

Tom K Alweendo: Crime and money laundering - the challenges

Address by Mr Tom K Alweendo, Governor of the Bank of Namibia, at the African Banking Congress, Johannesburg, 8-10 March 2005.

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Ladies and Gentlemen,

I would like to thank the organizers of this event for inviting me to give an address on the topic of Crime and Money Laundering. The choice of this topic is so appropriate because of the challenges money laundering poses to the banking sector in Africa. Financial crime and money laundering is increasingly becoming a global phenomenon and this is not only a threat to the global banking sector, but it has the potential to become a threat to the civil and political spheres.

Money laundering is conventionally defined as any process that is carried out to disguise or conceal the nature or source of or entitlement to money or property from criminal activities. Although countries have come up with different money laundering definitions in their statutes, it is important that any useful definition should recognize that crime of any nature is an act against society and as such, to launder any proceeds from unlawful activity or the contravention of any law followed by laundering should be encompassed in the definition.

A new dimension to what constitutes money laundering is with respect to terrorism, whereby legitimate or clean money is committed to the financing of unlawful activity. The definition of money laundering that encompasses any unlawful activity would be well inclusive and would provide law enforcement with a wider legal arm. The combating of financing of terrorism, which is an unlawful act, is in most jurisdictions provided for in separate legislations but linked to the mainstream national anti money laundering laws, especially in respect of detection.

The anti money laundering legislations that are being promulgated by most jurisdictions have and are criminalizing the act of money laundering as defined above. This in essence means that these laws make the act of money laundering a criminal offence and that to launder money derived from criminal acts constitutes committing a crime punishable by law. In addition, the anti money laundering laws places a requirement for reporting institutions to report suspicious transactions, failure of which constitutes an offence by both the institution and/or officers of that institution.

The Meirium-Webster dictionary describes crime as an "act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law and that makes the offender liable to punishment by that law". This definition pre-supposes the existence of a public law that sets out the details of the acts or omissions that national legislators consider to be punishable by that law. Laws are therefore designed to protect us and ensure our safety in all aspects: physical, financial, psychological and social.

The extent to which money is laundered globally is estimated to be between \$500 billion and \$1 trillion. The wide range of the estimate highlights the difficulties associated with obtaining accurate data on this problem. This is the case because only a limited number of countries have set up anti money laundering regimes that are up and running and therefore able to provide appropriate statistics. The problem of lack of accurate money laundering statistics in Africa is compounded where the setting-up of anti-money laundering regimes is only gaining momentum now. It will take some time for Africa to build up accurate statistics on money laundering as this would have to be sourced from actual cases investigated and finalized.

Further, a good understanding of the national money laundering activities requires concerted national research and studies of the money laundering typologies commonly practiced in each country. In this regard, it is worth mentioning that the Institute for Security Studies in South Africa has initiated a number of researches and studies aimed at documenting the extent of money laundering in Africa, especially Southern Africa. However, the sufficiency and integrity of the statistics provided by the Institute is only as good as the national sources supplying the information. It is therefore imperative that national efforts to determine the extent of money laundering must be improved as these statistics are important for convincing the legislative and political processes on the need for legislative changes necessary for effective combating of money laundering.

The anti money laundering laws protect the rights of individuals by providing for the articulation of what crime is, the acts of crime and the punishment thereof. Legislators, in consultation with their constituents through legislation on crime, lay the foundation for basic individual human rights and the attainment of inner individual self fulfillment. Crime and criminal acts work towards eroding these very basic individual rights.

Despite the enactment of laws designed to curb crime and acts of crime, these evils still take place and are in most cases on the increase. The law enforcement agencies the world over are overwhelmed by the sheer size and sophistication that criminals are now employing to perpetrate their illegal deeds. The efforts on crime prevention are now compounded by globalization that has created what one may say is a global economy in which organized crime groups and individuals can and do generate huge sums of money by drug trafficking, financial crime, corruption, intellectual property crime, terrorism and human trafficking.

Crime and money laundering is indeed a global problem which requires a concerted global response. In order to protect our respective financial systems from the destabilizing effects of crime and money laundering, it is imperative that we act and respond to this scourge with unprecedented resolve and commitment to combating it. Everybody has, therefore, a responsibility to combat money laundering, because its negative impact has a unique way of creating far ranging negative consequences. By tackling money laundering we would be attacking the criminals at their weakest and most vulnerable point - their money sources.

In the past years since the start of the criminalization of money laundering and the enforcement of anti money laundering laws in the 1970s and more vigorously in the 1980s and 1990s, evidence from court cases and reported suspect transaction has given an indication that the most common money laundering typologies has been in the realm of drug trafficking, organized crime, corruption, illicit dealing in weapons, human trafficking, fraud and theft. The act of successful money laundering fuels the perpetration of the above crimes by providing the criminals with avenues to conceal their deeds from law enforcement agencies and ultimately provides them with the rewards for their criminality in the form of money which would then appear to be legitimate.

The concealment cycle for the proceeds of money laundering involves, firstly, the distancing of the criminals from the illegal proceeds (money or property), the obscuring of the money trail, hiding of the origins to eventually possess what would appear as clean money. The role played by globalization and ICT in the concealment process in money laundering has been aptly described by the following quote from a central banking thriller "Nest of Vipers" by Linda Davies: *"the money screamed across the wires, its provenance fading in a maze of electronic transfers which shifted it, hid it, broke it up into manageable wads which would be withdrawn and re-deposited elsewhere, obliterating the trail"*.

The linkage between money laundering and crime denotes that everybody as individuals is affected by money laundering. Crime erodes basic individual liberties in that it threatens their rights to life and entitlement to property. The consequences of crime and money laundering are bad for business, development, and the general rule of law. Governments have therefore got real reasons for spearheading the combating of money laundering. Another reason why money laundering should be combated is that if left unchecked, it would lead to the accumulation of economic power to organized crime. This development has the potential of eroding our political and social systems based on elected representation as we know them today. In other words, the social consequences for allowing money launderers to operate unchecked could spell disaster for stability and the rule of law.

The financial sector, in particular the banking sector, more than any sectors, needs to operate in a crime and money laundering free environments. Banks deal with other people's money and therefore rely heavily on reputation for probity and integrity. Without the public confidence from the law abiding citizenry it would be difficult for banks to conduct business in the form they do now. In instances where banks may condone and are active parties to money laundering, the end result is that legitimate business would avoid such banks. It is also conceivable that money laundering if perpetrated on a high scale would complicate the ability of banks to manage their operations and risks. This is so because banks will not be able to predict the movement of laundered money.

Banks have also to be aware of the consequences of doing business with money launderers or unwittingly and fraudulently being used as conduits for money laundering. In jurisdictions where national anti money laundering laws have been promulgated, non complying banks and institutions have been subjected to hefty fines and in some instances the banking licenses have been known to have been withdrawn.

As a central banker, my concerns regarding the money laundering would immediately be that it would erode the effectiveness and management of monetary policy. Money laundering on a grand scale has the potential of changing the demand for cash, make interest rates and exchange rates more volatile and cause high inflation rates for a country. Money laundering is also bad for the economy and development in that it undermines legitimate business, competition and reduces the tax revenue to national authorities as launders would be operating underground outside the tax net. Money laundering is thus bad for the economy both nationally and internationally. Regulatory and supervisory agencies have a good reason to participate in the combating of money laundering in that if not contained, it would defeat their objectives and weaken the institutions under their supervision.

The combating of money laundering should revolve around ensuring the ability of national and international agencies to find, freeze and the forfeiture of laundered money. This presupposes the existence of appropriate national and international laws and the capacity for implementation of those laws. In addition, the wide scope of affected stakeholders in anti money laundering efforts require an unprecedented level of co-operation both at national and international levels.

Another important aspect of money laundering is the tendency and need for perpetrators to operate cross border schemes for the purpose of concealment and/or to take advantage of the uneven developments in the national anti money laundering regimes. This requires that countries should develop anti money laundering regimes that are moving in tandem in terms of speed and standards for detection and law enforcement.

The international community and national agencies have indeed recognized the need to combat money laundering. To this end the first pre-requisite for combating money laundering is to have in place appropriate national legislation. Appropriate national legislations have to be crafted with local circumstances in mind while recognizing the need for taking into account the international nature of money laundering. To this end, the participation of multi-lateral agencies such as the United Nations, the EU, the AU, etc. is important in the formulation of international instruments necessary to combat money laundering.

Anti-money laundering international instruments are essential for ensuring that the international community reacts to money laundering as a global problem. The international instruments provide a forum for bringing national efforts on money laundering into the international loop. To mention but a few, the following are some of the important international instruments that the international community have crafted: the Basel Declaration 1988; the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; FATF 40+9 Recommendations, 1990, with numerous revisions; UN Convention against Transnational Organized Crime, 2000; UN Convention against Corruption; UN International Convention for the Suppressing of the Financing of Terrorism.

These are but only a few of the various international instruments that are critical to the success in the fight against money laundering. In addition, various multilateral organizations have been instrumental in advancing the cause for the fight against money laundering. The IMF and the World Bank have been very active in providing resources for capacity building and technical expertise. National jurisdictions are encouraged to ratify the international instruments as they provide the basis for ensuring appropriate national anti-money laundering laws and international cooperation. Critical to the international cooperation is the attendant national legislations pertaining to extradition of criminals who operate cross border money laundering schemes. Without having robust extradition laws, the criminals would have loopholes in the global sphere that would allow them to evade law enforcement agencies in a particular jurisdiction.

The existence and membership to regional anti-money laundering groupings is important in that it contributes to the harmonization of laws and standards. In Africa, a number of anti money groupings have been created and have provided the needed impetus for ensuring that Africa as a whole is moving towards a uniform approach regarding the money laundering problem.

It is important to note that legislative gaps that may exist at international and national levels will be exploited by the money launderers and make national anti-money laundering regimes ineffective. In line with the need to formulate appropriate national legislations, there is a need to formulate standards for anti-money laundering practices and institutions that should provide maximum effectiveness both at national and international levels. The G7 created Financial Action Task Force (FATF) that has crafted 40 + 9 recommendations aimed at providing international standards for anti money laundering, improving national systems for combating money laundering, strengthening the role of financial systems and for strengthening international co-operation.

The combating of money laundering presupposes the existence of capacity and resources at national level. In Africa, this is a real challenge in that there are competing demands with regards to the procurement and utilization of scarce resources. The resources scarcity is more critical in the law enforcement spheres, since most national jurisdictions have less than efficient law enforcement agencies which are in most cases overwhelmed by the demands to enforce other national laws.

Another important ingredient for the effective combating of money laundering is the need for political commitment, as well the support from affected industries and general populace. It is worth noting that through the AU and other multilateral agencies where African nations are members, a number of efforts are being made to ensure that Africa is not lagging behind. In Africa, a number of regional anti-money laundering bodies have been created and it is comforting to see the support these regional groupings are receiving from their respective authorities. The creation of necessary anti-money laundering institutions such as the Financial Intelligence Centers is an issue that each of the African authorities are busy working on. Financial Intelligence Centers are important for the detection of money launderers by linking the money flows to the perpetration of specific crimes.

The pressures that the African banking sector is being subjected to for compliance with national and international anti-money laundering requirements, makes me to want to compliment our banking sector in Africa for living up to those requirements despite the costs involved in some instances. In one way or another banks in Africa have been working to ensure compliance with the important aspect of customer due diligence and have been improving on their institutional capacity to ensure that their systems and personnel are geared for their discharge of their responsibilities as reporting institutions. The challenges for Africa with regard to ensuring effective anti money laundering are immense more so in that innovative thinking may be necessary in some respects such as that the majority of the African economy is cash based. This may entail the setting of entirely home grown standards.

The combating of money laundering has assumed an urgent impetus at both national and international levels as a result of the scale that money laundering has begun to assume, especially with respect to the financing of terrorist acts. The efforts being made to combat money laundering are beginning to bear fruits in that it is now taking center stage in all jurisdictions. No one wants to be left behind mainly due to the consequences of such a situation – those lagging behind might find it difficult to transact and do business with the rest of the complying world. In terms of setting up effective infrastructures necessary for combating money laundering, one can conclude that Africa and the international community is beginning to getting the upper hand on criminals. A word of caution is that despite the positive developments, the criminals are constantly devising more elaborate and evasive means to circumvent anti money laundering efforts.

I would like to conclude by emphasizing that money laundering is a crime that affects every individual, business and government. It creates an important concern in that if unchecked it has the potential of fuelling crime and ultimately erodes the individual rights of citizens and affects national and international economic performance. The combating of money laundering requires first and foremost the crafting of appropriate laws and the creation of national and international capacity and the coordination thereof. All the above presupposes the need for political commitment at all levels.

I thank you for your attention