

# **AFRICA REGIONAL JUDICIAL DIALOGUE ON ADJUDICATING TRANSNATIONAL ORGANIZED CRIMES AND ILLICIT FINANCIAL FLOWS IN AFRICA**

Strengthening adjudication of Transnational Organized Crimes and Illicit Financial Flows in  
Africa: Experiences, Challenges, and emerging issues

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with the Hon. Deputy Judge President, Mr Justice E.H.T. Angula

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**THEME:** Strengthening adjudication of Transnational Organized Crimes and Illicit Financial Flows in Africa: Experiences, Challenges, and emerging issues

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**NAMIBIA REPRESENTATIVES:** The Hon. Justice E.H.T. Angula and Mrs E.E. Schickerling

# CONTENTS

ACRONYMS AND ABBREVIATIONS.....	8
INTRODUCTION .....	11
OVERVIEW OF THE TRENDS AND TYPOLOGIES IN TOC AND IFF .....	15
PRESENTATION .....	15
Why are we here? .....	15
What are Transnational Organized Crimes (TOC) and Illicit Financial Flows (IFF)? .....	15
Transnational Predicate Offences / TOC Typologies in Africa.....	18
Money Laundering.....	29
Illicit Financial Flows.....	31
Link between Corruption, Organised Crimes, IFFS and money laundering .....	34
Impact of Transnational Organised Crime .....	34
TOC Crime Detection and Prevention & Suspicious Activity Indicators.....	35
Common Suspicious Activity Indicators for Financial Crimes .....	36
Regulatory Regimes for Financial Crimes .....	42
How are Judicial Officers Affected?.....	45
Key Take Away / Lessons Learnt .....	48
DIALOGUE .....	49
Mozambique: Justice Jose Norberto Carrilho.....	49

Kenya: Lady Justice Roseline Wendoh .....	50
Malawi: Justice John Katsala.....	50
Conclusion.....	51
UNDERSTANDING THE ROLE OF THE JUDICIARY IN TOC ADJUDICATION .....	52
PRESENTATION .....	52
DIALOGUE .....	53
Kenya: Lady Justice Diana Mochache, Judge of the High Court.....	53
Tanzania: Dr Jose Mlyambina, Judge of the Labour Division .....	54
Zambia: Justice Susan Fusani Mtonga Wanjelani .....	54
Floor Participation.....	56
CURBING IFF'S FLOWING FROM ILLEGAL WILDLIFE TRADE AND PRECIOUS METALS AND STONES WITHIN THE EASTERN AND SOUTHERN AFRICAN REGION .....	57
PRESENTATION .....	57
Approach to Combat IWT, Illicit Dealing in PMS and ML in the ESAAMLG Region .....	57
DIALOGUE .....	63
Kenya: Ms Florence Magoma, Kenya Wildlife Service .....	63
Nigeria: Ms Atuweni Tupochile, Anti-Money Laundering Advisor, UNODC .....	63
Zimbabwe: Justice B Chikowero.....	64
Floor Participation.....	64
EMERGING JURISPRUDENCE: CASE STUDIES, TRENDS, ISSUES & LESSONS IN DETERMINING TOC & IFF CASES .....	66
PRESENTATION .....	66

Trafficking in Persons Law and Practice, The Ethiopian experience Justice Etmet Assefa Asamrie .....	72
DIALOGUE .....	78
ROLE OF COURTS IN DISRUPTING MONEY LAUNDERING & CORRUPTION NETWORKS: TECHNIQUES, TRENDS AND COUNTER-MEASURES .....	79
PRESENTATION .....	79
DIALOGUE .....	81
Uganda.....	81
ASSET RECOVERY AND MANAGEMENT: THE COMMON AFRICAN POSITION ON ASSET RECOVER (CAPAR) .....	83
PRESENTATION .....	83
Introduction.....	83
Process Leading to the Adoption of the CAPAR.....	84
Implementation of CAPAR : Towards Empowering Judiciary for Efficient Asset Recovery and Management.....	85
Conclusion.....	86
DIALOGUE .....	86
Kenya: Dr Constance Gikonyo, AML and Asset Recovery Researcher (Senior lecturer University of Nairobi) .....	86
Burkina Faso: Justice Antoine Kabore.....	89
STRATEGIES FOR ENHANCING CAPACITIES FOR TOC ADJUDICATION .....	91
Nigeria: National Judicial Institute .....	91
Mozambique: Judicial Court of Tete Providence .....	91

Ghana: JTI .....	92
Sierra Leone: Judicial & Legal Training Institute (JLTI) .....	93
Nigeria: National Judicial Institute .....	94
AFRICA REGIONAL JUDICIAL DIALOGUE RESOLUTION .....	95
NAMIBIA TAKE AWAY .....	102
CAPACITY BUILDING .....	102
Compendium of Namibian POCA Judgments and Orders.....	102
Specialized Training for Judges.....	102
Institutional Memory and Knowledge Transfer.....	103
Namibia Judiciary Training Institute .....	103
THE RULE OF LAW.....	104
Maintaining and Management of Assets under Preservation or Restraint Orders .....	104
INTERNATIONAL VISIBILITY AND PARTICIPATION.....	104
Ad Hoc Specialized Court.....	105
Consistency in International AML and IFF Training and symposiums .....	106
GENERAL.....	106
Presentations.....	106
Awareness.....	107
CONTACTS TO REMEMBER .....	108
USDOJ .....	108
ESAAMLG .....	108
UNODC .....	108

AML EXPERT.....	109
KJA.....	109
AFRICAN REGIONAL JUDICIARY TRAINING INSTITUTES' CONTACT PERSONS .....	110

# ACRONYMS AND ABBREVIATIONS

AML	Anti-Money Laundering
ATM	Automatic Teller Machine
AUC	African Union Commission
CAPAR	Common African Position on Asset Recovery
CDD	Customer Due Diligence
CFT	Combating Financing of Terrorism
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DT	Drug Trafficking
ESAAMLG	Eastern and Southern African Anti-Money Laundering Group
ETIS	Elephant Trade Information System
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit

GDP	Gross Domestic Product <sup>1</sup>
JTI	Judicial Training Institute
IFF	Illicit Financial Flow
IUCN	International Union for Conservation of Nature
IWT	Illegal Wildlife Trade
KJA	Keya Judiciary Academy
KYC	Know Your Customer
LEA	Law Enforcement Agencies
ML	Money Laundering
MSB	Money Services Business
MVTS	Money or Value Transfer Services
NGO	Non-Governmental Organisation
NJTI	Nigeria Justice Training Institute
OG	Organized Crime

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<sup>1</sup> Gross domestic product is the total monetary or market value of all the finished goods and services produced within a country's borders in a specific time period,

PEP	Politically Exposed Person
PEPS	Politically or Publicly Exposed Persons
SAR	Suspicious Activity Report (also known as Suspicious Transaction Report)
SDG	Sustainable Development Goal
SME	Small and Medium-sized Enterprise
STR	Suspicious Transaction Report (also known as Suspicious Activity Report)
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TF	Terrorist Financing
TOC	Transnational Organized Crime
TBML	Trade Based Money Laundering
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCTOC	United Nations Convention on Transnational Organized Crime
UNODC	United Nations Office on Drugs and Crime
USDOJ	United States Department of Justice

# INTRODUCTION

The United Nations Convention on Transnational Organized Crime (UNTOC) defines Transnational and Organized Crime (TOC) as an offense “whose inception, perpetration and/or direct or indirect effects involve and affect the interests of more than one country”.



UNTOC identifies several categories of TOC, which vary in their outfits, scope, scale, and impact. TOC poses a substantial threat to the safety, security, and interest of states, and is a driver of many major geopolitical challenges including conflict, political instability, exacerbating inequalities, and hindering sustainable development efforts. It is increasingly recognized that targeting proceeds and financial flows of serious criminal activities and terrorism, through effective financial investigations, prosecution, and judicial process together with anti-money laundering (AML) and combating financing of terrorism (CFT) measures is a key strategy to effectively mitigate these threats. It is for this purpose that the European Union (EU) has been supporting regional initiatives dedicated to enhancing national and regional capacity in this field of financial investigations/ prosecutions, asset recovery, AML/CFT, and counter illicit financial flows (IFFs).

The 2021 Global Organized Crime Index indicated that both East and Southern Africa reported a low regional average score for TOC resilience in Africa. While the manifestation of TOC varies in Eastern and Southern Africa, some common challenges impede the effective response to TOC, notably, namely:

- (i) inadequate knowledge of emerging TOC manifestations to inform strategic responses, especially from a regional perspective;

- (ii) weak enforcement of regional and domestic legal frameworks against TOC and/or their deficiencies;
- (iii) limited capacity to effectively respond to the intersectionality between TOC and corruption, illicit financial flows, asset forfeiture, recovery, and management;
- (iv) limited coordination and collaboration amongst anti-TOC agencies across countries, etc.

Noting the urgency and complexity of these challenges and reflecting on the feedback from previous capacity building initiatives for Judges and other key actors in the criminal justice system on the subject, the Kenya Judiciary Academy (KJA) conceived the idea of a regional judicial dialogue on TOC and IFF. This is in recognition of the fact that the prevention and response to TOC and IFF, and its effects require coordinated and collaborative efforts across jurisdictions. Such collaborative efforts are facilitated through conversations, reflections, and information sharing between judiciaries on their different experiences, challenges, and best practices in the adjudication of TOC cases.

Why involve Judiciaries? The Judiciary plays a crucial role in adjudicating transnational organized crime and illicit financial flows. Some key roles and responsibilities of the judiciary in tackling TOC & IFF issues include:

- a) Prosecution and Trial: It is the duty of the judiciary to examine the evidence presented, assess the credibility of witnesses, and determine the guilt or innocence of the accused.
- b) Interpretation and Application of Laws: This includes laws on money laundering, corruption, fraud, and other relevant offenses. Through their decisions, judges clarify legal provisions, close loopholes, and ensure that the law is effectively applied to address complex and evolving issues around TOC & IFF.
- c) Extradition and Mutual Legal Assistance: In cases involving TOCs & IFF, cooperation between different jurisdictions is crucial. The judiciary facilitates extradition processes and mutual legal assistance requests, ensuring that perpetrators of cross-border criminal activities are brought to justice.

d) Asset Recovery and Confiscation: Illicit financial flows often involve the movement of funds across multiple jurisdictions, making asset recovery and confiscation a complex task. The judiciary plays a key role in issuing orders for freezing and confiscation of proceeds of crime, ensuring that criminals do not benefit from their illicit activities.

e) Setting Precedents and Establishing Legal Standards: The judiciary's decisions in transnational crime cases contribute to the development of legal standards and precedents. Such landmark judgments establish important legal principles, interpretations, and guidelines, which guide future cases and shape the legal framework for combating transnational organized crime and illicit financial flows.

Given the global nature of TOC and IFF, regional and international cooperation is thus essential for judges particularly, to provide exposure to international judicial networks and forums to share best practices and exchange information around adjudicating TOC & IFF. This expose not only improves the quality of jurisprudence but also strengthens cross-border cooperation among judicial systems. Such collaboration enhances the effectiveness of judicial responses to transnational crime and illicit financial flows.

Against this background, the KJA and its partners convened a 3-day regional judicial dialogue on TOC and IFF during the period 3 - 5 October 2023, on the role of courts in the prevention and response to TOC and illicit financial flows. The dialogue provided a platform for policy leadership to improve transnational justice. The dialogue also created a forum to discuss experiences, challenges, and potential solutions in the adjudication of different forms of TOC and illicit financial flows amongst Judges, practitioners, and experts in this field. It further provided an opportunity to reflect on the gains made in regional criminal justice reforms, and in particular, cross-border crimes and related judicial training by the judicial training institutions. The dialogue reflected on sustained achievements made in the adjudication of TOC and define a way forward for the development of a TOC curriculum for judiciaries in the region.

Due to the trans-border effect of TOC, the dialogue brought together Judiciary Training Institutes and Judges from the region with the objectives of:

1. Enhancing understanding of transnational organized crime (TOC), its evolving dynamics, emerging trends, and the interconnected nature of TOC with illicit financial flows, and corruption
2. Facilitating knowledge sharing and exchange of best practices among Judges and JTIs on the best approaches to TOC prevention and response.
3. Fostering collaboration and partnerships between JTIs in the region, stakeholders at the national, regional, and international levels to develop comprehensive and coordinated judicial responses to TOCs & IFF.
4. Identifying and promoting innovative approaches, technologies, and legal frameworks to prevent, detect, and combat TOC and illicit financial flows in the region.
5. Addressing the socio-economic consequences of TOC and illicit financial flows, particularly on vulnerable communities, and exploring strategies for inclusive development.
6. Sharing experiences, challenges, emerging issues, and good practices from the African continent on TOC.
7. Exploring strategies to sustain and institutionalize capacity building in various thematic areas of TOC in the region.

# OVERVIEW OF THE TRENDS AND TYPOLOGIES IN TOC AND IFF

## PRESENTATION



*By Ms. Mercy Buku, AML Expert*

### Why are we here?

“The work of judges, prosecutors and other investigative authorities is crucial for stable institutions, transparency and the rule of law, which are all pillars of an effective AML/CFT ( and criminal justice) system”<sup>2</sup>

### What are Transnational Organized Crimes (TOC) and Illicit Financial Flows (IFF)?

Transnational Crimes are crimes that:

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<sup>2</sup> <https://www.fatf-gafi.org/media/fatf/documents/reports/AML-CFT-Judges-Prosecutors.pdf>

1. Have actual or potential effect across national borders and crimes that are intrastate;
2. It involves more than one country in their planning, execution, or impact;
3. They involve cross-border transference as an essential part of the criminal activity - They are international (i.e. cross borders between countries);
4. It includes crimes that take place in one country, but their consequences significantly affect another country and transit countries may also be involved.

The UN Convention on Transnational Organised Crime defines an 'organized criminal group' as being:

- a group of three or more persons that was not randomly formed;
- existing for a period of time;
- acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration;
- in order to obtain, directly or indirectly, a financial or other material benefit.

(TOC) refers specifically to transnational crime carried out by criminal organisations. Examples of transnational crimes include:

- Human trafficking and People/Organs smuggling
- Smuggling/trafficking of illegal goods (e.g. arms, drugs, precious metals and stones, illegal animal and plant products and environmentally harmful goods, stolen natural resources or protected animals' parts)
- Sex slavery
- Terrorism,
- Torture
- Racial discrimination (e.g. former apartheid),
- Transfer of toxic waste,
- Money laundering

Illicit financial flows (IFFs) are illegal movements of illegally earned money or capital from one country to another/across international borders. Some examples of illicit financial flows might include<sup>3</sup>:

- Trade-based money laundering for drug proceeds
- Trade mis-invoicing to facilitate tax evasion.
- Money laundering through anonymous shell companies
- Wire transfers for the financing of terrorism from one region to an operative in another.

Transnational Crime, Money Laundering and Illicit Financial Flows (IFFs) are closely related and tend to occur simultaneously. IFFs serve as a conduit for laundering the proceeds of crime to disguise their original source. Billions of dollars of public funds siphoned through IFF's cause a major drain on capital and revenues in Africa and undermine its productive capacity and potential to achieve the Sustainable Development Goals (SDGs). Most common transnational organized crimes are<sup>4</sup>:

- Money laundering,
- Human smuggling;
- Cyber crime;
- Trafficking of humans, drugs, weapons, kidnapping,
- People smuggling, endangered species, body parts, or nuclear material.

Transnational crimes can be grouped into three broad categories:

1. Provision of illicit goods (drug trafficking, trafficking in stolen property, weapons trafficking, and counterfeiting, precious metals and stones, luxury goods);
2. Provision of illicit services (commercial sex and human trafficking),

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3 <https://gfintegrity.org/issue/illicit-financial-flows/>

4 <https://www.unodc.org/unodc/en/data-and-analysis/toc.html> and <https://www.occrp.org/en/daily/6240>

3. Infiltration of business and government (fraud, racketeering, money laundering, and corruption) affecting multiple countries.

Transnational crimes are distinguished from international crime, which involve crimes against humanity that may or may not involve multiple countries. Examples of international crimes are genocide and terrorism.

The most common TOC crimes in East Africa are:

1. Migrant smuggling from Ethiopia and Somalia to Yemen and Saudi Arabia;
2. Heroin trafficking from South-West Asia to Eastern Africa (value US\$160 million in local markets);
3. Ivory trafficking through Eastern Africa to Asia – (between 5,600 and 15,400 elephants are poached in Eastern Africa annually, producing between 56 and 154 metric tons of illicit ivory, of which two-thirds (37 tons) are destined for Asia, equivalent of US\$30million in 2011);
4. Somali maritime piracy. Somali pirates brought in an estimated US\$150 million in 2011, equivalent to almost 15% of Somalia's GDP.<sup>5</sup>

## Transnational Predicate Offences / TOC Typologies in Africa

### *Drug Trafficking*

Drug trafficking is a global illicit trade involving the cultivation, manufacture, distribution, and sale of substances which are subject to drug prohibition laws. Drug trafficking is one of the largest sources of illicit funds worldwide due to its high value.

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<sup>5</sup> [https://www.unodc.org/documents/data-and-analysis/Studies/TOC\\_East\\_Africa\\_2013.pdf](https://www.unodc.org/documents/data-and-analysis/Studies/TOC_East_Africa_2013.pdf)

The UNODC 2010 World Drug Report estimates that the profits derived from illegal narcotics trade amount to US\$600 billion annually, In 2019 the Heroin trade accounted for USD 33 billion. Up to US\$1.5 trillion in drug money is laundered each year. This amount exceeds the combined GDP of most African countries.

Drug Trafficking Vulnerabilities includes amongst others:

- High levels of unemployment
- Poor educational standards,
- High rates of illiteracy, rural poverty and high-income disparities,
- High rates of population growth and limited natural resources (such as water)
- Weak policing and judicial systems enable infiltration and expansion of organized crime networks.
- The wide spread cultivation of cannabis and Local consumption of cannabis especially in urban areas
- The use of psychotropic substances by both adults and minors.
- Lack of appropriate mechanisms and skilled human resources to control and prevent DT
- Inadequate counselling and treatment facilities.
- Increase in sophistication in trafficking and new methods of disguising drugs; e.g. increased use of women

### *Illicit Wildlife Trafficking*

Wildlife trafficking involves the illegal trade, smuggling, poaching, capture, or collection of endangered species, protected wildlife (including animals or plants) – (UNODC). Poaching or Illegal killing of wildlife for Ivory, skins etc. is done for sale internationally, mainly in Asia for medicinal and ornamental purposes. Rhino and Elephant are mostly poaching or Illegally killed.

Wildlife trafficking is now a days one of the most lucrative types of transnational organized crimes, with annual revenues estimated to be between USD 7.8 billion and USD 10 billion per year (excluding fisheries and timber).

SA, Kenya and Tanzania are the top target countries in East and Southern Africa.

Illegal proceeds are suspected to be laundered into the financial systems worldwide.<sup>6</sup>

Illicit Wildlife Trafficking Vulnerabilities includes amongst others:

- Porous borders which provide easy access to country and national parks;
- Having some of the largest population of rhinos and elephants also contributes;
- High growth in demand for rhino horns and elephant tusks; medicinal and ornamental value;
- Increase in prices of rhino horns and elephant tusks;
- Well organized criminal syndicates executing crimes;
- Poverty forces locals into being contracted into poaching activities;
- Inadequacies in preservation and combating efforts;
- Inadequate wildlife crime combative efforts due to insufficient resources;
- Lack of international and domestic coordination and cooperation of various stakeholders' combative initiatives.

Money Laundering Methods used in Illicit Wildlife Trafficking are some of the most complex and highly variable methods. Complexed chains of intermediaries involved in the supply chain usually includes poachers, porters, couriers, front companies, retail and processing points to buyers.

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<sup>6</sup> ESAAMLG Typologies Reports

There are three (3) distinct phases of wildlife crime –

1. Poaching
2. Trafficking
3. Retail

Each of these phases is increasingly professionalized and dominated by criminal and corruption networks. Cash is the preferred method of payment in respect of payments in the domestic setting. The payments are in the national currency of the beneficiaries, pegged to the United States Dollar (USD) or value of the merchandise. Forex is normally preferable due to favourable exchange rates. The Forex is exchanged through black market / forex bureaux.

### *Human Trafficking*

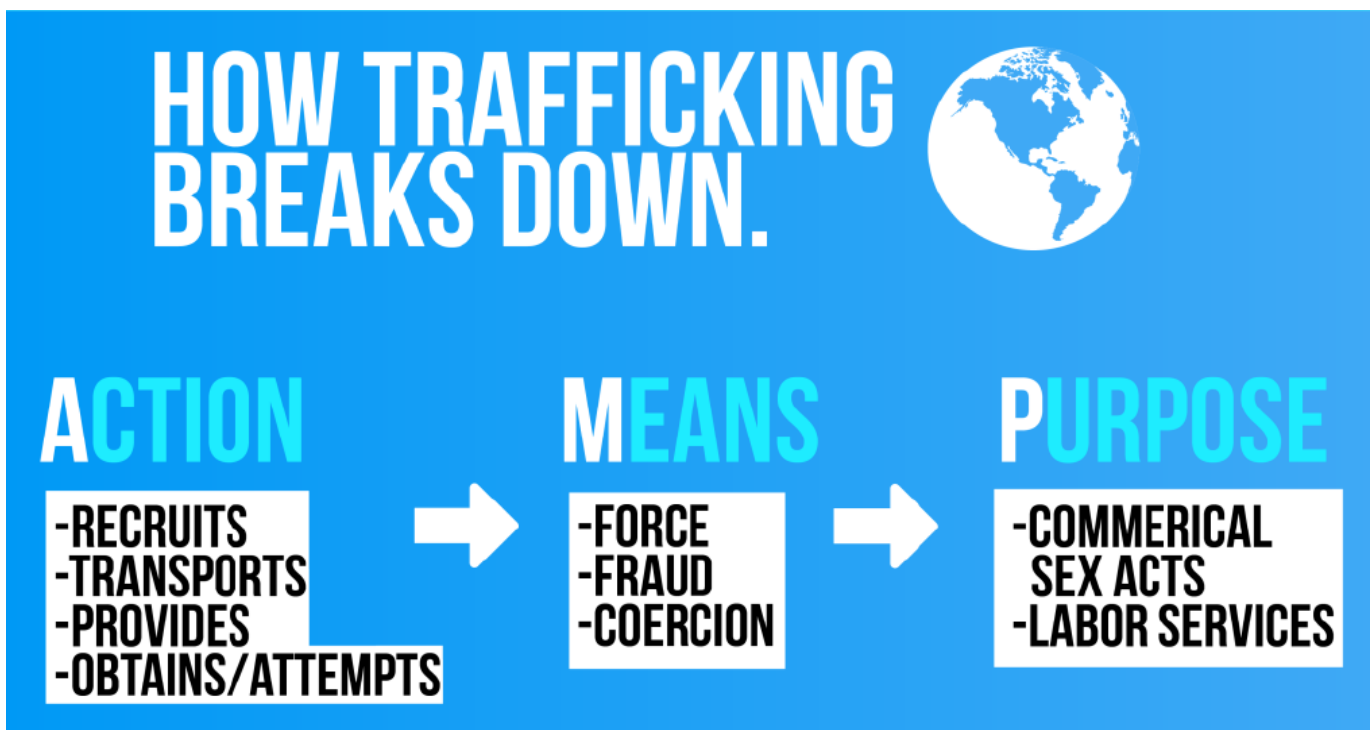
Human trafficking is the trade of humans for the purpose of forced labour, sexual slavery, or commercial sexual exploitation for the trafficker or others. Illicit business of trafficking in persons generates US\$32 billion dollars per annum and 1/3 of this value is from sexual exploitation. Eight (80) percent of trafficking in persons is for sexual exploitation purposes. Main factors contributing to the increasing international and domestic prevalence of trafficking in persons include:

- low socio-economic development,
- political instability
- disparities in income levels.

The Human Trafficking Vulnerabilities are amongst others:

- High Poverty levels in most regions;
- Lack of specific legislation on trafficking in persons in most member countries;
- Length and porous borders which pose a challenge for the member countries to effectively patrol and monitor;
- Unstable neighbouring countries;

- Lack of well developed infrastructures;
- Corruption within Government Departments and Private Institutions;
- Bogus recruitment agencies, orphanages' and children's homes, travel agencies acting as fronts;
- Long distance truck drivers -involved in facilitating movement of victims.
- Agents that assist traffickers in forging travel documents;
- Capacity constraints by LEAs, due to inadequate formalized information sharing and coordination systems between agencies.



### *Firearms Trafficking*

Arms trafficking or gun running is the illicit trade of contra band small arms, explosives, and ammunition. It is often associated with transnational criminal organizations.

The 1999 Report of the UN Panel of Governmental Experts on Small distinguishes between –

- weapons designed for personal use, such as small arms (revolvers and self-loading pistols, rifles and submachine guns etc); and

- Light weapons for military use such as heavy machine guns, grenade launchers, -aircraft guns, portable anti-tank guns, mortars of calibres which are designed for use by military personnel.

Ammunition and explosives also form an integral part of small arms and light weapons used in conflict. Scholars estimate illegal arms transactions amount to over US\$1 billion annually. According to other estimates 'the illegal firearms trade generates between EUR 125 million to EUR 236 million per year globally, which represents between 10 to 20 % of the total trade in legal firearms IMF Reports / Eurostat-Trafficking-of-Arms.

Yemen, Afghanistan, Central African Republic, Iran Iraq, Somali, Chad, Sudan amongst top ranked countries for arms trafficking

Proliferation Financing is associated with Arms Trafficking.<sup>7</sup>

Somalia is an example of Fire Arms Trafficking. Shipments of thousands of illicit weapons from the Iran-Yemen arms trade are reportedly transported via maritime routes to Somalia. There they are sold to the violent extremist groups Islamic State in Somalia and al-Shabaab. The weapons smuggling network allegedly extends to al-Shabaab-linked armed groups in Kenya, Ethiopia and Mozambique –threatening security in an already volatile region. It violates United Nations (UN) and European Union (EU) sanctions and the renewed UN Security Council arms.

Vulnerabilities of Firearms Trafficking are:

- Lack of specific legislation on gun use and trafficking;

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<sup>7</sup> Proliferation financing is defined as providing funds or financial services which are used in whole or in part, for the manufacture, acquisition, possession, development, export, trans=shipment, brokering, transport, transfer, stockpiling, or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dial use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations.

- Length of and porous borders and coastal waters which pose a challenge for the member countries to effectively patrol and monitor;
- Unstable neighbouring countries; political conflict;
- Lack of well developed infrastructures;
- Increase in sophistication in trafficking and new methods of disguising consignments;
- Capacity constraints by LEAs, due to inadequate formalized information sharing and coordination systems between agencies;
- Corruption within law enforcement;
- Lack of international and domestic coordination and cooperation of various stakeholders combative initiatives.

### *Terrorism and Terrorist financing (TF)*

Terrorism is defined as criminal acts, including against civilians, committed with intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

**Terrorist Financing is the financing of terrorist acts.** It involves the solicitation, collection, or provision of funds with the intention that they may be used to support terrorist acts or organization. Funds may stem from both legal and illicit sources. Terrorist financing is usually included in the definition of terrorism and related offences.

Terrorists source funds for their activities through various methods, some of which include:

- Private donations;
- Abuse and misuse of non-profit organizations;
- Proceeds of criminal activity such as piracy and illegal charcoal burning;
- Extorting local and diaspora populations and businesses;
- Kidnapping for ransom;

- Legitimate commercial enterprises e.g. through hotels, hospitals etc;
- State sponsorship of terrorism.

Terrorist Financing and Money Laundering goes hand-in-hand. When money is laundered it can be used to fund future criminal acts, such as Terrorism. Terrorist groups can also be funded by proceeds of criminal activities. The destination of money used to support terrorism has to be disguised in the same way that the source of laundered funds must be disguised. Both often require assistance from financial services.

The 2022 Global Terrorism Statistics reflects the following:

- Deaths from terrorism fell by nine per cent to 6,701 deaths - 38 per cent lower than at its peak in 2015;
- Attacks declined by almost 28 per cent from 5,463 in 2021 to 3,955 in 2022.
- Sub-Saharan Africa - 60% of terrorism deaths –an increase of eight per cent, mainly in Togo, Djibouti, Central African Republic and Benin.
- Afghanistan remained the country most impacted by terrorism
- The deadliest terrorist groups in the world in 2022 were Islamic State (IS) and its affiliates, followed by al-Shabaab, Balochistan Liberation Army (BLA) and Jamaat Nusrat Al-Islam wal Muslimeen(JNIM).
- Global economic impact of terrorism was US\$52 billion in 2017, 42 per cent lower than in 2016.
- Compared to other forms of violence such as homicide, armed conflict, and military expenditure, terrorism is a small percentage of the total global cost of violence.<sup>8</sup>

The impact of terrorism, however, remains widespread.

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<sup>8</sup> Global-terrorism-index-2023

## *Corruption*

11 World Leaders have fallen due to corruption since 2016.

African countries feature among the world's most corrupt countries. The Corruption Perception Index (CPI) indicates that Sub Saharan Africa has the lowest average ranking of 33 out of 180 countries, and 44 countries ranking below 50. Eighty percent of countries in Sub Saharan Africa have made little to no progress in the fight against corruption the last 10 years.

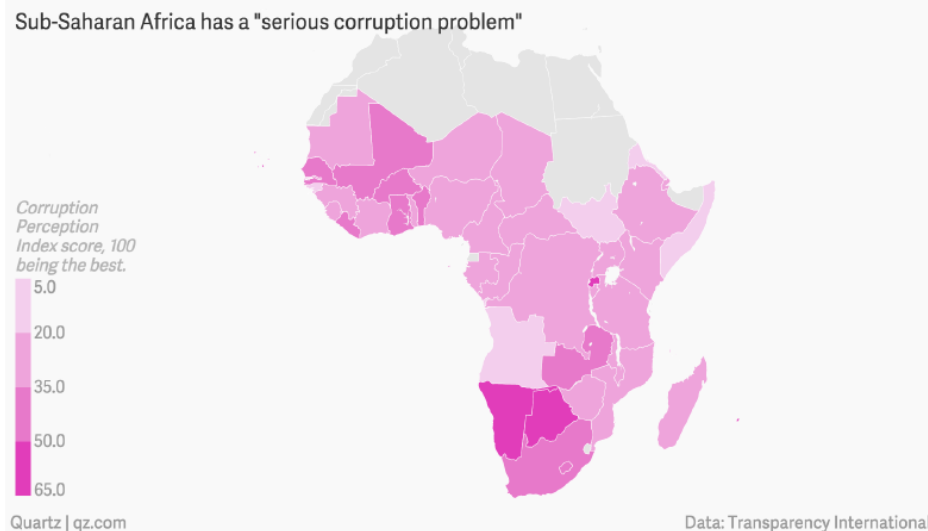
The definition of corruption is dishonest or fraudulent conduct by those in power, typically involving bribery and/or abuse of entrusted power for private gain.

Under Anti-Corruption Legislation corruption offences Include: Bribery; fraud; embezzlement or misappropriation of public funds; breach of trust; Tax evasion, Election offences (e.g.vote rigging, bribery of voters), Secret inducements for advice, Deceiving principal, Conflicts of interest, Improper benefits to trustees for appointments, Bid rigging, etc, Abuse of office, Dealing with suspect property.

## GLOBAL STATISTICS - CORRUPTION

It is argued that more than US\$1 trillion is paid in bribes alone each year compared to the estimated size of the world economy of over US\$30 trillion (World Bank Institute Report)

<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EXTTRADERESEARCH/0,,contentMDK:20191512~menuPK:215762~pagePK:210083~piPK:152538~theSitePK:544849,00.html>



Corruption impacts all spheres of life, both Public and Private Sector.

Grand and complex corruption largely involves the movements of money and laundering of the same through financial institutions and property market, examples of which are –

- Procurement Fraud e.g.tender rigging, bribery to secure supply, building and road contracts etc;
- Election offences –bribery of voters, election, rigging;
- Employment – job placements, promotions, transfers;
- Education - Exam irregularities, school placements, teacher transfers etc;
- Bribes made to avoid compliance with the law.

Transparency International Corruption Index reflects the following corruption vulnerabilities:

- Withheld Services;

- Poor/Delayed Services;
- Harassment /Intimidation by authorities;
- Seek unfair advantage/unjust enrichment/theft of public resources;
- Dishonest attitude to payment for services;
- Public Acceptance/Perception/ social inequalities;
- Poor Remuneration of public servants;
- Unemployment/Poverty;
- Competition for services/ Contracts;
- Lack of political goodwill to deal with it;
- Lack of knowledge/education e.g. where to report;
- Corruption entrenched as a culture

The same survey listed the following as reasons for offering bribes:

- It was the only way to get a service 38%;
- To speed up the service 31%;
- To avoid problems with the authorities 17%;
- To access a service I did not legally deserve 5%;
- To avoid paying the full cost of the service 5%;
- It was expected 4%

Grand scale corruption undermines the political and economic stability of a country by diverting economic resources from the public sector and threatening sustainable peace.

Corruption erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis.

Exposing corruption and holding the corrupt to account can only happen if we understand the way corruption works and the systems that enable it.

## Money Laundering

Money Laundering is the process of “making dirty money clean”. It involves criminals engaging in a series of criminal acts designed to conceal or disguise the true origin of criminally derived proceeds so that the unlawful proceeds appear to have been derived from legitimate origins or constitute legitimate assets. Such Criminal acts are called **predicate offences** and are each capable of generating huge amounts of money. Examples of predicate offences are corruption and bribery, drug trafficking, illicit wildlife trafficking or poaching, illegal arms sales, counterfeiting, extortion and prostitution rings, land fraud, etc.

Money laundering enables the criminal to enjoy the financial profits of such crimes without revealing their source.

Under AML legislation in Kenya, the definition and scope of money laundering is a lot broader than the traditional ‘**washing dirty money**’ concept.

Proceeds of crime include:

- Property or economic benefits a person would gain, directly or indirectly;
- as a result of an offence committed in Kenya or anywhere else,
- irrespective of whether committed before commencement of the Act.

***NB The offence of money laundering can be committed by a person merely having stolen goods in their possession.***

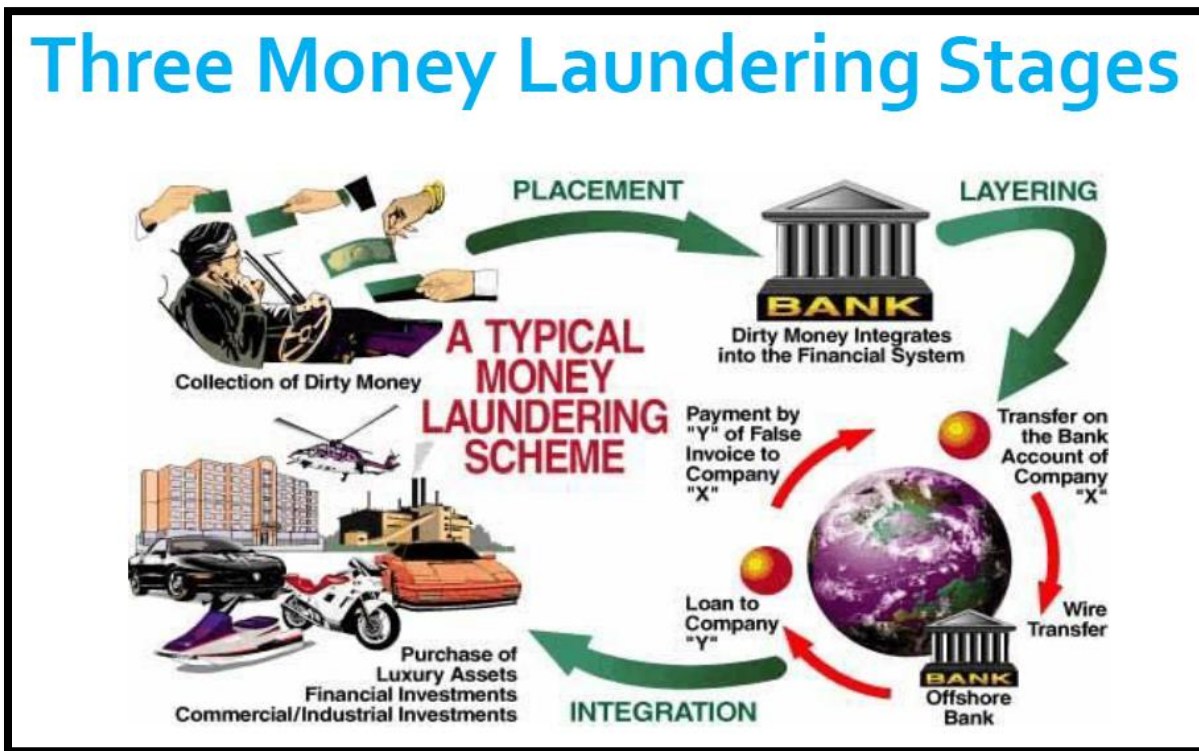
The following are typical money laundering offences under most AML Legislation:

- Acquiring, possession, and use of criminal proceeds;
- Concealing or transferring criminal proceeds to avoid prosecution;
- Assisting another to retain the proceeds of crime;
- Failure to disclose knowledge or suspicion of money laundering (to report suspicious activity); Tipping off (disclosures regarding an AML investigation).

**General Requirements for money laundering are:**

- Criminal Offence Must Occur (Predicate Offence),
- Which Generates Proceeds of Crime – Normally in Cash Form
- Proceeds of Crime must be placed into the Financial System – through Various Stages (Placement, Layering and Integration )
- Clean Money is Re-introduced into the financial system / Used to Purchase Property Etc - Integration Stage.

The estimated amount of money laundered in one year is \$800 billion – 2 trillion or 2-5% of global GDP.<sup>9</sup>



<sup>9</sup> [www.unodc.org/unodc/en/money-laundering/globalization.html](http://www.unodc.org/unodc/en/money-laundering/globalization.html)

There are three main methods by which criminal organisations and terrorist financiers move proceeds of crime/IFFs for the purpose of disguising its origins and integrating it into the formal economy.

- 1.Through the use of the financial system;
- 2.Through the physical movement of money (e.g. through the use of cash couriers / hawalas);
- 3.Through the physical movement of goods through the trading system (TBML)

TBML generates cashflows amounting to more than one trillion dollars which helps finance the operations of transnational organized crime, thus the importance of raising awareness about this problem and its impact on the region.

The following risk factors make a country vulnerable to Money Laundering Risk

- **Country Geographic Risks** –political instability, corruption, poor regulatory regimes and law enforcement mechanisms
- **Product/Financial Services Risk** –proliferation of new products e.g. digital financial services which are attractive to criminals
- **Customer or Financial Exclusion Risk** –Poor KYC identification regimes, informal cash economy etc
- **Systems or Operational Risks** : Inadequate Controls, data protection safeguards
- **Compliance Risk** –Compliance breaches, law enforcement challenges
- **Regulatory Risks** –Inadequate regulatory and supervisory frameworks

## Illicit Financial Flows

Illicit financial flows (IFFs) are illegal movements of illegally earned money or capital from one country to another/across an international border. Some examples of illicit financial flows include:

- Trade-based money laundering for drug proceeds
- Trade mis-in voicing to facilitate tax evasion
- Money laundering through anonymous shell companies
- Wire transfers for the financing of terrorism from one region to an operative in another.

IFFs serve as a conduit for laundering the proceeds of crime to disguise their original source.

Billions of dollars of public funds siphoned through IFF's cause a major drain on capital and revenues in Africa and undermine its productive capacity and potential to achieve the Sustainable Development Goals (SDGs). Africa Loses \$50 Billion Yearly in Illicit Financial Flows (Report of the AU High Level Panel on Illicit Financial Flows from Africa).

There are four main Categories of Illicit financial flows (IFFs):

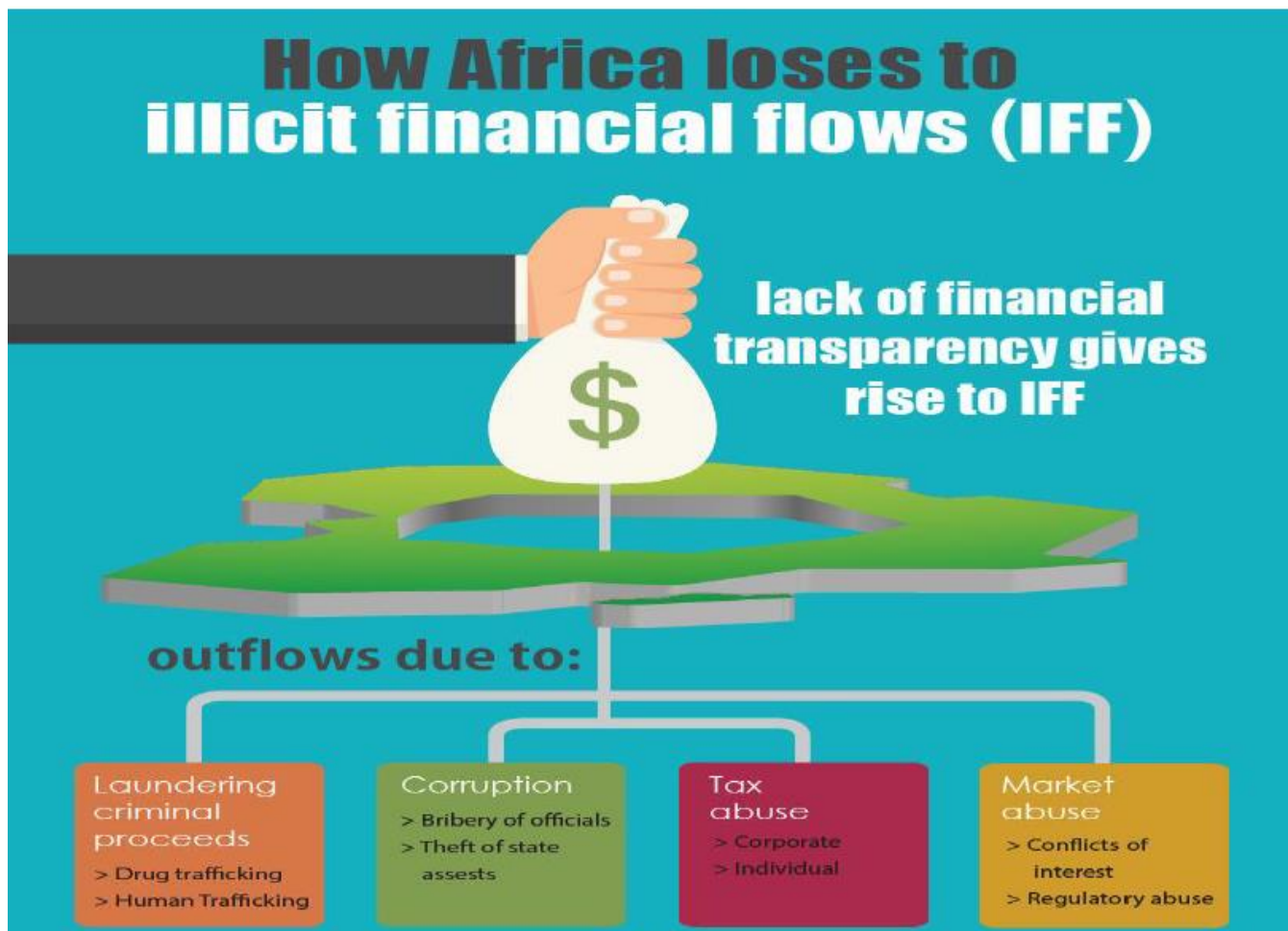
- Tax and Commercial practices
- Illegal Markets
- Terrorist Financing
- Corruption, Fraud and Theft

#### 4 BROAD CATEGORIES OF IFFs

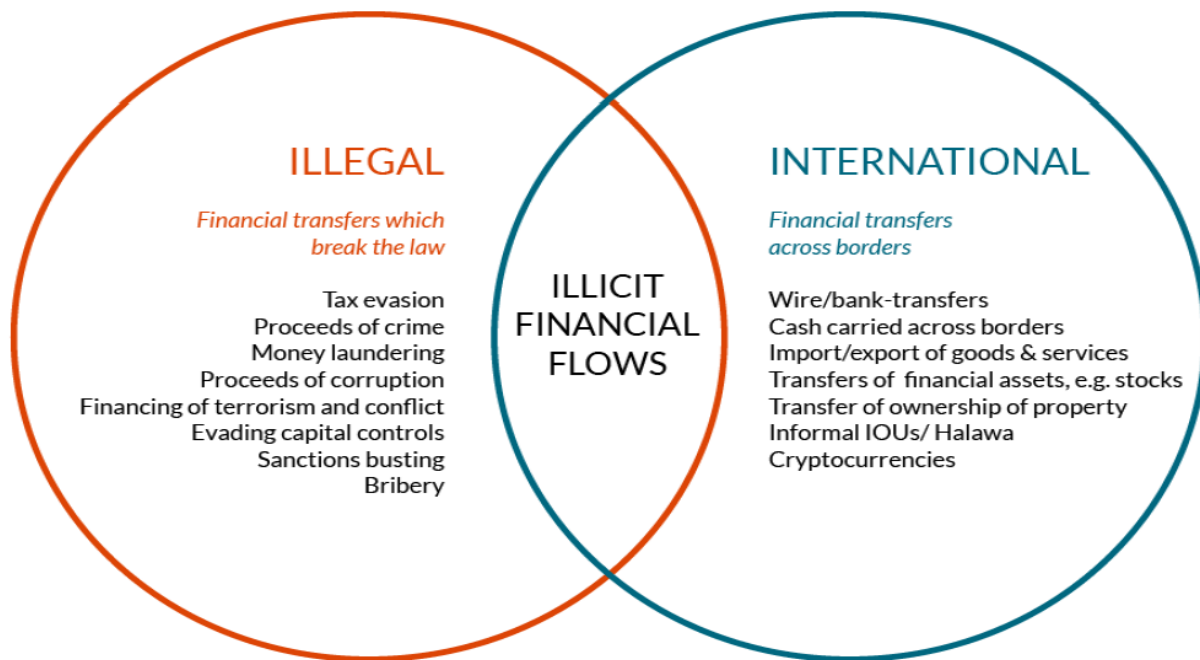


IFF's are mainly caused by-

- lack of Financial Transparency
- Money Laundering
- Corruption
- Tax Abuse
- Market Abuse



## Methods of Transferring IFFs



### Link between Corruption, Organised Crimes, IFFs and money laundering

Corruption is a major facilitator for organized crime and enables illicit flows and laundering of proceeds of crime. Corruption, Money Laundering and Illicit Financial Flows (IFFs) are closely related and tend to occur simultaneously. IFFs serve as a conduit for laundering the proceeds of crime to disguise their original source. Money laundering often involves cross-border transfers of money to secret accounts within jurisdictions where IFFs are largely uncontrolled.

### Impact of Transnational Organised Crime

TOC has a negative impact in that it –

- Enhances criminal activities such as IWT, bribery, corruption, tax evasion,
- Subjects legitimate business to unfair competition in areas of goods and services
- Investor Losses e.g due to stock market manipulation
- Social effects –Drugs, Human Trafficking and Prostitution
- Causes Reputational damage -discourages honest investors
- Customer attrition and loss of market share
- Legal Risk –law suits and penalties
- Terrorist activities –e.g bombings in Kenya, Tanzania, Uganda and Nigeria, US and Europe
- Economic distortion and loss of control of economic policy -numerous grand corruption scandals involving senior government officials

## TOC Crime Detection and Prevention & Suspicious Activity Indicators

### *Suspicious Activity Reporting*

Reporting Suspicious Activity is critical to every Money Laundering Investigation

In Kenya (and most other African jurisdictions) there is a Statutory Obligation under the AML Legislation

NB: There is no need to prove commission of an actual offence; reasonable suspicion that an offence has been committed is enough

AML Compliance Officers have a duty to enquire about and report Suspicious activity

### *Detection Through Suspicious Activity*

Criminal activity can be detected from unusual transaction patterns / behavior for the type of business or type of customer which can not be justified. These patterns can be detected through actual dealings with the customer or through transaction monitoring systems.



## Common Suspicious Activity Indicators for Financial Crimes

Examples of suspicious activities are:

- Frequent, large-scale or low value cash transactions
- Large or rapid movements of funds in and out of client account
- Operation of multiple client accounts with no economic rationale
- Multiple Transfers or Withdrawals
- Unexplained, irrational Changes of Mind about transaction
- High transactional value inconsistent with customer profile/financial standing (Doctrine of Inconsistency)
- Inability to verify Client Identity/Beneficial Owner

- Nervous Behavior and Defensive stance to questioning
- Suspicious Client Background
- Suspicious Behaviour in Staff/Clients

NB –Every crime has specific suspicious activity indicators

### *Corruption Red Flag Indicators*

Politically or Publicly Exposed Persons (PEPS)

(Includes their family members or close associates)

- 1.PEPS receiving and /or sending unusually large amounts of funds in different currencies.
- 2.Cash transactions by PEPS involving large amounts(e.g. currency exchange,use of cash to purchase high cost goods, shares, real estate, cars etc).
- 3.Transaction payments of unusual amounts or frequency involving PEPS etc.
- 4.Payments by foreign legal entities involving Complex financial flows or arrangements, are received in a PEPS account in another jurisdiction
- 5.The stated source of wealth of funds received to a bank account of a PEP, his / her family members or close associates, or other official, may be inconsistent with the client's stated career history, expertise, or age.<sup>10</sup>

### 6.Public Procurement Contracts

- 6.1.Services provided to state-owned companies or public institutions by shell companies

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<sup>10</sup> Egmont Group (See Appendix for Further Indicators on other TOCs)

6.2. Companies constantly winning a majority of the largest tenders/public procurement bids, or long-term contracts are repeatedly awarded to the same subcontractor, without reasonable justification.

6.3. Unreasonable specifications for the performance of the contract e.g. on location and bidding time favouring one contractor

6.4. Subcontractors have common director(s) and/or are related with the management of the contractor.

6.5. Subcontractors brought in on business deals once a contract has already been agreed and for no obvious reason.

6.6. Deposits in bank accounts of public officials with cheques issued by construction companies

6.7. Legal entities receiving highly complex and technical government contracts incompatible with the size or experience or unrelated to their field of business.

6.8. Cheques issued by a public entity, being cashed out and subsequently deposited to bank accounts of public officials or persons/entities related to public officials.

## 7. Illicit Wildlife Trafficking

- Seemingly unreasonable movement or exchange of products from person to person;
- No clear indication of someone paying for a shipment of goods / transportation;
- No reasonable or logical link between a person who is receiving a certain benefit and the person paying for such a benefit (e.g. someone paying for the transport or accommodation and meals of a person who could be involved in poaching activities);
- Customs officials who appear to be living beyond their financial means;

- Arise in the number of illegal shipments; and Trucks that only prefer to cross the borders at certain times (e.g when certain customs officials are on duty)

## 8. Drug Trafficking Suspicious Indicators

- Unexplained large cash deposits
- Purchase of real estate properties using cash
- Wire transfer with false documentation accompanying the transaction
- Foreign visitors purchasing property without known sources of income
- Previously convicted individuals owning cash based business
- Purchase of insurance policies at a higher value than the actual property value
- No visible economic purpose in transactions
- Trust fund accounts which are not commensurate to the net worth of the person supporting that trust account
- A registered company continuously making nil tax returns
- Bank officials directly making deposits in third party accounts
- Clients who insist on dealing with the same bank official whenever they are transacting
- Frequent cheque deposits from a casino
- Unusual account activity monitoring by a bank employee
- Lack of customer/employee due diligence accounts

- Clients who insist on dealing with the same bank official whenever they are transacting
- Frequent cheque deposits from a casino
- Unusual account activity monitoring by a bank employee
- Lack of customer/employee due diligence
- Unusual deposit patterns from other financial institutions
- Cheques written to a company being deposited into a personal account
- Use of high value currency notes i.e. US\$100 bills
- Possession of counterfeit currency
- Possession of large amounts of currency from jurisdictions not related to the traveller
- Possession of multiple identities and travel documents in different names
- Use of fraudulent documents to facilitate business transactions
- Traveller in possession of multiple identities bearing the same face but with contradicting bio data

#### 9.Human Trafficking Suspicious Indicators

- Use of unchartered and suspicious routing;
- False travelling documents;
- Group travel for conferences, seminars and study tours;
- Tickets bought with cash or suspected stolen credit cards;

- Group travel of persons within same age group and sex;
- Lack of own financial means at disposal for the travel;
- Minors with no direct relationship to the accompanying adult;
- Group of young girls accompanied by one or more men;
- Body language of the person such as excessive blinking or nervousness,
- Lack of knowledge of the destination;
- Evasive, inaccurate or contradictory answers upon being questioned;
- Person holds a passport from a country that is neither the country of embarkation or disembarkation;
- Person with a specific type of visa and no supporting documentation; and
- The person is a known criminal or is a suspected criminal

#### 10.Fire Arms Trafficking Suspicious Indicators

- Relatively short amount of time from when a firearm was purchased to when it was recovered
- Recovered firearm originated (reported stolen from or traced to) from a different region of the country or another country
- Recovered firearm was part of multiple firearms purchased by the same person
- Recovered firearm was part of multiple firearms stolen at or around the same time or vicinity
- Altered or obliterated serial number

- Suspect claims to have obtained firearm from a non-licensed individual
- Pattern of recovered firearms (from different individuals or from different locations) originating from same geographical location.

## Regulatory Regimes for Financial Crimes

### International Controls

- Local Legislative /Regulatory Controls
- Internal Provider Controls–Banks, Financial Institutions etc–AML/CFT Compliance Programs
- Law Enforcement–Investigation, Prosecution and Adjudication, Asset Recovery, Domestic and International Co-operation, Mutual Legal Assistance

### *International Standards and Efforts*

- Countries have come together globally to ratify certain protocols and conventions which serve as corner stones for a common approach to legislation and procedure to attack ML/FT globally.

Standards comprise of the following:

- UN Conventions
- Financial Action Task Force recommendations on AML Compliance Standards
- Regional FATF guidelines (Giaba, Esaamlg, Menafatfetc)

- AML and Predicate Legislation
- Criminalise Money Laundering and Terrorist Financing and recognize the link to related predicate offences including Trans National Organised Crime.

### *UN Conventions*

UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention, 1988)

- International Convention for the Suppression of the Financing of Terrorism (SFT Convention, 1999)
- The International Convention against Transnational Organized Crime (Palermo Convention, 2000)
- UN Convention Against Corruption (UNCAC) 2003
- Targeted Financial Sanctions –UN Security Council Resolution 1267 (1999) and its successors 1373 (2001), 2178 (2014) etc

### *Legislation*

Countries are required to incorporate the International Standards and Conventions into law (List is not exhaustive)

- Anti-Terrorism
- Anti Corruption and Economic Crimes

- Anti-money Laundering
- Anti Piracy
- Anti Poaching
- Cybercrime
- Data Protection
- Anti-Counterfeiting
- Narcotics Drugs and Psycho tropic Substances
- Penal Code and Evidence Act
- Mutual Legal Assistance
- Criminalize the offences and provide for compliance with AML Act***

### *Money Laundering Link to Prosecutions for TOC*

Money Laundering Link to Prosecutions for TOC has a two pronged approach

- The legal framework for combatting and Transnational Organized Crime is reinforced by the AML legal framework
- The AML Law imposes additional penalties to ensure that criminals and/or their associates are not allowed to enjoy the financial profits of their crime even if they have been penalised under the predicate law

- Such penalties involve imprisonment, fines, confiscation of proceeds of crime and assets purchased with the proceeds of crime

Prosecutions for Transnational Crimes should be carried out in conjunction with prosecution for Money laundering to facilitate preservation of the proceeds of crime

- Charge sheets should contain all elements of the predicate Offence plus a charge for ML

- Investigations should be carried out to establish criminal liability for both the financial crime and the Money Laundering Offence

- Measures should be taken to preserve the proceeds of crime—seizure of assets, freezing of bank accounts

- Criminals must not enjoy the financial profits of their crimes

## How are Judicial Officers Affected?

### *Vulnerabilities of Judicial Officers*

Judicial Officers may inadvertently become vulnerable to exposure to criminal activity in the course of their duties in the following ways:

- Lack of Knowledge of the law and appropriate offences

- Sensitivity of the cases due to the huge amounts involved and high profile suspects

- Insufficient evidence to convict in deserving cases

- Political pressure to delay or dismiss high profile cases

- Fear of retribution

- Integrity issues such as bribery, corruption and lifestyle changes

### *Ongoing Challenges*

- Slow pace of FC investigations and closure of cases; (e.g Low conviction rate)
- Poor grasp of the law
- Misframed charges e.g too many charges, failure to include money laundering etc
- Insufficient evidence to convict, gaps in the law
- Jurisdictional challenges
- Complexity of investigations –transnational/continental boundaries
- Lack of Capacity (Resources), Funding, Training, political goodwill and infrastructural support for LEA's,
- Witness unavailability
- Conflicting roles and duplication of effort: e.g on charges for Predicate Offence and Money laundering –Agencies need to liaise closely with the FRC and ODPP for the co-ordination of Law Enforcement activities (MLA established in Kenya)
- Delay in Mutual Legal Assistance requests
- Inadequate modern investigative tools and equipment –hence slows down the gathering of evidence
- High public expectations/Negative perception of LEA's and Judiciary

### *Challenge in prosecutions*

- Lack of sufficient evidence
- Bribery of officials
- Lack of prosecution capacity
- Unrealistically high standard of proof
- Witness credibility
- Death of crucial witnesses
- Death of suspect

### *Internal Challenges*

- Insufficient budget allocations in the face of other competing national needs
- Inadequate training of officials in relevant agencies
- Conflicts between unexplained wealth provisions in anti-corruption legislation and the presumption of innocence.
- Corruption of the judiciary

### *Role of Judicial Officers -Responsibilities*

- Know the Law and Typologies for various Predicate Offences/TOCs
- Comply with the law –DO NOT facilitate commission of an offence e.g through an erroneous or compromised ruling

- Familiarise yourself with the investigative and asset recovery process for TOC processes and appropriate penalties for various offences
- Familiarise yourself with the Mutual Legal Assistance Act and law in other jurisdictions – a must for Transnational Organised Crimes
- Preserve integrity at all times; if need be recuse yourself to avoid conflict
- Apply case law/precedent and international conventions and best practice where appropriate

## Key Take Away / Lessons Learnt

- Judges and Prosecutors play a critical role as stakeholders in the enforcement of the law; hence need to be conversant with the law and investigative processes as to be able to adjudicate / prosecute Financial crime cases effectively
  - Need to familiarize themselves with the law in other jurisdictions as these crimes transcend transnational / continental boundaries
  - Prosecutors and Law Enforcement Agencies need to work together to ensure effectiveness and efficiency in the conduct of Financial crime investigations and speedy closure of cases;
  - Investigative Agencies should collaborate in the sharing of information on TOC Investigations
- Effective Witness Protection programmes to address Witness unavailability
- Prosecutors and LEAs need to liaise closely for the co-ordination of Law Enforcement activities to avoid Conflicting roles and duplication of effort:
  - Prosecution and Conviction of key corruption and TOC suspects will satisfy high public expectations and reduce Negative perceptions about the Judiciary and LEA's

- Governments should address the Lack of Capacity (Resources), Funding, Training and infrastructural support for LEA's, and invest in modern investigative tools and equipment to facilitate effective investigation and prosecutions as well as asset recovery
- Government and Regulators should have the necessary legislation in place, coupled with appropriate regulatory regimes to enforce it including asset recovery processes; and appropriate training programs for all stakeholders
- Countries should foster international cooperation to provide the widest possible range of mutual legal assistance in TOCS investigations and prosecutions

## DIALOGUE

### Mozambique: Justice Jose Norberto Carrilho

Mozambique is strategically located, rich in wildlife and on an old Portugal-India trade route. All the TOC Crimes are therefore present in Mozambique. That includes amongst others Drug Trafficking, Money Laundering, Trade in Vulnerable Species, including word, Terrorism and Human Trafficking. Mozambique may be recognized as the country with the least success in the fight against TOC.

We are part of all the international and continental policies and treaties with national legislation incorporating the same.

We organize ourselves through the police, a specialized Prosecutors Group, a specialized Attorney General Group, and keeping statistics on TOC cases tried.

The majority of the TOC cases in Mozambique are those of Illegal trade in wood, Terrorism and Drug Trafficking.

We have seen that it is important to have political will in the fight against TOC. The Judiciary must be brave and must display a high level of integrity, when presiding in these matters. There must be zero corruption in the organs involved in trying TOC cases (Police, Prosecution and Judiciary).

## Kenya: Lady Justice Roseline Wendoh

The key to success in Kenya lies within the specialized courts, from Magistrates' Court level all the way up.

## Malawi: Justice John Katsala

We need the following to effectively address TOC's:

\*Cross national and parallel investigation at the same time;

"Capacity Building. We must ask ourselves whether we have enough forensic specialists who can assist. We must build capacity on criminal intelligence. Judges and Prosecutors must be trained in financial and economic process and trends to successfully prosecute and preside over TOC cases.

\*Create Awareness & Due Diligence on all levels.

\*The underlying (predicate) offence must be prosecuted with the money laundering offences. Even if you are unsuccessful in the conviction of the underlying offence, the evidence on that will assist in establishing and proving the elements of the money laundering offence.

\*The Government must put in place relevant laws. However, even if all the laws are there, the law enforcement still remains a challenge.

## Conclusion

Everybody tries but the fight is difficult and becomes even more difficult. The individual countries can however not fight alone. Africa must take hands in the TOC fight.

# UNDERSTANDING THE ROLE OF THE JUDICIARY IN TOC ADJUDICATION

## PRESENTATION



**By Justice P.M. Ayua,  
Judge of the Federal Court of Nigeria**

There are numerous cases of terrorism in Nigeria. Illiteracy and poverty do contribute and make the young so much more vulnerable for the Boko Haram attack. The Boko Haram also has an ethnic connotation.

Challenges experienced are amongst others sloppy and incomplete investigations, which result in the Prosecutor not bringing enough and sufficient evidence to secure a conviction. As judges depends on prosecutors to do our part, we as judges are grateful for the training presented to prosecutors by the UNODC.

It is equally as important for the judiciary to know and understand TOC and how the underlying crimes (predicate offences) link up with crimes like money laundering and also how it links with other LEA's.

We the judiciary are will to do the job but it bogs down with the prosecution and the investigators. Without a proper investigated cases where facts are placed before the court by the prosecutor, the judiciary's hands are tied.

## DIALOGUE

### Kenya: Lady Justice Diana Mochache, Judge of the High Court

Almost all the TOC offences are known to Kenya, namely Terrorism, Terrorism Financing, Human Trafficking, Wildlife Trafficking, Narcotics Trafficking, Trafficking in Firearms, Corruption and Money Laundering. We therefore have specialized courts with trained judges to attend to these cases.

It is important bringing the offender before court without 24 hours from arrest and to simultaneously obtain a seizure or preservation order, which are also brought to us. It is most common for offenders to claim that the 24 hours was exceeded or that they were assaulted during the arrest. Those cases are also being heard by us in the specialized courts.

We are all angry for what these offenders do, BUT SINCE Kenya chose democracy and to uphold the Rule of Law, due process should still prevail. The fight against TOC must be within the parameters of the Rule of Law, and without any exception. Violating the rights of the TOC offenders or allowing the violation of the right of the TOC offenders, will bring us to the same level where they are.

The Kenya Laws no provides for pre-charged detention for purpose of investigation, but there must be reasonable grounds to believe that the person committed an offence with the TOC ambit or is about to commit an offence.

The prosecutors charge offenders simultaneously with the predict offence and the money laundering offence. Even he/she is not convicted of the predict offence, and he/she can't explain

how he/she lawfully came into possession of the money or lawfully acquired the money, he/she can still be denied the money by forfeiture and/or be found guilty of money laundering. Judges must be very sure that they distinguish between assets acquired lawfully and assets acquired unlawfully.

It is ok for the judge to give a reduced sentence if the small fish is happy to sell out the sharks for plea bargaining, because we actually want to catch the shark. Call the victims to testify so that we create awareness amongst not only the legal fraternity, but also amongst the public in general. Avoid torture, including psychological torture during investigation, because if an offender suffered torture during the investigation or questioning, he/she will go free.

## Tanzania: Dr Jose Mlyambina, Judge of the Labour Division

Tanzania faces all the TOC'S plus one case of piracy, where I was the presiding judge.

TOC's are not a new phenomenon, it is as old as humankind. We as judges should not delay on cases with the excuse of many cases on our table. We should not hide behind technical issues.

The Judges Target audience in judgment writing should include the parties, lawyers, other judges, academics and the public at large. It is however important for the judge to not only abide to the Rule of Law, but also take cognisance that of the fact that our findings have an impact on the welfare and prosperity of one's own country as well as other countries.

Very little jurisdictions are familiar with the Law of the Sea, which in essence to offences committed at sea. The Law of the Sea is therefore the applicable law when one deals with Piracy cases. Any country has jurisdiction to try a case in terms of the Law of the Sea.

## Zambia: Justice Susan Fusani Mtonga Wanjelani

The role of the adjudicator is limited to the interpretation of the law against the facts before the court. The Constitution of Zambia allows for the Chief Justice to create specialized courts. Zambia

recently created the Economic and Financial Crime Court, which is an ad hoc specialized court which expedites these cases. A separate set of rules were published which applies in this court. Zambia also have the electronic evidence act which applies to cases in this court.

Expedition of cases in TOC cases are crucial, since it reduces the danger of loss if evidence and memory of witnesses and it restores confidence in the judicial system. Ways of expediting TOC cases are:

- Judge Driven Case Management from the first appearance in the court;
- The case management must be done in the special court already, since the very first thing to do is setting time lines; Be specific on when disclosure is to be done, when answer to Pre-Trial Memorandum and response thereto is to be filed, when applications for financial assistance are to be lodged, and most important when the trial will commence.
- Parties and Lawyers must know that the case will commence on the date fixed by the court irrespective of any pending interlocutory issues, i.e. appointment of lawyer of finances to employ lawyer;
- The court must pursue a non-adjudgment policy and deviation must only be under exceptional circumstances;
- No interlocutory appeals should be allowed in the special court.
- 

Presiding in TOC cases requires continuous training through symposiums, such as this one, since Zambia does not yet have its own JTI

Although a judge relies on the prosecutor to present the evidence and argue the law, judges still need to equip themselves with knowledge on the law, the underlying principals and the procedure, to easily and speedily deal with these matters. Knowledge is essential in fast tracking these criminal matters.

Judges can't sit back and blame the prosecutor, investigator or even the lack of a JTI. The individual courts must be pro-active in preparing the Judiciary to be ready to deal with TOC cases and TOC related cases. The courts may also use subsidiary legislation to address some of the

gaps in fighting TOC's, but will only be able to identify such gaps if they are properly trained in TOC subjects.

## Floor Participation

- Create awareness amongst telecommunication companies and international companies such as Mastercard AND visa;
- The private sector and the public in general must be included in awareness and training, because everybody plays a role in the chain of events;
- Ensure that the country has proper witness protection programs to ensure the safety of witnesses who are willing to testify against these syndicates. ;
- There has to be a balance between the Constitution, rights of the offender, rights of the victim, and the interest of the State;
- Covid changed the historical ways in which trafficking was done, and specially the payment methods. After Covid, new payment methods were introduced such as Hawala, and Crypto Currency. Drugs are no longer delivered from one person to another, but are nowadays delivered via criminal courier companies.

# CURBING IFF'S FLOWING FROM ILLEGAL WILDLIFE TRADE AND PRECIOUS METALS AND STONES WITHIN THE EASTERN AND SOUTHERN AFRICAN REGION

## PRESENTATION



By Chris Likomwa, ESAAMLG

Approach to Combat IWT, Illicit Dealing in PMS and ML in the  
ESAAMLG Region

## *Introduction*

The Eastern and Southern Africa Anti- Money Laundering Group (ESAAMLG) was launched in August, 1999 to develop mechanism to cooperate in the implementation of AML/CFT programmes by adopting and implementing the FATF Standards.

ESAAMLG currently has 21 member countries.

South Sudan and Burundi are the recent additions.

DRC is a regional observer of ESAAMLG and has plans to seek full membership.

## *The Role of ESAAMLG in Combatting IWT and related ML/TF*

- Poaching and IWT have linkages with ML and TF.
- Illicit dealing in PMS also has links to ML and TF.
- Fighting ML means fighting also IFF in relation to poaching and IWT and Illicit dealing in PMS
- So traffickers and smugglers can also be discouraged if we could fight ML/TF and IFFs associated with poaching and IWT, and ID in PMS.
- ESAAMLG is assisting its members through assessments including on fighting poaching and IWT/ML, monitoring their progresses through follow up processes, TA &T provisions, FIU Forum platform, typologies studies,,,,, e.g. the ESAAMLG RTMG has conducted a special typologies studies on ***Poaching and Illegal Trade in Wildlife and Wildlife Products and Associated Money Laundering in the ESAAMLG Region***
- <https://www.esaamlg.org/reports/TYPOLOGIES-REPORT-ON-THE-WILDLIFE-CRIMES-AND-RELATED-ML.pdf>
- <https://www.esaamlg.org/reports/TYPOLOGIES-REPORT-ON-THE-WILDLIFE-CRIMES-AND-RELATED-ML.pdf>
- ***We have also been implimenting the findings and recommendations of an FATF 2020 Study on ML and IWT***

- <https://www.fatf-gafi.org/content/fatf-gafi/en/publications/Environmentalcrime/Money-laundering-wildlife-trade.html>
- **In 2023 we also carried out a study on Illicit Dealing in Gold, Diamond and rubies**
- [https://www.esaamlg.org/reports/ILLICIT\\_DEALING\\_SEPT\\_2022.pdf](https://www.esaamlg.org/reports/ILLICIT_DEALING_SEPT_2022.pdf)

### *Objectives of the three Typologies Studies*

ESAAMLG considered it necessary to carry out the studies focusing on the region in order to:

- Determine the magnitude of poaching, related illegal trade and other related wildlife crimes;
  - Determine how poaching and related wildlife crimes are organized
  - Understand how wildlife crimes are financed-major sources of funds and channels used.
  - Establish the trends in payment methods and how the proceeds are laundered and existence of effective confiscation/forfeiture regimes in the region;
  - Make recommendations to assist or influence member states and other stakeholders.
- Determine the extent of illicit dealings in gold, diamond and rubies in the ESAAMLG Region:
1. how it happens and is organised,
  2. establish who is involved,
  3. where the crimes are most concentrated,
  4. the factors that give a conducive environment for the crimes to thrive,
  5. assess who is benefiting from the illicit dealings, particularly from cases provided.
  6. Determine the extent of IFFs arising from illicit dealings in PMS and how these interact from the flows in goods.
- Determine the extent of IFFs arising from illicit dealings in PMS and how these interact from the flows in goods.
- Determine the capacity of Member Countries in identifying and tracing the proceeds of illicit dealings in PMS; and whether there has been an effective confiscation/forfeiture

regime for these crimes. Understand whether the trade in PMS is used as a way to launder the proceeds of other crimes or to finance terrorism.

- ▶ Determine the adequacy of control measures (legal and institutional frameworks) and implementation in preventing and suppressing illicit dealings in PMS.

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- ▶ Determine the adequacy of control measures (legal and institutional frameworks) and implementation in preventing and suppressing illicit dealings in PMS.

### *Key Findings*

- ▶ Destination and transit- South Africa, Botswana, Uganda, Tanzania, Zambia, and Mozambique and that these were in most instances used as transit destinations
- ▶ Outside the ESAAMLG Region- The UAE, China, Russia, Thailand, Belgium, USA and India
- ▶ The proceeds are laundered in the domestic economy through the real estate sector; mining sector; automotive industry; construction industry, tourism sector and the financial sector and its related industries
- ▶ The Values of the proceeds could not be established.
- ▶ the study has not conclusively confirmed a linkage between TF and proceeds of illicit dealing in PMS in the ESAAMLG region and in particular rubies in Northern Mozambique, the possibility cannot completely be ruled out.
- ▶ Countries have Units that investigate ML/TF associated with PMS. However, the extent of illicit financial flows arising from illicit dealings in PMS could not be established because member countries did not pursue ML investigations. As a result, offenders were in most instances charged for the predicate offences only

- ▶ the FIUs received very few suspicious transaction reports related to illicit dealing in PMS. The financial sector submitted half of the STRs received by FIUs in the period under review while the PMS sector filed less than 1.25% of the STRs.
- ▶ corruption of public officials throughout the value chain as one of the challenges being faced when dealing with cases of illicit dealing in PMS. However, no jurisdiction explicitly gave a case study where a public official was arrested for corrupt practices while handling such cases.
- ▶ No national and international coordination mechanisms in investigating cases of illicit dealings in PMS and related ML/TF.

### *Limitations of the Studies*

- Despite the increase in criminal cases involving wildlife and PMS in the region, the Studies could not obtain information on the illicit financial flows driving the crime—both on the demand and supply sides, the information was not available, accessible or understood.
- ESAAMLG participated in the FATF’s typologies study on IWT/ML to close the gap on the level of understanding of the illicit financial flows.

### *Typologies Works on IWT/ML*

- The “**Money Laundering and the Illegal Wildlife Trade**” study shows that jurisdictions should view the proceeds generated by IWT as a threat to their financial systems and to the international financial community, rather than as a problem only for those jurisdictions where wildlife is illegally harvested, transited, or sold.
- The study further shows that criminals are frequently misusing the legitimate wildlife trade, as well as other import-export type businesses, as a front to move and hide illegal proceeds from wildlife crimes.

- Criminals are also reliant on corruption, complex fraud and tax evasion and the growing role of online marketplaces and mobile and social media-based payments to facilitate movement of proceeds from wildlife crimes.

### *Actions Actualising ESAAMLG IWT Plan*

- ▶ Implementation of Recommendations coming out of the IWT projects by the ESAAMLG and FATF on Understanding of ML risks linked to IWT
- ▶ Series of Workshops involving IWT experts including judiciaries.
- ▶ Yet to actualize the Illicit Dealing in PMS.

### *Resolutions and Actionable Points*

- ▶ Need to sensitize judicial officials in the Region. These judicial officers include judges and Magistrates who have jurisdiction to hear cases related to IWT.
- ▶ Countries should adopt a multi-agency or a task force to deal with IWT and other organized crimes. This approach has been implemented by other countries in the Region and it is working.
- ▶ There is need to form FIU and Private Sector Partnerships in order to help the private sector to identify IWT red flags and ultimately to help to improve reporting and the quality of STRs reported (ESAAMLG and UFW Partnership)

### *Actions Taken*

- ▶ Workshop for Judges and Magistrates on Money Laundering and Illegal Wildlife Trade in the ESAAMLG Region (June 2022)

- ▶ ESAAMLG to undertake/commission legal research on legislation and policies pertaining to money laundering, illicit financial flows, and wildlife trafficking in ESAAMLG member states with a view to analyzing similarities and differences between jurisdictions.
- ▶ Tailor made programs in-country training that deals with local specificities and contexts. (Tanzania and Botswana)
- ▶ Implementation Status Reports submitted by member countries to the ESAAMLG RTMG and Plenary.
- ▶ Need for skilled prosecutors that can also lead in civil litigation. Training to include officers from across the criminal justice system and nature conservation bureaucracy. (Nov/Dec 2023)

## DIALOGUE

### Kenya: Ms Florence Magoma, Kenya Wildlife Service

The effect of Environmental Crime does not only have a negative effect on the economy of a country, but it also steals the heritage of a country.

Environmental crimes are faceless. Offenders are paupers trying to earn an income in a very weak economy and the traders exploit it.

Kenya is, for the most of it, not a source country, but rather a transit country, which makes it difficult and in some instances impossible to detect and track, especially on the flow of the money.

### Nigeria: Ms Atuweni Tupochile, Anti-Money Laundering Advisor, UNODC

The starting point in combatting all of these TOC crimes, especially ML, is awareness. The most effective awareness remains to be a scandal which exposes high flyers.

How can things be made easier?

1. There is a need for collaboration. Task force must work with the private sector and expert groups (i.e. Wildlife Conservation Groups). RSA is a good example of collaboration.
2. Create Task Forces. The advantage is a thorough case presented to the court, covering the complete chain of events with evidence by the particular expert or source of evidence, making sure that all elements of the crime is proven;
3. International Cooperation. Take hands, ask for help and advice. Come up with case books which may be used not only in your own jurisdiction, but also by other jurisdictions. These case books assist in understanding the subject and the extent of the crime(s)

## Zimbabwe: Justice B Chikowero

Our criminal procedure rules is inadequate to deal with AML cases, since it doesn't move cases forward. Zimbabwe therefore needs a special set of rules aimed at moving cases forward, and to put pressure on all role players. It is important to include all role players in crafting the procedure, since it should deal with everybody, including role players involved prior to the commencement of the trial.

## Floor Participation

### *Kenya*

I am a magistrate in Kenya's Drug Trafficking Special Court situated at the airport in Nairobi. I attended the training presented to the prosecutors and investigators, and it assisted a great deal in understanding the crime but mostly the challenges which the prosecutors and investigators have. Sentencing in specialized courts should not only be a matter of sentencing. The bench must when a sentence is considered, take into considering the effect and impact of the specific crime on the country, eg Wildlife heritage or the effect of drug trafficking on society in general

### *Mozambique*

It is important to create awareness & sensitization of Environmental Crimes. From ground level of public in general to possible offenders, sources of information and evidence, investigators, prosecutors, end receivers and judges. The different stakeholders should not act individually, but should act in corroboration with one another.

### *Zambia*

Countries need to relook at their laws on jurisdiction. Zambia recently had a case where the offenders were caught with elephant tusks, which they obtained in Zimbabwe. They were simply travelling through Zambia. Luckily Zambia's laws provide for being in possessions and does not require that the offence was to be committed in the Zambia jurisdiction.

# EMERGING JURISPRUDENCE: CASE STUDIES, TRENDS, ISSUES & LESSONS IN DETERMINING TOC & IFF CASES

## PRESENTATION

**By Justice Taboka Slave (Botswana)**

### *Background*

- Botswana is a source, transit, and destination country for women and children subjected to sex trafficking and forced labour.
- Residents most susceptible to trafficking are unemployed men and women, those living in rural poverty, agricultural workers, and children.
- Some rurally impoverished parents send their children to work for affluent relatives in cities or as herders at remote cattle posts.
- Young Batswana serving as domestic workers for extended family and friends of family may be exploited for free labour while being denied an education and basic necessities and subjected to confinement or verbal, physical, or sexual abuse.
- Girls and women in prostitution are exploited domestically, in places such as bars and along major highways, by truck drivers.
- There have also been reports of forced labour by both adults and children of San ethnicity in private farms and at cattle posts.

- August 2023- News of Botswana Police intercepting a cargo truck at the Ngwasha gate near Nata village, on suspicion of smuggling with about 40 foreigners alleged to be illegal Ethiopian nationals enroute to South Africa.
- Matter currently under investigation.
- As a cornerstone in combating human trafficking, Botswana acceded to the United Nations Convention Against Transnational Organised Crime and its Protocol to Prevent, Suppress, and Punishing Trafficking in Persons, Especially Women and Children.
- Both Convention and Protocol have been domesticated into Botswana law through the Anti-Human Trafficking Act of 2014.

### *Overview of the Act*

- Gives effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons.
- Provides for the prohibition, prevention and combating of trafficking in persons.
- Provides for measures to protect and assist victims of trafficking in persons.
- Establishes a Human Trafficking Prohibition Committee to oversee the implementation of the Act.
- Calls for the establishment of centres for victims and the creation of a victims' fund which are not yet in place.

### *Penalties or Punishments under the Act*

Section 9 of the Act provides punishments for the offence of trafficking in persons. In terms of subsection 9(1), any person who commits an offence of trafficking in persons shall be liable to the following:

- a) a fine not exceeding P500 000.00; or
- b) imprisonment for a term not exceeding 25 years; or
- c) to both fine and imprisonment.

In terms of subsection 9(2), where an offence of trafficking in persons is accompanied by other aggravating factors, e.g. the removal of an organ from a person's body during the commission of the offense, the perpetrator shall be liable to a fine not exceeding P1 000 000.00, or imprisonment for a term not exceeding 30 years, or both a fine and imprisonment.

- Notable is that in 2018, the Act was amended mainly to expand on the definition of exploitation and include the offence of smuggling of persons.
- Section 12A of the Anti-Human Trafficking (Amendment) Act, 2018 provides for punishments for the offence of smuggling in persons, and the punishments range from a minimum fine of P200 000.00 to P 1 000 000.00 or imprisonment to a minimum term of 10 years to life imprisonment or to both a fine and imprisonment.

### *Shortcomings of the Act*

- Unlike other Acts of Parliament dealing with serious offences such as, the Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act No. 15 of 2018 which clearly prioritises imprisonment terms over fines, offences under the Anti-Human Trafficking Act are generally punishable with fines as opposed to imprisonment.

- As such, by allowing for a fine in lieu of imprisonment, these penalties are not commensurate with those for other serious crimes, nor do they disincentivise would-be traffickers from the crimes, as many have the financial muscle to pay.
- The Act has also been criticised for lack of formal procedures to identify and refer victims for care.
- This hinders their overall protection. More worrisome is the failure to provide victim care centres, often relying on Civil Society Organisations (CSOs) to do so.
- It is therefore important for the Act to be amended to provide for further protection services, be it short-term shelter, long-term housing, or counselling in collaboration with CSOs and allocation of adequate funding.

### *Interventions*

- Botswana is currently working on amending the Anti-Human Trafficking Act to among others, remove sentencing provisions that allow fines in *lieu* of imprisonment or mostly prioritise imprisonment over fines.
- Further, Regulations for the 2014 Act have also been drafted in order to make it easier for judges and prosecutors to implement the Act and are pending approval by the Human Trafficking (Prohibition) Committee.

### *Jurisdiction of courts in human trafficking cases*

- A magistrate has no jurisdiction over an offence charged under Section 9(1) of the Anti-Human Trafficking Act. This was confirmed by the High Court exercising its appellate jurisdiction in the case of *Given John Leonard Massawe*, CLHGB-000057-16.

- The court's ruling was based on the fact that the offence carries a maximum penalty of twenty (25) years imprisonment.
- Noteworthy is that this case did not deal with the buffet of sentences provided under Section 9(1) of the Act, and it was not appealed.
- It therefore remains the law in so far as the jurisdiction of magistrates with respect to offences under Section 9 is concerned.

### *Progress or Achievements*

Although the Government of Botswana does not fully meet the minimum standards for the elimination of trafficking, significant efforts has been made towards meeting the set standards since the commencement of Act. These include:

- Prosecuting, convicting, and sentencing traffickers to adequate prison terms;
- cooperating with other states on mutual legal assistance and investigations on trafficking in persons;
- training and public awareness-raising initiatives; and
- identifying more victims and referring more victims to care.

### *Prosecutions, Convictions and Sentences*

- With respect to cases heard, convictions, and sentences, significant progress has been made, which also confirms the importance or impact of training investigating officers.
- In the case of *The State v. Sarudzai Mujee* CTHGB 000042-17 (6 July 2021), a Zimbabwean trafficker was sentenced to ten (10) years imprisonment, which was the first

prison sentence in several years and a shift from fines and suspended sentences imposed previously.

- *The Massawe case (supra)* was subsequently heard by the High Court, and the trafficker in this case was sentenced to ten (10) years imprisonment (30 December 2021).

### *Cooperation with other states*

- Issues of trafficking in persons are now included in the agenda of the Joint Permanent Commissions on Defence and Security as well as cooperation (JPCDS' and JPCCs) between Botswana and other African states. To this end, Botswana cooperates with the governments of South Africa, Zimbabwe, Eswatini, and Tanzania on mutual legal assistance and investigations.
- Botswana has also signed a Memorandum of Understanding with Zimbabwe in 2022 on Cooperation in the Field of Child Protection, which covers trafficked children.

### *Training and Awareness Raising Initiatives*

- Since commencement of the Anti-Human Trafficking Act in 2014, Government has trained front-line officers, investigators, and prosecutors, including three (3) judicial colloquia for judges and magistrates on the Act and issues of trafficking in persons.
- Thus, improving understanding of the complexities of human trafficking and its nexus with other related transnational organized crimes including, drug trafficking.
- Government has also conducted public awareness-raising campaigns in schools throughout the country in order to educate and sensitise students and teachers on issues of trafficking in persons.

- Government also sponsors radio campaigns on the same in order to sensitise the public on issues trafficking in persons.
- These are ongoing initiatives aimed at assisting or improving in early detection of trafficking in persons.
- Furthermore, Government Commemorates the Annual World Day Against trafficking in various cities, towns and village across the Country in an effort to sensitise communities on trafficking in persons.

### *Conclusion*

Overall, Botswana has made significant progress in combatting trafficking in persons since commencement of the Anti-Human Trafficking Act, 2014. However, there is still more to be done.

## Trafficking in Persons Law and Practice, The Ethiopian experience Justice Etmet Assefa Asamrie

### *Introduction*

- Ethiopia is usually described as **an epicenter for irregular migration** from eastern Africa to southern Africa, North America, Europe and the Middle East.
- IOM study identified three routes through which countless number of Ethiopian nationals are smuggled and trafficked:
  - Eastern route

- via Djibouti, Somaliland, Puntland and Yemen into Saudi Arabia, Gulf Countries and the Middle East,
- Northern route
  - transits through Sudan, Egypt, and Libya onward into Europe through crossing of the Mediterranean Sea and
- Southern route
  - transits through Kenya, Tanzania and other African countries onward to South Africa.
- The trafficking of Ethiopians **occurs predominantly for exploitation**
  - in the context of labour, such as, domestic servitude, forced labour and debt bondage in the Middle East.
  - They are also trafficked for sexual exploitation, removal of organs, forced begging, and in the context of illegal adoption.
- The duty of the government to respect and protect rights and benefits persons conferred by nature and law necessitated
  - enacting legal framework
  - creating a system that enable crime prevention,
  - holding perpetrator accountable,
  - protecting and rehabilitating victims specially to undertake activities that reaches section of the society vulnerable to the crimes and in taking into consideration the age, sex and special needs of the victims and facilitating international cooperation;

## *Legal Framework*

- Constitution of FDRE, 1994
  - Article 18(2) of the 1995 Constitution provides that '**Trafficking in human beings for whatever purpose is prohibited**'.
- Proclamation No. 1178/2020, A Proclamation to Provide for the Prevention and Suppression of Trafficking in Persons and the Smuggling of Persons
- Criminal Code, 2004
- United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing UNTOC as well as the **Palermo Protocol**.

## *Criminalization*

- Until very recently, human trafficking was not given adequate attention.
- The 1957 Penal Code which was in force until 2004 had no provision on human trafficking despite the serious challenge posed by the practice.
- The present Criminal Code, on the other hand, incorporates provisions which criminalize human trafficking.
  - However, the **law failed to adequately deal with the matter** as it left out to address various issues associated with human trafficking.
  - Human trafficking, for example, is criminalized if it is carried out for the purpose of exposing individuals to forced labor.

- Consequently, the law cannot be used to criminalize human trafficking that may be carried out for the purpose of sexual exploitation, slavery or removal of organs.
- the law does not comprise other essential aspects such as prevention methods and victims' protection.
- In 2012, **Ethiopia ratified** the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing UNTOC as well as the Palermo Protocol.
- Ethiopia has undertaken international obligations to take appropriate measures to suppress the crime of trafficking.
- Pursuant to Article 2 of the *Trafficking Protocol*, the obligations include
  - adoption of domestic legislation that criminalises trafficking in persons;
  - prosecution of traffickers; and
  - provide appropriate support and protection to victims.
- Three years later, it enacted Proclamation No. 909/2015, a special criminal law dedicated to the prevention, suppression and punishment of TiP and SoM.
- Proclamation No. 909/2015 lacked clarity, was inconsistent with other laws and did not provide adequate responses to the problem thereby necessitated for replacement with a new and comprehensive legal framework.
- Hence Proc. No. 1178/2020;

### *Proc. No. 1178/2020*

- Proclamation No. 1178/2020 repealed and replaced both Proclamation No. 909/2015 and the relevant provisions of the Criminal Code of 2004.
  - Unlike the Criminal Code, it is a law designed not only to prevent and prosecute TiP but also **to protect and rehabilitate victims**.
  - Unlike Proclamation No. 909/2015, Proclamation No. 1178/2020 came up with more comprehensive and lasting mechanisms **to prevent and suppress TiP and SoM**.
  - It replaced the national committee established under its predecessor with a more **robust national council**.
  - It replaced a taskforce established under the previous law with the **National Partnership Coalition on Migration (NPCM)** for the prevention and control of the crimes of TiP, SoM and the unlawful sending of persons abroad for work

### *Penalty*

- Up on conviction, the penalty for human trafficking is seven to twelve years and in aggravating circumstances ten to twenty years rigorous imprisonment and fine.
- Where the offence causes the death of the victim, depending on the circumstances of the case, **the imprisonment from Fifteen years to rigorous shall be punishment twenty five years or life imprisonment or death and fine**.

## Cases

- In September 2020, the Federal High Court (FHC) concluded the case of Dejene Filatte et al. – a case involving the exploitation of Ethiopian migrants who left the country through the southern route to South Africa.
- In a landmark sentencing decision on 15 June 2021 in the case of Kidane Zekarias et al., the Federal First Instance Court (FFIC) **handed down a life sentence** the TiP perpetrator for crimes committed along the north-western route involving Ethiopia, Sudan and Libya.
- In 2021, Emanuel Yirga Damete, a former ringleader of a Libya-based TiP and smuggling of migrants (SoM) syndicate, was sentenced to 18 years in prison by the FFIC.
- Although the crimes for which those defadants stood trial were **perpetrated abroad (in Sudan, Libya, Kenya etc.) with the help of several co-perpetrators**, the trials were carried out **based on evidence collected from victims who resided in Ethiopia** at the time of the hearings.
- No evidence was collected or obtained from another country to be used against the defendants.
- Cooperation and coordination is essential
  - Dejene Filatte and Askale Loddiso, criminal masterminds in Tanzania and Kenya; and Kidane Zekarias and Emanuel Yirga Damete, leaders of organised criminal groups based in Libya. Askale Loddiso and Dejene Filatte were arrested abroad with the help of Tanzanian and **Kenyan police**,

## Challenges

- Witnesses and victims are unavailable and unwilling to testify in TiP prosecutions.

- TiP is largely a culturally acceptable practice for members of various communities in Ethiopia, and it is 'normal' to engage in smuggling activities even though these result in the exploitation of victims.
- Coordination (Domestic and international)
  - To apprehend suspects and gather evidence
- Specialization (courts, prosecutors)
- Training of professionals (Judges, prosecutors, police, etc)
- Awareness creation

## DIALOGUE

Victims in general are from rural areas and orphaned populations. They are attracted by promises of employment.

A number of reports were received from victims who were lured by syndicates who trafficked to the victims to work for Malayan, Chinese and Thai textile manufacturers , who are then sexually harassed

A big challenge remains to be corrupt police officers.

# ROLE OF COURTS IN DISRUPTING MONEY LAUNDERING & CORRUPTION NETWORKS: TECHNIQUES, TRENDS AND COUNTER-MEASURES

## PRESENTATION



**By Mr Scott Asphaug,  
Anti-Corruption Resident  
Legal Advisor USDoJ**

The role and function of the US DoJ Resident Legal Advisors is not to substitute, but to be an addition to capacity building, training, mentoring of prosecutors, and now expanding to serve the Judiciary and Law Enforcement efforts in the countries in which we are posted.

The US perspective on the role of the courts in addressing TOC, ML and Corruption cases presented before them, and in particular the United States Federal Court where I practice and where Judges are appointed for life can mainly be seen in the following:

Judges rule their courts with an iron fist, so much so that they exercise complete control over their courtroom and the management of the cases before them. This ensures that practitioners like me know exactly what to expect, namely:

- 1) A fair, but immovable timeline to complete a case;
- 2) An expectation that all litigants will file motions / applications on time, presentations will be well prepared, where appropriate all cases will be considered for plea bargaining and trials will be continuous from opening statement through to closing argument.

Why am I sharing this? Because I ask you to consider whether one way to disrupt corruption is to reduce court delays. The Question is however how to reduce court delays.

### *Plea Bargaining*

I submit that court delays can be reduced by embracing plea bargaining and the use of plea agreements and cooperation agreements in your courts. Plea bargaining significantly reduce backlog, especially in minor cases; Plea bargaining reduce excessive pre-trial detention in prisons; and the benefit to victims is that they are not required to re-live the incident by giving testimony. The victims therefore have faster closure. Plea bargaining is also much fairer to the accused since a slight discount in the sentence avoids a protracted trial. It further provides for restitution to those harmed and cooperation for a sentence discount allows the LEA's to move u a criminal organization. All of this without the effort, time and inherent delays associated with trial.

### *Active Case Management*

Consider ordering an omnibus trial order with fair dates to produce discovery, file and respond to motions, and an order that trial, once started, will progress without delays, to conclusion.

- This is fairer to the accused in that it reduces detention and stigma of being accused and it avoids potential that the defence lawyer seeks delays in order to increase fees. It is also better for the bench.

- As fact finder the judge will be more ready to rule, based on his/her immediate memory, rather than having to rely in notes. It is further important to remember that the flow of testimony in under control of the court and not the litigants.
- It is also better for the Public. Corruption cases generate great public interest. Long delay do a disservice to the public and their ability to learn about the cases. Long delays also causes the pubic to lose faith in the judiciary and results in negative perceptions.
- It denies highly placed accused persons the ability to delay cases in order to continue to hide assets and live a life of wealth stolen from others. .

If this bold case management can work in the US against a former president, then surely Africa can benefit from it.

### *Sentencing*

Sentencing should move in a timely way, including the use of imprisonment and asset recovery

### *Specific and General Deterrence*

International partners want to offer assistance as and when requested. Call upon these organizations for assistance. Call the UNODC, ESAAMLG or the US DoJ. Let's find a way to work together to reduce corruption, TOC, ML and IFF across Africa. Let's fight TOC, ML and IFF across Africa through training and capacity building

## DIALOGUE

### Uganda

Any guilty finding in A TOC, ML and IFF case must include custodial a sentence, even if it is just for one night in prison. The high flyers must spent at least one night in prison amongst the ordinary garden variety prisoners, because it is only then that conditions in the prisons improve. This also

applies for your average offenders. A little time in prison deter them from even considering to continue with these criminal activities.

# ASSET RECOVERY AND MANAGEMENT: THE COMMON AFRICAN POSITION ON ASSET RECOVER (CAPAR)

## PRESENTATION



**Issaka GARBA ABDU**  
**Department Political Affairs**  
**Peace and Security AUC**

## Introduction

The African Common Position on Asset Recovery (CAPAR) is a policy and advocacy instrument aimed at helping African countries to identify, repatriate and effectively manage the assets of Africans for the common good of their citizens in accordance with Africa's development agenda,

national laws and other legitimate government objectives in a manner that respects the sovereignty of member states.

## Process Leading to the Adoption of the CAPAR

- Given the scale and transboundary nature of IFFs, an ambitious multilateral approach to the recovery of assets lost through IFFs channels is needed.
- The 24th AU Summit held in January 2015 adopted the Report of the High Level Panel on Illicit Financial Flows from Africa and the Special Declaration on IFFs, committing to implement the recommendations of the High Level Panel.
- The Special Declaration also called on the African Union Commission, with the support of Member States, to launch a diplomatic and media campaign in favor of the restitution of illicit assets.

In 2017, the Assembly adopted the theme "Winning the fight against corruption: a sustainable path to Africa's transformation", one of the main objectives of which is the development of CAPAR.

- Subsequently, the African Union declared 2018 the African Year for Combating Corruption.
- The 31st Ordinary Session of the Assembly (2018) called on international partners to agree a transparent and effective timetable for the recovery and return of African assets illegally placed under their jurisdiction.

The report by H.E. Muhammadu Buhari, President of Nigeria and AU Champion of the Year of the Fight against Corruption, on the implementation of the Year of the Fight against Corruption theme presented to the 32nd Ordinary Session of the Assembly, February 2019, reiterated the need for CAPAR

- CAPAR was then facilitated by the strong commitment of the AU champion on anti-corruption, the President of Nigeria SEM. Muhammadu Buhari; the African Union (AU) Commission; the AU Advisory Council on Corruption; with the technical support of the Secretariat of the High-Level Panel on Africa's FFIs.

- The Assembly of African Union Heads of State and Government in their 33rd Session in February 2020, endorsed the CAPAR to guide African countries in the recovery and management of stolen assets.

The CAPAR has four pillars, which highlight priorities for asset recovery in Africa:

- (i) detection and identification of assets,
- (ii) recovery and return of assets,
- (iii) management of recovered assets, and
- (iv) cooperation and partnerships.

## Implementation of CAPAR : Towards Empowering Judiciary for Efficient Asset Recovery and Management

- Given the scale and transboundary nature of IFFs, an ambitious multilateral approach to the recovery of assets lost through IFFs channels is needed.
- The process of detecting, identifying, recovering and returning illicit assets is generally complex and lengthy, involving several jurisdictions and often complicated by technical, legal or political obstacles.
- Therefore, it is important to set up a continental networking mechanism for national authorities and focal points of judicial bodies and security services involved in mutual legal assistance in cases involving the tracking, recovery and return of illicit assets.

- Share best practices on achievements in tracking, recovering, and returning illicit assets through mutual legal assistance at regional level.
- Promote the harmonization of legislative frameworks and criminal procedures to facilitate regional judicial cooperation in cases involving the tracking, returning and recovery of illicit assets.

## Conclusion

- For CAPAR to produce tangible results if it should go beyond mere declarations of intent or general principles, and sets out some concrete measures to translate the vision into reality.
- There is a need to Strengthening Advocacy and Promotional Missions to Member States on promoting the implementation of the Common African Position on Asset Recovery (CAPAR).
- AUC through the working group on CAPAR can provide capacity building to Member States to MS upon on the CAPAR and its implementation .
- At AUC, the development of drafts framework on CAPAR Implementation and model agreement on asset recovery are ongoing with a view to support MS.

## DIALOGUE

**Kenya: Dr Constance Gikonyo, AML and Asset Recovery Researcher  
(Senior lecturer University of Nairobi)**

### *CHALLENGES LINKED TO ASSET RECOVERY*

Gap in beneficial ownership transparency- not having access to this information e.g because it is not available or if available the procedure to access is lengthy and bureaucratic. Inadequate

regulations requiring the disclosure of beneficial ownership information can make it easier for criminals to hide behind shell companies, trusts, or nominee owners.

Limited capacities for the agencies involved to handle the different types of recovered assets.

Asset disposal issues: Determining how forfeited assets should be managed and eventually disposed of can pose challenges. Ensuring transparency and accountability in this process is crucial.

Lack of victim compensation procedures- there are no regulations guiding on how to allocate recovered assets, whether to victims, public services, or other stakeholders, can be a complex and contentious issue.

Difficult investigations involving complex financial structures- Investigations involving complex financial structures are often challenging due to the deliberate use of intricate mechanisms to obscure the movement of funds, launder money, or hide assets. Complex financial structures may involve multiple legal entities, trusts, offshore accounts, and cross-border transactions.

Maintaining up-to date and records on the recovered properties- jurisdictions may not have in place any or efficient record keeping/tracking systems over forfeited property.

Establishing a centralized tracking system of the recovered assets- there should be a centralized tracking system that the agencies involved in asset forfeiture can have access to. This will ensure that everyone is reading from the same script.

Lack of comprehensive legal framework e.g. regulations on how to handle the recovered assets.

### *EMERGING ISSUES IN RELATION TO ASSET RECOVERY*

Recovery of crypto-currency and other digital assets- The rise of crypto currencies and digital assets presents new challenges for tracking and recovering illicit funds. Criminals are increasingly

using digital currencies for money laundering and to obscure the origin of their assets. Effective regulation and enforcement in this area are crucial.

The utilization of cybercrime and financial fraud- Criminals are leveraging technology for illicit financial activities. This includes the use of encryption, dark web marketplaces, and other advanced tools that make detecting and prosecuting financial crimes more challenging.

Green laundering – Criminals are increasingly using "green" investments as a cover for money laundering. Judicial officers need to be vigilant in detecting and prosecuting cases where illicit funds are funneled into seemingly legitimate green businesses.

Recovery of art and cultural heritage- The theft and illegal trade of art and cultural heritage items have become a concern in asset recovery efforts. Judicial officers may need to deal with cases involving the recovery and repatriation of stolen artifacts and historical treasures.

Victim compensation and transparent utilization of recovered assets- Ensuring that recovered assets are used for the benefit of victims is an emerging issue. Developing mechanisms to compensate victims of financial crimes and ensuring that they have a voice in the asset recovery process are important considerations.

## *WAY FORWARD*

Promote the recovery of instrumentalities- instrumentalities are refers to tools, assets, properties, or resources that are directly involved or used in the commission of a crime. Recovering these instrumentalities is not only a matter of justice but also a means to disrupt criminal networks and deter future criminal activities.

Enhancing legal frameworks - Develop and update legal frameworks to address emerging challenges and provide clear definitions of financial crimes, penalties, and procedures for asset recovery.

Enhancing technological adaptation- Invest in digital forensics tools and expertise to collect electronic evidence, trace financial transactions, and investigate cybercrimes. Keep pace with technological advancements, ensuring that judicial officers have the tools and expertise to investigate and prosecute crimes involving digital assets and cybercrime.

Developing asset management guidelines -on how forfeited assets should be managed and eventually disposed of.

Establish victim compensation mechanisms - Developing mechanisms to compensate victims of financial crimes, particularly in cases where public funds are stolen

Enhance data sharing and digital evidence handling - need to develop robust protocols for secure information sharing and digital evidence handling in asset recovery cases, especially in a digital age where evidence may cross borders.

Enhancing capacity building and international cooperation- Strengthen international cooperation through bilateral and multilateral agreements, including mutual legal assistance treaties, to facilitate the recovery of assets held abroad.

Financial Forensics - Utilize financial forensics tools to trace money flows, identify hidden assets, and uncover money laundering schemes. This includes forensic accounting and audit techniques.

## Burkina Faso: Justice Antoine Kabore

The underlying message throughout the Conference is that the Rule of Law should prevail, irrespective. The court should thus be conscious of the rights of all, including the accused person, when and if an order for preservation is applied for. The court must in granting a preservation order ensure that the assets will be safe, secure, maintained, and where applicable responsibly managed. Assets must not lose value while under protection.

Governments must set up an independent institution for asset management, who must be held accountable for all assets under their protection. Assets released or forfeited should be of equal value on the day of release or forfeiture than what it was on the day of preservation.

The asset management institution may play a valuable role in asset identification and recovery, if they have a complete database of all assets preserved, the owners of the same and the flow of the assets.

A portion of the proceeds of asset recovery should ideally be used to compensate the victims.

National Institutions for Asset Recovery must work in cooperation and collaboration with other countries.

Africa is a country rich in natural resources, however Africa does not benefit from it itself due to low socio development and foreign financial exploitation.

It is important to create a platform to share best practices and achievements amongst African countries

# STRATEGIES FOR ENHANCING CAPACITIES FOR TOC ADJUDICATION

## NIGERIA: NATIONAL JUDICIAL INSTITUTE

The Nigeria Judiciary makes JTI the focal point of all Judicial Activities. Key Programs run by the NJTI are:

- Induction Courses for Judicial Officers;
- Refresher Course for Magistrates
- Annual Round Table for heads of courts with stakeholders where they look critically at challenges experienced by courts but also by the various stakeholders of the courts, i.e. police, prison, prosecution, lawyers etc. The aim is for the judiciary to identify areas where they may assist stakeholders in making the courts more accessible, efficient and effective. The Annual Round Table is presented in a format where the judges and heads of court are the moderator and the representatives of the various stakeholders are the speakers.

## MOZAMBIQUE: JUDICIAL COURT OF TETE PROVIDENCE

It is important to conduct a social study on TOC, and share the same with all African Jurisdictions. The basic training for Magistrates' and Judges should include training on TOC, since it is a subject which not only features in the criminal cases, but also in many of the high monetary value civil cases. No judge can adjudicate on, and fight against organized crime in the absence of the necessary technical knowledge on the various elements of Organized Crime. It is not enough to

simply discuss these issues or rely on the evidence presented on these issues. It is important that there is the necessary education on the subject for judges and magistrates.

There must be Political will to adopt a legal framework to address and align transnational practices, trends and decisions. TOC most often targets the most vulnerable communities for the benefit of the offenders, who in many instances include other nationalities. The Mozambique Legislatures were therefore innovative in introducing for example indirect evidence, providing judges the power to ask for further investigation, if the evidence presented during the trial is not complete or sufficient to support the charges. The legislatures further introduced very heavy sentences for OC, which serves to deter offenders from committing these offences or even venturing into the idea of committing these offences.

Institutional Modernization is another instruments used to ensure that Judges and Magistrates are capacitated to adjudicate OC cases.

The Mozambique JTI is responsible to train Judges, Magistrates and Prosecutors.

## GHANA: JTI

JTI's throughout Africa is a necessity in combatting TOC and IFF. There is so many development in legislation, case law and international treaties between the time when a person leaves law school and the time when he or she is appointed as a judge. Research done by judges are aimed at solving a specific case and are narrowed down to the issues in dispute, thus not leaving room for a much wider research which will cover the subject in brought. Judges who are therefore not faced with a specific TOC or IFF cases will in all probabilities not research TOC and IFF. This then being the reason why JTI's fulfill such an important role in the continuous education and learning of judges, magistrates and registrars.

The Ghana JTI started off as a training institute for registrars and other staff members. The Judiciary however soon discovered the value in structured continuous training and nowadays judges and magistrates are included in the training programs offered.

The Ghana JTI currently compulsory Induction courses and short seminars on capita Selecta for Judges and Magistrates and is supplemented by ongoing training is further offered on trends in law and society.

There is no legislation establishing the JTI as an organization, which have negative financial implications. The absence of legal recognition of the JTI, results in the absence of a separate budget to execute the mandate.

Cyber is used as a very important platform in perpetrating offences against women and children, therefore ongoing cyber training for all magistrates. Our eJustice have an interface with JTI, where all JTI training material are being made available to all.

## SIERRA LEONE: JUDICIAL & LEGAL TRAINING INSTITUTE (JLTI)

The Judiciary must be prepared for the “Dark Web”, “Crypto Currency”, and “Green Laundering”. What is it?, How is it used in day-to-day crime? How do you access it? How do you retrieve it? How do you convert it, where applicable?.

Very little Judiciaries in Africa prepare their benches by exposing them to training on these controversial subjects, despite the fact that it is very important to train them on it. We therefore call upon other jurisdictions to share their training papers in a virtual community so that we can all benefit from the Judicial Training presented in the various jurisdictions, or at the very least share in in a virtual community where the heads of the jurisdictions have access.

## **NIGERIA: NATIONAL JUDICIAL INSTITUTE**

The Nigeria National Judicial Institute promotes joint training for Judges, Prosecutors and Investigators in TOC and IFF subjects

# AFRICA REGIONAL JUDICIAL DIALOGUE RESOLUTION



Final Conference Communiqué

JOINT COMMUNIQUÉ OF THE REGIONAL JUDICIAL DIALOGUE ON STRENGTHENING  
ADJUDICATION OF TRANSNATIONAL ORGANISED CRIMES AND ILLICIT FINANCIAL  
FLOWS IN AFRICA

“THE MOMBASA COMMUNIQUE”

5TH OCTOBER 2023,

MOMBASA, KENYA

WE, the Judiciaries, Judiciary Training Institutes, Chief Justices, Heads of Courts, Heads of Judiciary Training Institutes, Judges, Judicial Officers, Representatives of Judiciaries, development partners and other stakeholders from 16 African countries (Botswana, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Rwanda, Sierra

Leone, Somalia, Tanzania, Uganda, Zambia and Zimbabwe) participated in the first Africa Regional Judicial Dialogue themed: “**Strengthening the Adjudication of Transnational Organised Crime and Illicit Financial Flows in Africa: Experiences, Challenges, and Emerging Issues**” in Mombasa, Kenya from 3 to 5 October:

**NOTING** that Transnational Organised Crimes (TOCs) and Illicit Financial Flows (IFFs) and associated crimes occasion political and economic instability; and are damaging to the security, society, economy, and democracy in the region.

**MINDFUL** that the impact of TOCs and IFFs in our countries and societies is felt the most by the vulnerable in our societies through disruption of lives and livelihoods, deterioration of basic services, insecurity, and loss of vital resources meant for the provision of basic services and development;

**RECOGNISING** the regional and international commitments that African states have made regarding the prevention, punishment, and deterrence of TOCs and IFFs, including: the United Nations Convention on Transnational Organised Crime (UNTOC), the United Nations Convention Against Corruption (UNCAC), the African Union Convention on Prevention and Combating Corruption, the African Union Policy on Prevention of Trafficking in Persons; and the African Union Policy on Prevention of Smuggling of Migrants in Africa, among other global and regional instruments and frameworks;

**ACKNOWLEDGING** that national legal systems in Africa have undertaken various measures and developed frameworks at the domestic level to implement the regional and international commitments;

**CONSCIOUS** that TOCs transcend physical borders and that perpetrators of these crimes and their networks are ever-expanding across the region, with African countries facing common issues and challenges;

**FURTHER CONSCIOUS** that TOCs and IFF continually evolve in sophistication and manifestation with the perpetrators and their networks taking advantage of technology and integration in the region, which necessitates adaptive and responsive frameworks that take cognizance of this trend;

**DESIROUS** to establish and maintain cooperation and collaboration between Judicial institutions in the region, as well as with other justice agencies in order to develop a holistic response to challenges posed by TOCs and IFFs;

**DETERMINED** to lend judicial weight to the fight against TOCs and IFFs both as a matter of constitutional duty and commitment to protect public interests;

**DRAWING** from the themes of reflections of the Africa Regional Judicial Dialogue, the emerging solutions and action agenda, the participants have agreed on a common agenda and mutual commitment to strengthen adjudication of transitional organized crime and illicit financial flows as follows:

### **A. Regional collaboration and cooperation in combating Transnational Organised Crimes and Illicit International Flows**

Judiciaries, JTIs, Courts, commit to establish and maintain collaboration and cooperation in order to have an effective response to TOCs and IFFs, in particular, the participants commit to:

1. Develop and maintain a network of Judiciaries, coordinated by JTIs in the region, that is focused on strengthening and achieving the effective adjudication of TOCs and IFFs.
2. Participate in the development and harmonization of global and regional frameworks, policies, and standards on the prevention and combating of TOCs and IFFs.
3. Develop initiatives that will facilitate cross-jurisdictional and multiagency collaboration and interaction in the region with the objective of forging links between the different agencies involved in the prevention and combating of TOCs and IFFs, including: the police, investigatory and

prosecution agencies, Asset Recovery agencies, Financial Intelligence Centres, Witness Protection Agencies, among others.

## **B. Enhancing the capacity of judiciaries to respond effectively to TOCs and IFFs**

Judiciaries, JTIs, courts, development partners and other stakeholders commit to progressively develop the capacity of courts to respond to TOCs and IFFs. In particular, the participants commit to the following:

4. Enhance collaboration between JTIs in the region in learning knowledge management, and sharing of lessons regarding TOCs and IFFs in the region.
5. JTIs will develop and maintain a resource centre and repository of robust information and relevant data on adjudication of TOCs and IFF for sharing in the region, including the development of a digest of cases in the region and other relevant materials and knowledge products.
6. Recognising the critical role played by other actors in the justice chain and commit to work more collaboratively with other justice sector agencies, such as the Investigators, Prosecution, Asset Recovery, Financial Intelligence Centres, and Witness Protection agencies, in order to ensure a coordinated and multi-agency approach that supports the adjudication of cases on TOCs and IFFs.
7. JTIs and Judiciaries will embrace and pursue a multi-agency and cross-jurisdictional approach to training and capacity development
8. Development partners will support national and regional initiatives of judiciaries in capacity development

## **C. Harnessing resources to support the development of capacity of judiciaries to adjudicate on Transnational Organised Crimes and Illicit Financial Flows**

Judiciaries, JTIs, courts, development partners and other stakeholders commit to progressively avail resources to facilitate the development of the capacity of court to effectively adjudicate TOCs and IFFs. In particular, the participants commit to the following:

9. The Judiciaries and JTIs commit to carry out assessment of the needs, including: infrastructure, human capacity, and technology, necessary for to aid the effective adjudication of TOCs and IFFs.

10. The Judiciaries and JTIs commit to seek more resources and budgetary allocations to facilitate capacity development of courts and judicial officers involved in the adjudication of crimes related to TOCs and IFFs.

11. Judiciaries and courts commit to the utilisation of technology in court processes with the objective of increasing efficiencies in resolution of TOCs and IFFs cases.

12. The development partners commit to assist the Judiciaries and JTIs in mobilizing and availing resources for capacity development and training in the adjudication of TOCs and IFFs.

#### **D. Enhancing the effective interpretation and application of legal and regulatory frameworks to combat TOCs and IFFs**

Judiciaries, judges, courts, and judicial officers commit to the progressive and innovative and application of existing legal and regulatory frameworks for prevention of TOCs and IFFs. In particular:

13. The participants commit to embrace and pursue alternative justice systems to the process of adjudication where such processes are applicable.

14. The participants commit to engage in and contribute to the development of national legal and regulatory frameworks aimed at combating TOCs and IFFs by providing judicial perspectives during the law-making processes.

15. The participants commit to use the available frameworks and rules to develop progressive jurisprudence in the adjudication of TOCs and IFFs that is cognizant of both the damaging character of these crimes to the society and the rights and freedoms of people, and the need to ensure restorative justice and deterrence.

16. Participants commit to progressively eliminate barriers to access to justice for victims of TOCs and IFFs and further commit to enhance realization of justice and restoration to victims through channels availed by the law.

17. The Judiciaries commit to explore special institutional and judicial measures to enhance adjudication of TOCs and IFFs, including the establishment of specialized courts and other adaptive frameworks.

DATED AT MOMBASA THIS 5TH DAY OF OCTOBER 2023 SIGNED BY:

H.E. HON. TEWODROS MEHERET KEBEDE CHIEF JUSTICE OF THE FEDERAL SUPREME COURT OF ETHIOPIA

HON. LADY JUSTICE PHILOMENA MBETE MWILU, MGH DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT OF KENYA

HON. JUSTICE (DR.) SMOKIN WANJALA SUPREME COURT JUDGE & DIRECTOR, KENYA JUDICIARY ACADEMY

CO-SIGNED BY

REPRESENTATIVES OF JUDICIARIES:

Botswana, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, Tanzania, Uganda, Zambia, Zimbabwe.

## REPRESENTATIVES OF JUDICIARY TRAINING INSTITUTES

Botswana, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Sierra Leone, Somalia, Tanzania, Uganda, Zambia, Zimbabwe.

## REPRESENTATIVES OF DEVELOPMENT PARTNERS

AGA-Africa,

AML-CFT ESCAY,

GiZ,

IDLO,

UNODC,

US-DOJ

# NAMIBIA TAKE AWAY



## CAPACITY BUILDING

### Compendium of Namibian POCA Judgments and Orders

Compile a Compendium of POCA cases in Namibia and publish the same on the website.

### Specialized Training for Judges

Invest in our bench by strengthening the knowledge in both the criminal and the civil streams with training by experts on, amongst other topics, TOC, IFF, Instrumentalities, Crypto Currency, Green Laundering, and Money Laundering trends.

## Institutional Memory and Knowledge Transfer

It is important to transfer knowledge acquired during workshops, dialogues, colloquiums, symposiums, specialized training etc. We therefore propose that it be made mandatory to present a report within seven days after the return from the workshop, dialogue, colloquium, symposium, specialized training. The report should consist of at least the following sections:

-Table of Contents;

-Introduction,

-Individual headings for each subject discussed, or trained during the workshop, dialogue, colloquium, symposium or specialized training, with a complete discussion of the content;

-Take Away for Namibia;

-Conclusion; and

-Contact Particulars of persons or institutions which may be of assistance to Namibia.

The report is to be published on a website to secure institutional memory and the contents is to be transferred by the person(s) who attended during a formal face-to-face training session.

A joint report may be submitted if more than one judge, magistrate and/or staff member attended the same workshop, dialogue, colloquium, symposium or specialized training.

## Namibia Judiciary Training Institute

It is recommended that a High Level Resolution be taken to, with immediate effect, establish a Judiciary Training Institute to –

- provide judicial education for judges, magistrates, legal officers, registrars and clerks of court;
- provide functional training in the form of Induction Courses for all positions, including judges and magistrates;
- provide administrative skills training for judges, magistrates, legal officers, registrars and directors and deputy directors;
- provide short courses, workshops, seminars and dialogues where necessary or warranted.<sup>11</sup>

## THE RULE OF LAW

### Maintaining and Management of Assets under Preservation or Restraint Orders

The Namibia bench must exercise its judicial power in POCA applications, in not only being conscious of, but also being protective over the rights of all, including the accused person. The court must consider in granting a preservation to include an order ensuring that the assets will be safe, secure, maintained, and where applicable responsibly managed. Assets must not lose value while under protection.

## INTERNATIONAL VISIBILITY AND PARTICIPATION

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<sup>11</sup> See discussion under the heading “A Concept Model for the Namibia Training Institute”

## Ad Hoc Specialized Court

Do not resist the “Specialized Court” concept, just because of the size of our jurisdiction. Institutions rating the country give high value to the concept “Specialized Court”. Consider establishing an *ad hoc* “Specialized Court” for Financial Crimes, Money Laundering, and Illicit Financial Flow Cases. Select a group of judges consisting of three or more judges who are trained in the subject and who receive continuous training to keep track with new trends and international policies and treaties. Announce a set of rules or practice directions applicable to the “Specialized Court”, aimed at fast tracking these cases and be specific with inter alia the following:

- Set a timeline within the first month from the date of indictment for legal aid applications, release of money for purpose of legal representation, disclosure, answer to state pre-trial memorandum, as well as trial;
- No adjournment policy for dates;
- Trial to be conducted on a continuous base and not in a piece meal fashion.
- Set clearance benchmarks as well as timelines for delivery of rulings, judgment on merits and sentence.

Announce the creation of the specialized court publicly for all stakeholders, national and international.<sup>12</sup>

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<sup>12</sup> Kindly refer to “Zambia: Justice Susan Fusani Mtonga Wanjelani, under the heading “Understanding the Role of the Judiciary in TOC Adjudication”

## Consistency in International AML and IFF Training and symposiums

It is of utmost importance to have consistence in the attendance of International AML and IFF Training and Symposiums. It is important that we identify a judge who will lead the way and be known as our expert contact in the field. In as much as the importance to give everybody the opportunity to attend training is recognized, we need to consider the big picture and accept that visibility and consistency will give international recognition to our country.

It is further of utmost importance that this judge(s) identified as Namibia's Judiciary Representative(s) transfer the knowledge to his or her colleagues in a structured way. Merely making handouts available will unfortunately not suffice.

The representative judges(s) should also be actively involved in initiatives by the Namibia Judiciary promoting, establishing and bettering adjudication of TOC and IFF cases.

## GENERAL

### Presentations

Teach Judges to –

- prepare Powerpoint presentations;
- to present in a professional manner, which captures the audience, is easy to follow and will leave a long lasting impression

## Awareness

An awareness is to be created amongst judges and practitioners on –

- The existence of TOC's in our country;
- Common Suspicious Activity Indicators for Financial Crimes;

The role of judges and practitioners on how Namibia is rated and/or perceived internationally and how that influence the future prosperity of the country, i.e. delays in judgments affects “How to do Business rating, duration of TOC Cases from arrest (indictment) to acquittal / sentence plays a role in the AML rating of a country (grey listing)



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SNO.	NAME	INSTITUTION	E-MAIL	PHONE NO.
1.	JUSTICE DR. SMOKIN WANJALA	KENYA JUDICIARY ACADEMY	[REDACTED]	[REDACTED]
2.	JUSTICE DIMAS MAROA	CFJJ MOZAMBIQUE	[REDACTED]	[REDACTED]
3.	JUSTICE DAMALIE N. LWANGA	UGANDA JUDICIAL TRAINING INSTITUTE	[REDACTED]	[REDACTED]
4.	JUSTICE REGINALD S. FYNN	TLTI-S. LEONE	[REDACTED]	[REDACTED]
5.	HON. RAYMOND V. KASWAGA	INSTITUTE OF JUDICIAL ADMINISTRATION LUSHOTO TANZANIA (ON BEHALF)	[REDACTED]	[REDACTED]
6.	DIRECTOR OLUMO ABDULAZEEZ	NATIONAL JUDICIAL INSTITUTE OF NIGERIA	[REDACTED]	[REDACTED]
7.	JUSTICE LIVARD L. PHILEMON	JTI ZIMBABWE	[REDACTED]	[REDACTED]

8.	JUSTICE DR. ERNEST OWUSU DAPAA	JTI, GHANA	[REDACTED]	[REDACTED]
9.	LADY JUSTICE MUGENI S. MULENGA	JUDICIARY ZAMBIA CHARIPERSON – TRAINING COMMITTEE	[REDACTED] ik	[REDACTED]
10.	JUSTICE AHMED MOHAMUD HASSAN	JUDICIAL TRIANING INSTITUTE SOMALIA	[REDACTED]	[REDACTED]
11.	AMB. DEGETE BULA	ETHIOPIA EJTI	[REDACTED]	[REDACTED]
12.	JUSTICE KABORE S. ANTOINE	BURKINA FASO ENAN	[REDACTED]	[REDACTED]
13.	LADY JUSTICE VIOLET CHIPAO	MALAWI JUDICIARY COMMITTEE MEMBER	[REDACTED]	[REDACTED]