

# **An Assessment Of Anti-Money Laundering And Counter-Terrorist Financing Act,2012 Of South Sudan**

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## **Abstract**

*Money laundering is the process of converting obtained money into legitimate funds to conceal its origin it is a global problem that is associated with criminal activities such as drug trafficking, terrorism, and extension.*

*The purpose of this paper is to identify the gaps in the South Sudan legal framework in combating money laundering. The study considered the current Anti-Money Laundering Act, from 2012 to determine to what extent it complies with the international standards set by FATF 40.*

*The researcher selected a relevant database to search the published materials related to money laundering, conducted a systematic review of published research to meet our study objective.*

*The importance of this study is to identify gaps within the South Sudan Anti-Money Laundering Legal framework and further its aim to recommend the areas to which amendments will be introduced and passed. Inserted. So, the study will not only assist the government in tackling money laundering offenses, but it will also closely relate to counter-financing terrorism (CFT),*

*Further, propose the necessary reforms, because money laundering is not only a global threat that fuels and expands criminal enterprise, but also helps hide corrupt payments and considered risks for financial systems and institutions' integrity regulations, which deters private investment, destroys competition, and has revenue impact well as obstructs good governance.*

*The contribution concludes that we know of money laundering which could be the basis of a more effective fight against transactional crime organizations.*

*Therefore, the South Sudan Government should adopt the proposed necessary reforms to the defunct financial system and pass the recommended amendments to the current Anti Money Laundering Counter Financing Terrorist Act, 2012. To address the gaps identified in this research and comply with international standards set by FATF 40 Recommendations, as well as ratifying the relevant International Instruments and Conventions that are main to combat money laundering and counter-terrorist financing. Namely, The United Nations Convention against Transnational Organized Crime, 2000, The three Palermo Protocols supplementing the United Nations Convention against Transnational Organized Crim, the Vienna Convention: UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, December 19, 1988 and the International Convention for the Suppression of the Financing of Terrorism, 1999.*

**Keywords:** *Money Laundering (ML), Financial Action Task Force (FATF), Mutual Legal Assistance (MLA), Counter Financing Terrorism (CFT), Anti-Money Laundering (AML)*

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## **I. Introduction**

Money laundering is a transnational phenomenon that has attracted increasing amounts of attention during the past two decades. The Financial Action Task Force (FATF) defines money laundering as the processing of criminal proceeds to disguise their illegal origin (FATF, 2022).

The term, money laundering originates from the US describing the Mafias in the 30s, which were controlled by criminal organizations (Agarwal, 2004). 2000, the IMF (2001,2003) as well as the World Bank estimate that 2-4% of the world's gross domestic product (GDP) stems from illicit (criminal) (Aarwal, 2006).

A part of criminal organizations and individuals, legal firms, institutions, and their officials may directly indirectly or indirectly manipulate legislation or systems to facilitate the process of money laundering.

Lopez-de Silanes and Chong (2007) describe money laundering as any process that tries to legitimize the proceeds of illegal activities while maintaining the value of the acquired assets. In other words, it is carried out to disguise or conceal the nature of the source of entitlement to money or property from criminal activities. This process is critical to the effective execution of organized crime.

Money laundering has been observed by diverse scholars to be a persistent threat to the global economy more specially to developing nations (Enofe, Alui & Ombu, 2018; Mekpor; Reganati & Loiva, 2017; Idowu & Obasan, 2012). It is threat stems from the fact that it depletes capital from a national economy by constituting a massive leakage in the system.

Money laundering in the advanced global economy necessitates carefully planned processes and networks consisting of wealthy individuals, offshore financial centers, brokers, advisors, third-party professionals, and financial institutions (Cooley and Shareman, 2015). In terms of payment transactions and money laundering techniques, it is also worth noting that wire transfers are often preferred in organizations for economic cooperation and development (Shareman, 2008).

Consequently, money laundering has become a severe and complex challenge for the development of global business and society (Buchanan, 2004); Cuervo-Cazura et al, 2021; Dierksmeier and Seele, 2018).

Money laundering is a persistent problem in the world's major financial markets as well as emerging markets. As emerging markets are in the development phase, it becomes easy for launderers to disguise and target such developing markets to expand their spread.

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Africa faces unique challenges in combatting money laundering, such as limited resources, weak institutional frameworks, and cross-border illicit financial flows. As a result, implementing robust AML measures is crucial for African countries to protect their financial systems, ensure transparency, and foster economic integrity. It requires a multi-faceted approach involving strong regulatory frameworks, capacity building, international cooperation, and the adoption of advanced technologies. By prioritizing AML efforts, African countries can protect their economies, attract investment, and contribute to global efforts to combat financial crime. According to Moshi, 2007 there is no country on the African continent where illicit money is not created in significant amounts.

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In advanced economies, laundering is invariably associated with sophisticated techniques intended to avoid the attention of investors (Mitchell et al, 1998; Irwin et al, 2012).

Upon assessment of South Sudan's Anti-money laundering regime, it is observed that the Anti-Money Laundering and Center-Terrorist Financing Act of 2012, is the only legislation that governs the works operations, reporting, and financial institutions as well as KYC & CDD matters, and the works recruitment and training requirements are not yet developed. This assessment shall be mainly to evaluate the anti-money laundering regime and establish whether the anti-money laundering and Counter-Terrorist Financing Act, 2012 met the international standard and comply with models provided by the legislative approach adopted, identifying the loopholes and gaps.

### **General objective**

To analyze how South Sudan Anti-Money Laundering Legislation acts against Money Laundering.

### **Specific Objectives**

The study shall seek to make recommendations on how to strengthen the legal framework, fill the gaps identified to effectively fight money laundering, and achieve the best result.

## **II. The Problem Of The Study**

The national financial institutions are not strong enough to support anti-laundering and cooperate in sharing information, developing, and setting measures and rules, regulations, and quid lines to ensure compliance and enforcement actions in combating money laundering.

The South Sudan Government has not yet enacted laws that support the anti-money laundering regime, such as Mutual Legal Assistance (MLA) and assets recovery laws to improve the credibility of not only its financial sector but its governance as well.

Due to the above facts, it is not sufficient to combat money laundering by only appointing the FIU commissioner in the case of South Sudan, without taking into consideration the appointment of qualified members, and employees for both FIUS and the National Multi-Disciplinary Committee on Anti-Money Laundering, allocating adequate budget and propose the necessary reforms to the defunct financial system as well as recommended amendments of the Anti-Money Laundering Counter Financing Terrorist, 2012, to address the gaps identified and comply with international standards set by FATF 40 recommendations. As well as recommended the ratification of the relevant international instruments and conventions in combating money laundering and counter-terrorist financing.

### **III. The Questions Of The Study**

- 1- To what extent does South Sudan's Anti-Money legal framework set out measures to make its financial institutions and reporting persons strive to combat money laundering and terrorist financing?
- 2- What are the gaps identified and the reforms required?

### **IV. The Importance of the Study**

The importance of this study is to identify gaps within the South Sudan Anti-Money Laundering Legal Framework and recommend the areas to which amendments will be introduced and passed.

So, the study will not only assist the government in tackling money laundering offenses, but it will also closely relate to Counter Financing Terrorism (CFT). Financial institutions are mainly also to combat Anti-Money Laundering (AML). Regulations combine money laundering (source of funds) with terrorist financing destination of funds, as well as seek to deter criminals by making it harder for them to hide ill-gotten money. Therefore, it will not be easy for the criminal using money laundering to conceal their crimes and divert them to clean money.

The money laundering process has changed over time, and the use of electronic money has increased over the years (Soundararajan, 2018).

### **V. Materials And Methods**

We conducted a systematic review of published research to meet our study objective (Soundararajan et al., 2018). The extant literature reviews on the topic explore various aspects of money laundering.

Mostly, the data sources for past reviews were policy documents and reports related to money laundering, along with their aims, methods, key findings, and main differences between past reviews and our present review.

This study was broadly inter-preterist because it sought to amalgamate expert opinions from individuals who have a range of experiences and who observe the AML regime from different perspectives.

### **VI. Results And Discussion**

The consequences of money laundering are detrimental to a country, and there are many negative risks and effects of money laundering. Money laundries conduct their operations in growing economies, making it difficult for legitimate activities to grow eventually forcing them to go out of business, which were initially productive, and turn them into partners in crime to launder their funds.

Based on the legal analysis that I have conducted on the South Sudan Anti-Money Laundering and Counter Financing Terrorist Act; 2012. More gaps have been identified that required the political will and commitment of the Government of South Sudan to endorse the proposed amendments and reforms to align the South Sudan AML/CFT Act with the international standards and reforms aimed at addressing key AML/CFT deficiencies that I have identified and confirmed by the International Monetary Fund efforts (IMF). (Consultant Report, 2023).

Financial intelligence units (FIUs) be considered independent national centers to receive and analyze suspicious transaction reports, cash reports, and other responses and information related to money laundering, terrorist financing, and associated predicate offenses, as well as, dissemination of their report to the competent authority and law enforcement agency instead of being as interdepartmental unit under the national ministry of finance as stipulated under the section 6 of the current Act, 2012 to comply with FATF.

FIUs should be allowed to have permanent employees instead of being under contract basis and their activities and expenditures be subjected to annual auditing to strengthen the establishments inserted under the current anti-money laundering and counter-terrorist Financing Act, 2012.

Knowledge of money laundering should be part of the elements of the offense of money laundering in the new amendments and be obtained from the objective factual circumstances and conviction should not be a condition to prove the proceeds of a crime.

Offenses of terrorist acts and terrorist financing should be defined and inserted since it has not been defined under the current anti-money laundering and counter-terrorist Financing Act, 2012 taking into consideration all the relevant definitions provided under relevant conventions to comply with FATF.

Penalties should be proposed for non-complying with due diligence requirements and provisions to comply with FATF recommendation No. 35. So, it should be added as a new section under the current AML/CFT Act, 2012.

Money service, virtual assets service providers wire transfers, and reliance on the third party and higher risk jurisdiction be inserted. In addition to provisions on regulating new technologies. Money service businesses should be regulated be licensed, registered as reporting entities, and supervised by the supervisory authorities (FATF recommendation No. 12, 14, 16, 20, 21,22,23,24,266,27,28,17, and 35). So, it should be added as a new section under the current AML/CFT Act, 2012.

Virtual assets (VA) and virtual assets service providers (VASP) are required to be licensed, registered, regulated, and considered as reporting persons. (FATF recommendation No 14). So, it should be added as a new section under the current AML/Act, 2012.

Provisions and sections on cross-border cash reporting obligations gaps have been identified on issues of reporting to FIUs, it is a FATF requirement that customs authorities are obliged to report to FIU and competent authority (FATF recommendation N0.32). Therefore, section 24 of the current AML/CFT, 2012 be amended to accommodate this provision. Further customs and competent authorities are to be mandated to cease, restrain the currency, and impose an administrative sanction (FATF recommendation No. 32). So, it is my opinion 24 of the current AML/CFT Act, 2012 be amended.

A common and integrative understanding of money laundering is required to address this wicked problem. Measures to prevent money laundering include AML, CDD, transaction monitoring, reporting requirements, international cooperation, and adequate resources and training to manage financial crime risk effectively. These measures aim to make it more difficult for criminals to launder money and help in combatting various criminal activities associated with money laundering.

To implement effective anti-money laundering (AML) measures, organizations and individuals should follow the guidelines provided by (FATF) which sets globally recognized standards against money laundering and terrorist financing. Key recommendations include:

1. conducting through a risk assessment-based approach.
2. appointing a member of senior management responsible for AML.
3. adopting appropriate policies, controls, and procedures tailored to the identified risks.
4. performing enhanced due diligence (CDD) on high-risk clients, such as Politically Exposed Persons (PEPs).
5. Monitoring transactions for suspicious activities and maintaining records accordingly.
6. The Ministry of Justice shall designate a Government agency to carry out the functions of the Central Authority, issue rules of procedures to govern the effect of international cooperation to comply with FATF Recommendations No.38,39&40 and further be mandated to have the following functions, to comply with FATF recommendation No 36&37.
  - 1) To coordinate requests for international assistance received from foreign government authorities.
  - 2) To assess whether assistance can be rendered.
  - 3) Liaising with domestic competent authorities to initiate, facilitate, follow up on, and finalize requests for international cooperation made by foreign government authorities.
7. Finally, the immunity of the commissioner of FIUs, members of the national committees, and employees of FIUs, the power of the minister of finance to issue regulations and the areas to cover, disposal of confiscated money, and decrees to implement UN Security Council resolutions should be redrafted to comply with FATF recommendation No. 21. As regards to implementation of the United Nations Security Council Resolutions, the national council of ministers should be mandated to issue decrees on the implementation of these resolutions.

## **VII. Conclusion And Recommendations**

Some countries entered punitive legislation to trace money laundering activity as the United Nations agreement for combating the illegal trade of drugs (Vienna, 1988) and the Basle Declaration concerned with preventing the criminal use of the bank system for money laundering purposes.

South Sudan Authorities and policymakers should accommodate all 40 Recommendations set by FATF, which Counters are required to comply with to avoid being blacklisted. Therefore, for the Republic of South Sudan to be removed from the Grey List Counters. I strongly recommended that the proposed recommendations be endorsed, since it has covered most of the FATF 40. it is my conclusion that the current Anti-Money Laundering and financing terrorist Act, 2012 be amended to accommodate the identified reforms because Money laundering can cause a vital take over the political part of power. Overall, money laundering activities raise dynamic and complex challenges for the world community.

These recommendations have covered the key provisions and sections that are required to be amended in addition to new measures and provisions that are supposed to be inserted across the Anti-Money Laundering and Counter Financing Terrorist Act 2012 including definitions of new terminologies, provisions on the status of FIUs, National Committee, Prohibition of Money Laundering, and Terrorist Financing, Anti-Money Laundering Reporting Entities, competent and supervisory authorities, law enforcement investigative powers and roles, Customer Due Diligence provisions, Anti Money Laundering Confiscation Regime, International Cooperation, Confiscation Regime, Immunities of FIUs Members, Employees, and Reporting entities as well as the Money laundering related offenses and Penalties.

### References

- [1]. Agarwal,J.,D. And Aman Agarwal(2004). Globalization And International Capital Flowers, Finance India, Vol. 19.
- [2]. Agarwal,J.,D. And Aman Agarwal(2006). Money Laundering: New Forms Of Crime, Victimization, Presented At The National Workshop On New Forms Of Crime, Department Of Crime, Victimization, With Reference To Money Laundering, Indian Society Of Victimology.
- [3]. Buchanan. (2004), B. (2004). Money Laundering- A Global Obstacle. Research In International Business And Finance, Vol.18. No 1.Pp.
- [4]. Cooley,A. And Sharoman, J. (2015). Blurring The Line Between Licit And Illicit: Transnational Corruption Works In Central Asia Survey, Vol.34. No.1, Pp.
- [5]. Cuervo-Cazurra, A., Dieleman, M., Hirsch,P.Rodrigues,S, And S. And Zyglido Pouleus,S.(2021). Multinational Misbehavior, Journal Of World Business.
- [6]. Dierks Meler, C. And Seele, P. (2018). Cryptocurrencies And Business Ethics. Journal Of Business Ethics, Vol. 152. No. 1.Pp.
- [7]. Enofe, A.O., Alui,A.K&Ombu.A.(2018). Money Laundering And The Nigerian Economy. International Journal Of Academic Research/Social & Management Sciences.
- [8]. Fatf, (2018). Professional Money Laundering, Available At [Www.Fatf.Gafi.Org/Media/Fatf/Documents/Professional-Money Laundering. Pdf](http://www.fatf-gafi.org/Media/Fatf/Documents/Professional-Money-Laundering.Pdf).
- [9]. Fatf, (2022). Professional Standards On Combating Money Laundering And The Financing Of Terrorism And Proliferation Available At [Www.Fatf-Gafi.Org/Media/Fatf/Documents, Recommendations](http://www.fatf-gafi.org/Media/Fatf/Documents/Recommendations) Accessed Is April,2021.
- [10]. Lopez-De-Sillanes,F, And A.Chung, (2007). Money Laundering And Its Regulation, Inter-American Development Bank, Research Department, Working Paper.
- [11]. Mitchell, A., Sikka, P., And Willmott, H. (1998). Sweeping It Under The Carpet: The Role Of Accountancy Firms In Money Laundering Organizations And Society, Vol, 23. No.5.
- [12]. Moshi, H.P.B. (2007). Fighting Money Laundering: The Challenges In Africa. Institute For Security Studies(Iss). Paper 152.
- [13]. Rousscan,D.M., Manning, J. And Denyer, D.(2008). Evidence In Management And Organizational Sciences An Assembling The Fields Fuel Weight Of Scientific Knowledge Through Syntheses, Academy Of Management Annuals, Vol.2. No.7. Pp.
- [14]. Sharman,J.C. And Chaikin,D.(2009). Corruption And Money Laundering Systems: Putting A Luxury Good To Work, Governance, Vol.22. No.27.
- [15]. Soundararjan, V., Jamali,D. And Spence, L.J.(2018). Small Business Social Responsibility: A Critical Multilevel Review, Synthesis And Research Agenda, International Journal Of Management Reviews, Vol.20. No.4.