrorist Act

The Anti-Terrorist Act establishes the Director of Public Prosecution (DPP) office, which individuals can use to disclose and report assets or money suspected of coming from terrorist funds. It prohibits the financing of terrorist organisations, terrorist acts, and individual terrorists. The Act addresses, among other things, the right of officers to intercept communications and conduct surveillance of bank accounts [16].

The Anti-Corruption Act

The Anti-Corruption Act granted the Inspector General of Police (IGG) and DPP authority to cause an investigation on anyone who maintains a standard of living above that which is commensurate with their current or past known sources of income and is in control or possession of pecuniary resources or property misappropriated to their current or past known sources of income or assets [17].

The Financial Institutions Act

According to the Financial Institutions Act, banks are required to report any suspected money laundering activity associated with any financial institution account to national law enforcement agencies. The Central Bank shall, if it has reason to believe that any account held in any financial institution has funds on the account, which are the proceeds of crime. The financial institution that maintains the account freezes the account as instructed in writing. The Bank of Uganda regulates the activities of financial institutions, ensuring their adherence to anti-money laundering requirements [18].

The Penal Code Act Cap 120

The Penal Code Act, Cap. 120, provides that the OPP can apply for a court order imposing restrictions on the operations of any bank account of an accused person, a person suspected of having committed an offence, or any person associated with such an offence, or for the disposal of any property of the accused person. The Act stipulates that the abuse of office can result in the forfeiture of any received property [19].

The Constitution established the independent Inspectorate of Government and a leadership code of conduct that, among other things, require senior government and parliament members to report financial assets on a yearly basis [19]. However, the Inspectorate of Government Act 2002 and the Leadership Code Act 2002 supplemented the provisions of the constitution. The Inspectorate of Government has the mandate to probe into instances of corruption, abuse of office, injustice, and duty neglect by individuals holding public office.

Anti-Money Laundering Act, 2013

The AMLA aims mainly to prohibit and prevent any sort of money laundering by imposing certain duties and obligations on financial institutions and other persons who may be used to launder money. It also offers guidance on how to deal with exposure to potential money laundering activity [2]. According to analysis, however, the Act appears to be unable to solve the problems that authorities elsewhere have dealt with in the fight against money laundering. Section 3 of the AMLA establishes the crime of money-laundering. The section provides that it is prohibited for any person to intentionally convert, transfer, transport or transmit property, knowing or suspecting that such property to be the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the crime generating the proceeds to evade the legal consequences of his or her actions, or conceal, disguise or impede the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing or suspecting that such property to be the proceeds of crime, or acquire, possess, use or administer property, knowing, at the time of receipt, that the property is the proceeds of crime, or act to avoid the transaction reporting requirements provided under the Act, or assist another to benefit from known proceeds of crime; or use known proceeds of crime to facilitate the commission of a crime; or participate in, associate with, conspire to commit, attempt to commit, aid and abet, or facilitate and counsel the commission of any of the acts described herein [2].

Section 5 of the Act distinguishes the crime of money-laundering from other crimes under Ugandan law, such as the crime of generating proceeds subject to money-laundering, and allows for its prosecution even without a conviction for the generating proceeds of money-laundering crime [2].

The effects of money laundering activities
Economic distortion and investment instability

Money laundering depresses economic growth by diverting resources to less productive activities and facilitating domestic corruption and crime. This diversion and redirection of funds from sound to low-quality investment or from one economic activity to another (usually with no rational economic reasons) is common practice for money launderers and does have far-reaching consequences. Money launderers naturally have a preference for jurisdictions where regulation is lax, and this means that most developing economies with anti-money laundering legislation either in infancy or defective in operation are an easy target [20].

Reputational risks

This factor uniquely relates to the integrity of financial institutions and markets. A financial institution is defined to include banks, body corporates, associations or groups of persons, whether corporate or incorporate which carries on business of investment and securities, a discount house, insurance institution, debt factorization and conversion firm, bureau de change, finance company, money brokerage firm whose principal business includes factoring, project financing, equipment leasing, debt administration, fund management, local purchase order financing, export finance, project consultancy, financial consultancy, pension funds management and as such other businesses as the central bank or other appropriate regulatory authorities may from time to time designate states, which basically offer financial services, run the risk of economical (and therewith political) dependence [21].

The resultant effect is the rise in inflation rates, which in turn results in the loss of control of national economic policies because it impacts financial behaviour and macro-economic performance, i.e., policy mistakes, volatility in exchange and interest rates, as well as monetary instability. The negative effects on the exchange rate and interest rates are caused by the large capital inflows or outflows that the laundering process artificially accentuates. Similarly, because money laundering transactions occur in the "underground" or informal sectors of the economy, they do not appear in official monetary and financial records [22].

Corruption, organized crime and social costs

This factor is directly linked to political corruption and all the predicate offences of the money laundering crime. Corruption is the abuse of entrusted power for private gain. It hurts everyone whose life, livelihood, or happiness depends on the integrity of people in positions of authority. Corruption holds back economic development, prevents a free market for businesses and consumers, and further exploits already marginalised groups. It is a complex social, political, and economic phenomenon that affects all countries [23].

Terrorism

Terrorism as an effect of the crime of money laundering operates in ways different from how corruption does. While corruption functions similarly to a revolving door, serving as both a precursor and a consequence of money laundering activity, terrorism only manifests as a consequence. To put it in context, terrorist organisations do not engage in acts of terror to launder funds, but rather they launder funds to finance their acts of terror. The cardinal aim is to maim, destroy, and cause grief; hence, money laundering is just a means to an end for terrorists [15].

Loss of revenue

Money laundering reduces the tax funds available for collection in the economy, as well as, by implication, the government's revenues. As a result, governments may have to levy higher taxes in order to obtain the funds necessary to fulfill their responsibilities to their citizens. However, there are other perspectives that stand in stark contrast to this. One may also view money laundering as a means to introduce more funds into the criminal syndicates established centers of operations within these countries, the potential long-term corruption and crime may outweigh the potential benefits of this short-term capital inflow [24].

Risk to privatization efforts

If money launderers manage to acquire privatized government entities, they might try to create a plausible façade for money laundering. This can undermine economic reforms, as money launderers are not interested in operating these entities as going concerns but rather as a conduit for laundering money [25].

Social costs

Despite the difficulties in quantifying the effect of money laundering, the laundering of the proceeds of crime contributes to increases in the level of crime. This may also act as a means of spreading insecurity, particularly when considering the potential trafficking in conflict diamonds that may be used as currency in the money laundering circuit to exchange diamonds for narcotics or munitions.

Money laundering also allows criminal syndicates to expand the scale and scope of their criminal activities. This means that governments must spend more on both law enforcement and any social and health rehabilitation programs that may be necessary to address the consequences of criminal activity, such as drug rehabilitation centres [26].

CONCLUSION

Money laundering continues to be the most common form of financial crime. Notably, the advancement in technology has further facilitated money laundering, particularly with the availability of electronic transfers, online gaming, and virtual casinos. Money launderers find it safer to deposit 'dirty money' in other countries to minimize the risk of detection. The availability of private financial institutions, such as high-end financial centres, has also increased the smuggling of cash. Most countries, including Uganda, have responded by implementing anti-money laundering laws, which serve as a common tool to prevent money laundering. The major focus is on non-complying countries that ignore the FATF and the United Nations directive. The offshore centres are major elements undermining the fight against money laundering.

Recommendations

The study calls for regulators to examine the AML framework in light of technological developments that have opened new avenues for money laundering. To achieve this, they should conduct empirical studies to determine the effectiveness of the AML regime as well as assist them in devising new ways to counter money laundering. More importantly, all countries should strive for financial inclusion in order to overcome the challenges associated with implementing AML measures. What is more, achieving an optimal regulatory regime requires the concerned authorities to conduct a cost-benefit analysis of the purported benefits of the regulations against the alternative options. The analysis will assist in eliminating unsuitable and cumbersome legislation. Through conducting a qualitative and quantitative assessment of the cost and benefits of the AML legislation, the regulators can objectively view the impact of the regulations and verify if the benefits outweigh the potential costs to society. Furthermore, the media and public events should raise public awareness of the effects of money laundering. The education system (especially in aspects such as banking, law, criminology, and public governance) should inculcate discipline and integrity in the minds of the citizens. Finally, as stated in Section 6 of the AMLA, the bank should have a duty to verify the identity of its customers, leaving the investigation of their authenticity to government agencies. This is because the bank requires its customers to present documents under the obligation of implementing safeguards to protect the confidential financial information the customers share. Some of the Act's provisions, such as Sections 9 and 14, contravene the banker-customer relationship duties of confidentiality and the right to privacy of the customer; therefore, law enforcement agencies should first get a court order before gaining access to such information about customers.

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