

CURRENT SITUATION AND COUNTERMEASURES AGAINST MONEY LAUNDERING: TANZANIA'S EXPERIENCE

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I. INTRODUCTION

Prior to the mid-1980s, our country had no orientation with organized crimes. The crime pattern was largely dominated by ordinary traditional offences such as simple thefts, sporadic incidents of armed robberies, simple forgeries, and the like. We could not by then envisage that organized criminal syndicates would one day transcend across our borders with such force and speed.

Early symptoms of organized crimes were first detected in 1983 when the country experienced serious economic crisis¹. However, the nature and extent of organized crimes by then differs from what we are experiencing today. The organized criminal syndicates which dominated the scene were largely based within the country, without any external connections. As a result, even the legislation which was enacted in 1984 to cater for that situation contained fewer offences that forms part of the organized offences². As a matter of fact, the Act³ was specifically tailored against International Economic Saboteurs. Though some of the provisions of the Act are still valid and operational, their

application to what is taking place today in the organized crime world is very difficult and below the required standards.

II. THE CURRENT PATTERN OF ORGANIZED CRIME IN TANZANIA

In 1985, the organized crime pattern in the country began to take a different shape. This was a time when our country made a U-turn in her economic policy. The effects of globalization never spared us. The wind of change in the former East European countries also had a role in determining our economic policy.

As a result of such changes which were by then taking shape in the world, we decided to abandon our former closed-door economic policy and instead opted for trade liberalization. This change of policy left our doors open for both genuine investors and potential organized criminal syndicates of the world to infiltrate their operatives into our country.

Immediately there-after, we began to note an astonishing upsurge of certain offences as well as emergence of new forms of crimes, such as the illegal Arms dealing, major frauds, poaching, corruption, violent crimes, smuggling, economic crime/fiscal offences, drug trafficking, and most recently terrorism. The opening up of our economy and the development of science and technology have together fuelled up organized crime incidents in our country. This was the first real orientation which we had with organized crimes.

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¹ This was the time when the then Prime Minister, late EDWARD MORINGE SOKOINE, declared and led the war against economic saboteurs.

² The economic and organized crime control Act number 13 of 1984.

³ Ibid;

III. THE OFFENCE OF MONEY LAUNDERING

This is part of organized crime offences. It is very difficult and completely out of perspective to discuss about money laundering without discussing organized crimes. Money laundering should be discussed in the context of organized crimes. This is the reason why we have directed our attention to organized crimes in the foregoing paragraphs. Just as it was with organized crimes, the offence of money laundering has not yet manifested itself fully in our system.

There is however a very strong possibility that the offence has deeply entrenched itself in our system but owing to the intricacies involved in its detection and investigation, we have yet to flush it out. To many of us for example, we used to associate the offence of money laundering with illicit drug trafficking only. It took time before it dawned on us that money laundering can be facilitated by dirty incomes derived from all the organized crime offences.

With those brief foregoing introductory remarks, let us now examine the current situation and countermeasures that have been adopted in Tanzania against Money Laundering. In this regard, our discussion will cover a brief analysis of the current situation of money laundering and the legal framework for combating such crime; we shall also explore and identify current problems in the detection, investigation, prosecution and punishment of the said offenders and solutions for them. We shall finally discuss, albeit briefly, the possibility of introducing new investigation methods and legislation in the fight against money laundering.

IV. BRIEF ANALYSIS OF THE CURRENT SITUATION

As mentioned in the introductory part, the offence of Money laundering has not yet registered itself very firmly in our system. Perhaps we lack the necessary skills to detect and investigate this offence or it is non-existent. However, we would like to believe the former to be true because with the trade liberalization at its peak, there has been a lot of people from all over the world coming into the country under the guise of investors. Due to lack of adequate skills it has always been difficult on us to identify non-genuine investors from the genuine ones.

Being a poor country which welcomes investments from all over the world, sometimes it is felt that if you start enquiries against the so-called investors you risk the possibility of chasing them away with their much-wanted investments. As a result we are always in dilemma not knowing the right course of action to take.

It is partly because of these reasons that our record of detection is not very impressive at all. These are however instances when Money Laundering activities have been inferred. One such incident involved the MERIDIAN BIAO bank which had offices in Tanzania, Zambia and in other countries in the world⁴. Apart from that case we do not have any statistics to amplify this situation. This does not however mean that Money Laundering is not present in our country.

Most of the emphasis had therefore been placed in fighting other organized crimes.

⁴ This bank was opened by suspected criminals from Malaysia and after operating for some time, it wound up its activities abruptly leaving several account holders in abeyance. It is believed that the same happened in Zambia.

The legal framework that is in place caters generally for organized crimes without specifically addressing the offence of Money Laundering. Recently, however, emphasis has been placed on Money Laundering as well. Let us now examine the legal framework in place against the offence of Money Laundering in Tanzania.

V. THE LEGAL FRAMEWORK FOR FIGHTING MONEY LAUNDERING

The offence of money laundering has always been discussed in the context of organized crime. For a long time in our country, there were no specific legal frameworks to deal with money laundering as a separate offence. The tendency has always been to resort to various legal provisions in place against organized crimes. We therefore intended to highlight some registration put in place against organized crime which also somehow caters for the offence of money laundering.

A. Legislation Against Organized Crime

When traces of organized crime began to be felt in Tanzania, organized crime had not yet assumed the international character it has now. As such, the legislation enacted was mainly aimed at combating what was considered a group of local economic saboteurs and other local organized criminal gangs⁵.

Prior to the enactment of this legislation, there were of course, two United Nations conventions against Narcotic drugs and the other against psychotropic substances. These conventions adopted a number of resolutions aimed at controlling narcotic drugs and psychotropic substances which by then were the leading organized crimes. It was envisaged, correctly, that other

forms of organized crimes derive their origins from the illicit trade and abuse of dangerous drugs.

Apart from the two United Nations conventions, two legislations were also enacted in 1965 and 1969 respectively⁶. Though they were not expressly dealing with organized crime directly, they were intended to facilitate the extradition of criminals and to follow in hot pursuit, though special arrangements with other countries, all those people who commit crimes in one country and run to another country. It was envisaged, again correctly, that the existence of such legislation would deter potential offenders from organizing their criminal schemes in one country and run to seek refuge and reap fruits of their criminal acts in another country when things turn sour in their countries.

As started earlier, the best weapon that the Tanzanian Government thought would help wipe out or control incidents of organized crime, is the Economic and Organized Crime Control Act⁷. This Act was enacted in 1984 when the first real adverse effects of organized crime began to bite. The promulgation of this Act was aimed at making better provisions for the control and eradication of certain crimes and culpable non-criminal misconduct through the prescription of modified investigation and trial procedures, and new remedies and for connected matters. A number of new offences were created and enshrined in the first schedule of that Act. One such offence is that of "Leading Organized Crime"⁸. In the following part we wish to discuss briefly some of the provisions of the Act which criminalizes money laundering.

⁵ The economic and organized crime control Act, Number 13 of 1984.

⁶ The extradition Act of 1965 and the fugitive offenders (pursuit) Act of 1969.

⁷ No. 13 of 1984.

⁸ Ibid; paragraph 4(1) of the first schedule to the Act.

**B. The Economic And Organized
Crime Control Act, Number 13 of
1984**

Part III of the Act covers the procedure and regulation governing the investigation and prosecution of economic cases. Organized crimes (including money laundering) falls within the ambit of this part. Under the provision of the Act, the investigation of all economic offences reported to the Police shall be conducted by Police Officers, with the assistance of such public officials as may be designated by the Director of Public Prosecutions after consultation with the Director of Criminal Investigation and by order published in Gazette⁹.

The act also empowers a Police Officer to conduct search and seize property involved in an economic forfeiture or confiscation of a property proved to have been involved in the commission or facilitation of an economic offence¹⁰. Transfer of advantage or property involved in or arising out of the commission by any person of an economic offence is prohibited by the Act¹¹.

However, when one reads the above provisions of law between the lines, he will notice that they do not provide anything specific in relation to the money laundering offence but rather they provide for organized crimes in general. Absence of specific legal provisions that criminalizes money laundering creates loop-holes in our legal systems which assists organized criminal gangs to thrive and flourish.

This helpless situation led many countries to introduce legislative initiatives regarding money laundering and

confiscation of the proceeds of crime. In act it was the United Nations convention which appealed to and mandated member countries to adopt a model with acceptable standards. In the following part, we wish to discuss briefly about the directive of the United Nations and the impact it had on our country in formulating the required legislation against money laundering.

C. The United Nations Convention

As we are all aware, the United Nations in many of its deliberations, convened a conference in Vienna, Austria.¹² The conference came up with a very famous convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The conference also came up with a model draft to be adopted by all member countries in order to intensify the war against organized crimes and especially illicit traffic in narcotic drugs which in most cases brews up other forms of organized crimes. The objectives of such model draft were/ are to enable different countries of the world to unify their strengths in order to fight and eradicate organized crime syndicates more collectively.

Tanzania, being a member of the United Nations, adopted into her legal system the proposed model and enacted two legislation almost simultaneously, the Mutual Assistance in Criminal Matters Act¹³ and the Proceeds of Crime Act¹⁴. These legislation are of unique importance as they call for Agreements to be made between states with regard to mutual assistance in a variety of activities related to the investigation of crime such as; collection of evidence, location of witnesses or suspects, service for search and seizure of

⁹ Ibid; section 21(1).

¹⁰ Ibid; section 22.

¹¹ Ibid; section 23.

¹² Ibid; section 58(1).

¹³ In 1988.

¹⁴ Number 24 of 1991 and number 25 of 1991, respectively.

stolen property etc, just to mention a and seizure of stolen property etc, just to mention a few¹⁵. Let us now examine the appropriate legal provisions in these two Acts which criminalizes money laundering.

D. The Proceeds of Crimes Act, Number 25 of 1991.

This Act was designed to introduce a new law fashioned to provide the most effective weaponry so far against major crimes. Its purpose, according to the bill sent to parliament for debate¹⁶, is to strike at the heart of major organized crimes by depriving persons involved of the profits and instrumentalities of their crimes. By so doing, it was envisaged that the Act will suppress criminal activity by attacking the primary motive, profit, and prevent reinvestment of that profit in further criminal activities. Generally speaking, the Act contains provisions of a coordinated international effort designed to target both the pushers and others involved in criminal activities as well as those who reap the most reward from such crimes.

This Act also provides a mechanism for the tracing, freezing and confiscation of the proceeds of crime such as drug trafficking¹⁷. It also confers on Police new powers to assist in following the money trail¹⁸. Furthermore, the Act creates a few new offences such as money laundering and organized fraud¹⁹.

The Proceeds of Crime Act²⁰ when taken together with the Mutual Assistance in

Criminal Matters Act, enables freezing and confiscation orders made by courts in our country to be enforced abroad. Likewise, they enable orders made in foreign countries in relation to foreign offences to be enforced against assets located in Tanzania.

VI. CURRENT PROBLEMS IN THE DETENTION, INVESTIGATION, PROSECUTION AND PUNISHMENT OF MONEY LAUNDERING OFFENDERS

A. Detection

This is the key to the dismantling of organized criminal syndicates. Without detection, it is impossible to apprehend and prosecute perpetrators of this crime. Detection however, requires special skills and knowledge of how this offence is committed. The investigators have a duty of sharpening their detection skills by updating themselves on methods of laundering cash that have been used to convert dirty cash into clean assets. Once investigators are able to distinguish various techniques employed by the offenders of this crime, detection becomes an easy task.

With increasing globalization and liberalization, countries, especially developing ones, are vulnerable to the risks of money laundering. Therefore, appropriate detection strategies ought to be put in place in order to discourage offenders of money laundering offence from entrenching their roots into our countries.

As stated earlier, our records on criminalizing money laundering in Tanzania is not very impressive. The logical assumption is that our detection strategies are not well advanced. We highly appreciate invitations to forums like

¹⁵ Section 4 of the mutual assistance in criminal matters Act, 1991.

¹⁶ Bill for proposed enactment of a law against proceeds of crime.

¹⁷ Section 9 of the Proceeds of Crime Act, number 25 of 1991.

¹⁸ Ibid; section 31(3).

¹⁹ Section 71 of the proceeds of crime Act, Part VII.

²⁰ Number 25 of 1991.

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this because we are sure to learn something useful which can improve detection of money laundering in our country.

With the development in technology, for example electronic cashing through internet, organized criminal gangs can now move large sums of money easier from one part of the world to another. This has somehow substantially reduced the importance of national borders thus allowing international criminals to finance, profit from and expand their illicit operation. This therefore requires highest standards of detection. This can only be obtained through training and cooperation from other developed countries or international agencies.

B. Investigation and Prosecution

Money laundering investigations are very complex and require specialized expertise, and are normally lengthy investigations. Many traditional Police investigative tactics did not include emphasis on the money, now however, these investigations are becoming an essential part of any significant organized crime investigation.

The problems outlined about detection can equally be highlighted in the aspect of investigation. We lack the necessary skills and knowledge of how to successfully investigate a money laundering case. The complexity nature and the lengthiness of such investigations calls for well trained personnel to carry out such tasks. These persons should be well versed about the existence of both bilateral and multilateral instruments at their disposal and how best to utilize them to their advantage.

Equally important here, is to impart the necessary knowledge to the investigators about the current techniques involving modern technology in the commission of this global offence. Lack of such knowledge

would entail failure on our parts because organized criminals would always be several steps ahead of us.

Prosecution of this offence also requires training and understanding of certain intricacies surrounding this offence. Designated prosecutors should be picked and trained in the various aspects of money laundering.

C. Punishment to Offenders

Detection and prosecution of offenders alone is meaningless unless appropriate punishment is meted out to proved offenders. Punishment to offenders, as we all know, serves a number of purposes. First and foremost, it consoles the victims of the offence, it also teaches a lesson to the offender and more importantly, it acts as a deterrent to potential criminals.

There is a prevailing belief worldwide that the more severe a punishment is, the better. Members of the public would always be relieved if severe punishment is inflicted upon proved offenders. This is the reason why many penal statutes impose corresponding punishment to various offences.

In Tanzania, the Penal Code²¹ is the statute which creates most criminal offences and imposes penalties to offenders of various crimes. However, in so far as economic cases are concerned, organized crimes being among them, any person convicted of an economic offence shall be liable to imprisonment for a term not exceeding fifteen years, or to both that imprisonment and any other penal measure provided for in the respective Act²².

In cases involving money laundering, imprisonment of whatever term would not

²¹ Chapter 16 of the revised laws.

by itself teach offenders a lesson nor will it serve as a deterrence to others. Deprivation of the ill gotten property or any other proceeds of the crime would equally be very appropriate and would certainly inflict greater pain to the offender. Since most of proceeds of money laundering crime are located far away from where the offence took place, an appropriate machinery should be put in place to trace and seize such properties in those countries. This machinery has been established in Tanzania by the enactment of two Acts²³. However, so far there is no case example to amplify the application of the provisions enshrined in those Acts.

**VII. POSSIBILITY OF
INTRODUCING NEW
INVESTIGATION METHODS
(INCLUDING NEW LEGISLATION)
IN THE FIGHT AGAINST MONEY
LAUNDERING**

In order to win the war against offenders or perpetrators of this offence, deliberate and calculated steps need to be taken in order to sharpen the investigative skills of officers concerned and also the come up with a legislation that will iron out all the existing legal hurdles.

As narrated in the foregoing paragraphs, criminals of this offence employ very sophisticated tactics and resort to modern technology in facilitating the conversion of dirty cash into clean assets. They also use skilled personnel and other professionals such as Accountants, Lawyers etc. to fend for them. All these poses a great challenge to the law enforcers, especially those in developing countries like Tanzania, who lack adequate skills, knowledge and modern facilities.

This situation is further compounded from bad to worse by the fact that this offence is an internationalized one in the sense that offenders form themselves in strong organized criminal syndicates. This set up requires harmonization of different legal systems and global cooperation. No country the world over can manage to fight this crime single handedly and win. It is for this obvious reason that we in Tanzania have supported various Regional and International efforts between Law Enforcement Agencies and Other Institutions, geared at fighting organized crime and particularly money laundering, collectively. We believe that introduction of whatever investigation methods or new legislation would not bring the desired effect if there is no corresponding collective Regional or International resolve to tackle this problem jointly.

The following is therefore an example of the Regional and International cooperation that exists between us and other countries/institutions against organized crimes:

- (a) There is the Annual Chiefs of Police Conference for the three East African countries where security cooperation and exchange of intelligence information feature most. Organized crimes are discussed in this forum and appropriate strategies are set²⁴. This is also supplemented by the biannual operational drugs meeting for the Heads of Criminal Investigation Department and Anti-Narcotic units of the three East African countries²⁵. Within East African, there is also the East African Inter-State Defence and Security Sub-Committee which meets annually to assess the security

²² Economic and organized crime control Act, number 13 of 1984, section 59(2).

²³ Number 24 of 1991 and number 25 of 1991.

²⁴ The countries involved are Kenya, Uganda and Tanzania.

²⁵ Ibid; recently Rwanda joined as a member.

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situation within the Region. In all these forums organized crime is the main agenda item. As a result of such cooperation in the Region, the Heads of states for the east African states have signed the protocol for combating illicit drug trafficking and money laundering in East Africa²⁶.

(b) In the SADC region, in which Tanzania is one of the member countries, the Chiefs of Police for SADC have a forum called SARPCCO²⁷. They meet biannually to lay strategies to combat organized crime and other cross-border crimes in the region. A similar protocol as that in the East African Region was signed in 1996 for the SADC countries.

(c) In August 1999 a meeting was convened in Arusha, Tanzania, to launch the Eastern and Southern Africa Anti-money laundering group. In that meeting the ministers responsible for finance and Legal Affairs from nine countries of our Region, agreed on a number of points for action in the region. Among those points include:

(i) Working towards attainment of the international standards in the fight against the laundering of proceeds of those crimes referred to in relevant multilateral agreements and initiatives which deal with combating serious crime, and to implement the 40 Recommendations of the Financial Action Task Force on money laundering.

(ii) To improve cooperation between members, and with other states, in the fight against money laundering.

(iii) To co-operate with all relevant international organizations concerned with combating money laundering.

(iv) To study emerging regional trends in money laundering, and to share member states' experiences in order to address those trends.

(v) To institute an evaluation process, including mutual evaluation, to assess the measures in place in each member state, and their effectiveness, and to identify the gaps between existing measures and endorsed standards.

(vi) To address deficiencies identified through the process.

(vii) To develop institutional and human resource capacities to check money laundering.

(d) There is also the INTERPOL. This body has very much helped to coordinate a number of activities between Law Enforcement Agency of its 178 members. INTERPOL has provided us with the X-400 communication equipment which transmits swiftly any information in a safe and secure manner to be used by the member countries. Recently, the Interpol Sub-regional Bureau Office was opened in Nairobi, Kenya²⁸. The Bureau helps to pass over any information on clandestine money laundering activities.

It is therefore our considered view

²⁶ This was done Arusha, Tanzania, on 30th November, 2000.

²⁷ The Southern Africa Regional Police Chiefs Committee.

²⁸ Senior Police Officer from Kenya, Tanzania and Rwanda have already been seconded there.

that any new investigation methods or new legislation envisaged to be introduced, should take into consideration efforts being currently made both within the Region and Internationally so as to supplement such efforts not to contradict them.

concrete and appropriate strategies can embark from. We thus urge other developed countries and International institutions to emulate the traditional example set by the organizers of this seminar and attend to the short-falls in the developing countries in dealing with the offence of money laundering.

VIII. CONCLUSION

Now, money laundering has firmly established itself as a major worldwide law enforcement issue. Apart from the effects of globalization, trade liberalization and development of science and technology, our country is also faced with a large influx of refugees and other displaced people fleeing the fighting and civil strifes in the Great Lakes Region²⁹.

Experience over years has shown that these people (refugees) engage in smuggling of firearms, illicit dangerous drugs and other organized offences. Some of them have also established hidden properties arising from the proceeds of such crime and others are being used by organized criminal gangs to invest their ill-gotten money in our territory.

On the other hand, being a poor country in dire need for investments, it is very difficult to draw a line between genuine and fake investors. As a matter of practice, we do not quite often make a follow up or trace the source of money by such investors. This in turn diminishes our capabilities in dealing with this offence.

All in all, the best solution to the money laundering problem should come from concerted Regional and International efforts. This seminar for example, is one of the necessary platforms upon which

²⁹ The wars in the Democratic Republic of Congo, civil strifes in Rwanda and Burundi serve as an example.