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Anti-money Laundering Law in Ethiopia: Analysis of its Enforcement with Specific Reference to the Responsibility of Banks

Research Paper submitted to the School of Law, College of Law and Governance of Jimma University, in partial fulfilment of the requirements for the award of the LL.M. degree in Human Rights and Criminal Law

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I. Declaration

I, Kalkidan Misganaw, do hereby declare that '**Anti-money Laundering Law in Ethiopia: Analysis of its Enforcement with Specific Reference to the Responsibility of Banks'** is my own work, that it has not been submitted for any degree or examination in any other university or academic institution, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Kalkidan Misganaw

II. Approval

The undersigned certify that they have read and hereby recommend to the Jimma University to accept the Thesis submitted by Kalkidan Misganaw entitled '**Anti-money Laundering Law in Ethiopia: Analysis of its Enforcement with Specific Reference to the Responsibility of Banks**' in partial fulfillment for the award of the Master degree in Human Rights and Criminal Law.

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III. Acknowledgment

I am indebted to my advisor Mr. Tadesse Sime (LL. B, LL.M, LL.M., PHD candidate) for his invaluable knowledge, scholarly comments and guidance in preparation of this paper. There are no words to express the gratitude I have for Mr. Markos Debebe (LL. B, LL.M, LL.M) for his kind, patient and passionate approach of supervising. Lastly, I wish to extend my sincere gratitude to my families to their support.

Thanks GOD for making it happen!

IV. List of Acronyms and Abbreviations

AML: Anti Money Laundering Law

ATM: Automated Teller Machine

CDD: Customer Due Diligence

CTR: Cash Transaction Report

ETB: Ethiopian Birr

ESAAMLG: East and South Africa Anti Money Laundering Group

ECDD: Enhanced Customer Due Diligence

FATF: Financial Action Task Force

FDRE: Federal Democratic Republic of Ethiopia

FIC: Financial Intelligence Center (Ethiopia)

FIUs: Financial Intelligence Units

FSRBs: FATF Style Regional Bodies

GDP: Gross Domestic Product

IMF: International Monetary Fund

KYC: Know your Customer

NBE: National Bank of Ethiopia

PEPs: Politically Exposed Persons

STRs: Suspicious Transaction Reports

USD: United States Dollar

4AMLD: The Fourth Anti-Money Laundering Directive

V. Abstract

Banks are among the institutions which take the leading role in the war against money laundering. They, however, remain highly vulnerable to an ever growing means and mechanisms of perpetration of the crime of money laundering. Such a reality demands a continues adoption of measures necessary to combat their involvement in the commission of this crime. In what appears to be responding to this demand, Ethiopia has enacted several laws imposing obligation on Banks to take preventive measures that can avoid manipulation of the financial system towards the commission of the crime of money laundering. Nonetheless, there exists no comprehensive study focused on assessing how Banks are complying with the requirements of anti-money laundering legislation. This research aims at examining whether Banks (both private and public) in Ethiopia are implementing measures intended to prevent the commission of money laundering. Besides, it studies the relationship and collaboration between the Banks and the regulatory organs (such as the Financial Intelligence Unit and the National Bank of Ethiopia) in identifying and removing a system that allows the use of Banks as intermediaries in the commission of money laundering.

Chapter One

Introduction

1.1. Background to the Study

The term money laundering is believed as coined in the 1920s in United States for its association with washing and cleaning,[1] in particular, in relation to the notorious gangster and businessman, Al Capone, who tried to obscure the true origin of the money accumulated from criminal acts like gambling, rackets and liquor through intermingling with the cash generated from doing launderettes and car washes.[2] Authorities indicted Al Capone in 1931 for tax evasion during the tax years 1925–1929.[3] After Al Capone was sent away for 11 years it was clear to the mob that other ways had to be found to remain successful in their acts. Money laundering remains amongst the serious problems that the world is facing. Although due to the mysterious nature of the crime it is difficult to estimate the exact amount of assets laundered globally, the IMF estimates it to be somewhere between two and five percent of the world GDP or between 1.5 trillion USD and 2.8 trillion USD.[4]

The Financial Action Task Force (FATF),[5] an international organization responsible for standard-setting in anti-money laundering, defines money laundering in the following way:

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[1] Peter, L *The Untold Truth about Global Money Laundering, International Crime and Terrorism*, 3rd edn. (2006), p.5.
[2] Ibid, p, 7.
[3] Bajram, I 'Money Laundering in Albania for the Years 2008-2015' 6 *European Journal of Economics and Business Studies* 1 (2016), p.101.
[4] Financial Action Task Force (FATF), *http://www.fatf-gafi.org/faq/money laundering/* accessed on January 24, 2018.
[5] See Ibid. The FATF was established by the G - 7 Summit. The summit was held in Paris in 1989. It was held with the intention of giving an appropriate response for threat posed by money laundering. Initially, it was empowered with the power of examining money laundering techniques and trends; and, setting out the measures that are necessary for averting the danger. Accordingly, the FATF came up with Forty Recommendations. These Recommendations target only how to fight money laundering. However, in 2001, following the September 11 terrorist attack the FATF mandate is expanded to fighting financing of terrorism. As a result, nine special recommendations targeted on fighting financing of terrorism were added. These days 40 + 9 FATF recommendations exist. There are, currently, 37 states members to the FATF; specifically, 35 jurisdictions and 2 regional organizations (the Gulf Cooperation Council and the European Commission). These 37 states members are at the core of global efforts to combat money laundering and terrorist financing. There are also 31 international and regional organizations which are associate members or observers of the FATF and participate in its work. In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. Ensuing its endorsement by 180 countries, the FATF is currently recognized as international anti-money laundering and countering the financing of terrorism standard. But the paper only concerns about money laundering though FATF has some other mandates.

"money laundering is the processing of criminal proceeds to disguise their illegal origin."[6] The Vienna convention also defines money laundering as 'act of concealing or disguise of the true nature of property derived from offence'.[7] Many writers in the area have also defined the crime of money laundering. According to Brigitte Unger, money laundering is washing dirty money or criminal proceeds to make them white or clean.[8] To this end, there are three well known techniques that launderer use; namely placement, layering and integration.[9] In general money laundering is a process employed to make the proceeds of crime appear as legal. In employing money laundering, there is no stage at which the asset will become legal. The ultimate effect, if successful, will be only deceiving the justice system as to the illegal nature of the crime and escape prosecution and enjoy the ill-gotten asset.

Money laundering has a serious nefarious effect on the nation and the world at large. Not only on the country at large money laundering has a devastating influence on financial institutions. [10]The manipulation of that financial institution by launderers subject them to legal sanctions by regulatory organs and this taints the firm's reputation; and can cause serious direct as well as indirect losses to the firm by impairing their effort to raise funds at competitive rates.[11]

Owing to the above serious adverse effect of money laundering, fighting money laundering has been a concern of the international community for the past two decades of 20th century. It has put in place various international conventions such as: the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[12]; the 1999 UN International Convention for the Suppression of the Financing of Terrorism[13]; and the 2000 United Nations

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[6] FATF, *http://www.fatf-gafi.org/faq/money laundering/* accessed on January 26,2018.

[7] United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances herein after Vienna Convention, 19 December 1988, Art. 3(1(b) (I & II).

[8] Unger, B 'Implementing Money Laundering in Masciandro, D et.al (eds.) *Black Finance: The Economics of Crime* (2007), pp. 103-104.

[9]Leong, A *The Disruption of International Organized Crime: An Analysis of Legal and Non- Legal Strategies* (2007), p.33. Placement stage is the act of removing bulky cash that criminals derive from the scene of the crime and usually in this stage they go to financial institutions to avoid detection by authorities. While at layering stage the money goes through complex transactions which are important to layer the true origin of the money; where as in integration phase the money repatriated to the economy seemingly legitimate by mixing with the legal assets.

[10] Paul, S *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, 2nd edn. (2009), p.11.

[11] Ibid.

[12] Vienna Convention, *supra note* 7. The convention was not principally targeted in thwarting money laundering but rather drug trafficking, the drafters were also aware about the main motive for trafficking of drugs is profit and targeting the profit will of a great help that is why the convention include provision which criminalize money laundering but only proceeds derived out of drug trafficking.

[13] International Convention for the Suppression of the Financing of Terrorism, 9 December 1999, Adopted by Resolution 54/109.

Convention against Transnational Organized Crime. [14] The commitments in these conventions have been incorporated into the Recommendations of the FATF.

Banks have been the major targets of laundering operations as they provide finance related services, facilitating domestic and international payment which has nexus with techniques employed to launder dirty asset.[15] Therefore, these institutions are accordingly covered institutions in the fight against money laundering. As a result, they are indebted with different anti-money laundering responsibilities. Failure to effectively control these institutions would likely expose for the exploitation of such institution by launderers.[16] And it is imperative to empower and strength these institutions with different tools to combat money laundering.[17]

For the existence of money laundering as independent crime, the commission of predicate offences is mandatory. A predicate offence is a crime from the commission of which the criminal generates the asset that will be laundered later. Corruption, drug trafficking, human trafficking, and arms smuggling are the most common and widely recognized predicate offences. [18] The FATF gives the discretion to states to determine which crimes fall under the category of predicate offences. Accordingly, there are four approaches followed by states: *i*) all serious crimes approach[19], *ii*) a threshold approach by providing penalty of imprisonment applicable to the

[14] United Nations Convention against Transnational Organized Crime, 8 January 2001, adopted by General Assembly, resolution A/RES/55/25.

[15] Yusarina, I et.al 'Money Laundering Risk: From the Bankers' and Regulators perspectives' 28 *Procedia Economics and Finance* (2015), p.7. Among the techniques employed to launder dirty asset placement is the prominent one in which the criminal may simply "deposit" the cash he/she derive from commission of a crime at certain financial institution or transferred the money to somebody in order to evade forfeiture of the asset.

[16] Customer due diligence, Record keeping, tipping off, cash transaction and Reporting of suspicious transactions are the main one.

[17] As it can be inferred from different international as well as regional responses to money laundering the main rational for their promulgation was to empower and strength those vulnerable institutions for money laundering. See for instance, the preamble of Basel principle for Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering (December 1988).

[18] Peter (2006), *supra note*1, P.13.

[19] It encloses the widest range of predicate offences as all serious crimes according to their national law is taken as predicate offence and will help as to avert the danger.

predicate offence,[20] *iii*) by having a complete list of predicate offences[21] or *iv*) mixed approach meaning both list and a threshold approach. On this point, the FATF as a minimum standard settler puts the first approach where the predicate offence consists of all serious crimes.[22]

Akin to other developing countries, though the extent may vary, Ethiopia's economy is characterized as being cash-based.[23] As rightly pointed out by the 2015 evaluation report of the Eastern and Southern Anti Money Laundering Group (ESAAMLG),[24] the existence of informal sector in Ethiopia coupled with the practice of cash transaction, even for big business like vehicle and real estate purchases make it attractive for those seeking to launder illicit proceeds.[25] In addition to being cash-based economy, Ethiopia is among those countries where the problem of corruption is deep rooted.[26] Human and arms smuggling, contraband, and tax evasion are also widespread in Ethiopia.[27] Inevitably, the existence of these problems involves money laundering activities.[28]

Although Ethiopia does not have an active role in production as well as consumption of narcotic drugs;[29] the country is at the center of illegal drug trade due to its vital strategic location

[20] Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year's imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months imprisonment. Prevention and Suppression of Money Laundering and Financing of Terrorism proclamation no. 780/2013 under its article 2 sub article 4 provide which crimes can be taken as predicate offence as "any offence capable of generating proceeds of crime and punishable at least with simple imprisonment of one year" by doing so Ethiopia adopted the second approach.

[21] By listing X, Y and Z as predicate offences for money laundering.

[22] FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (2012), Recommendation 3. However, countries are at liberty to follow either of the approaches.

[23] ESAAMLG *Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism*: The Federal Democratic Republic of Ethiopia (2015), p.3. This mutual evaluation of Ethiopia was conducted by the World Bank and ESAAMLG.

[24] ESAAMLG is FATF style regional body established for supervising the application of FATF recommendation by its member states.

[25] ESAAMLG (2015), supra note 23.

[26] As per the Transparency International Corruption Perception Index Report of the Year 2017 Ethiopia scored 34. Available at *http://www.transparency.org/news/feature/corruption_perceptions_index_2017* accessed on January 27, 2018. The Corruption Perceptions Index measures the perceived levels of public sector corruption worldwide. When the score is proximate to "0" the country is highly corrupt and when its score is approaching to "100" it becomes a clean nation.

[27] ESAAMLG (2015), supra note 23, p.4.

[28] Ibid.

[29] Drug trafficking is widely recognized predicate offence for money laundering as it generates huge amount of money it results in criminalization of the proceeds of drug trafficking by the Vienna Convention.

as a transit route to Middle Eastern, Asian, and West African markets.[30] The amount of drugs transiting Ethiopia continues to increase. Some argue that Ethiopia's numerous airline connections could be a possible reason for the continuous increase in the number of drugs transiting through the country.[31]

In order to avert the problem, Ethiopia had issued in 2009 a proclamation (No.657/2009) on Prevention and Suppression of Money Laundering and the Financing of Terrorism.[32] The proclamation does not define money laundering, but cross referred it to article 684 of the FDRE Criminal Code.[33] Despite the efforts made to criminalize money laundering, the FATF had categorized Ethiopia in 2010 as a jurisdiction with a strategic deficiency in terms of adequately criminalizing money laundering and as to the effective functioning of Financial Intelligence Center (FIC). [34] Having those recommendations for improvement, Ethiopia repealed its anti-money laundering law for effectively and comprehensively fighting money laundering.[35] In addition to such law, laundering and financing of terrorism such as the UN Convention for the Suppression of the Financing of Terrorism, IGAD Convention on Mutual Legal Assistance in Criminal Matters[36] and the IGAD Convention on Extradition.[37] In 2013, Ethiopia was accepted as a full member of ESAAMLG.[38]

The supervisory organ, the FIC of Ethiopia was established in 2009 by the Council of Minister's (CoM's) Regulation no. 171/09. [39] The Center has the power of ensuring the compliance of financial and designated non-financial business and professions as per the requirements of the

[30] United Nations Office on Drug and Crime (UNODC), *Market analysis of Plant-based Drugs: opiates, cocaine, cannabis World Drug Report* (2017). Accordingly, in 2015, 35 % of the heroin found in Belgium had transited the southern route (mainly via Burundi and Ethiopia).
[31] Ibid.
[32] Prevention and Suppression of Money Laundering and the Financing of Terrorism Proclamation No. 657 of 2009. Herein after Proclamation No. 657/ 2009.
[33] Predicate offenses are defined in Ethiopian criminal code as "all serious crimes". As provided under article 684/7 of the Ethiopian criminal code, for the purpose of money laundering, serious crimes are those punishable with rigorous imprisonment of 10 years or more and crimes generating proceeds of 50,000 birr or more.
[34] FATF Public Statement – Public Statement No.1 available at http://www.fatf-gafi.org/publications/high-riskandnoncooperativejurisdictions/documents/fatfpublicstatement-february2010.html accessed on January 31, 2018.
[35] Proclamation for Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780 of 2013, herein after Proclamation No. 780/2013, preamble para. 3 provide that it has become necessary to have comprehensive legal framework to prevent and suppress money laundering and financing of terrorism.
[36] Ethiopia ratified this convention on February, 2012 by Proclamation No.732/2012 known as IGAD Convention on Mutual Legal Assistance in Criminal Matters Ratification Proclamation.
[37] This proclamation also ratified in 2012 by enacting proclamation no. 733/2012 also known as IGAD Convention on Extradition Ratification Proclamation.
[38] ESAAMLG Members available at http://www.fatf-gafi.org/pages/easternandsouthernafricaanti-moneylaunderinggroupesaamlg.html accessed on April 17, 2018.
[39] Financial Intelligence Center Establishment Regulation 171 of 2009, herein after FIC establishment regulation.

proclamation, raising public awareness on matters of money laundering and terrorist financing and receiving and collecting information can be taken as instances.[40] Therefore, the study is conducted in addition to analyzing the law, it is to examine and assess the implementation of anti-money laundering laws by banks.

1.2. Statement of the Problem

Although they are not conclusive by and in themselves, having a comprehensive legal framework and establishing appropriate institutions are among the measures that various jurisdictions have agreed to have as means of fighting money laundering. Accordingly, various minimum standards, for example by the FATF, have been developed to effectively thwart money laundering. Primarily, the standards keen to protect the financial institutions such as banks from being used as a Laundromat to clean dirty asset.

Banks are usually considered in the frontline in the war against illicit money movements. The frontline officers who always deal with the customers have to make precaution while doing their day to day activities to fight the commission of money laundering. The compliance officers are also those who are responsible to review and supervise the assessment of money laundering risk made by front line officers.[41] Accordingly, due diligence is among the responsibilities imposed on banks in order to fight money laundering. Banks have to identify the customer and verifying that customer's identity using reliable, independent source documents, data or information; they shall refrain from keeping anonymous accounts or accounts in obviously fictitious names. Comprehensive customers' due diligence programs are banks' most effective weapons against being used unwittingly to launder money.[42] Their effort to know customers in case of depositing money or other related bank services will enable them to deter and detect money laundering and also it is an alert for suspicious transactions in which they are expected to report to the financial intelligence unit. However, directors, officers and employees of financial institutions are prohibited from disclosing the fact that a suspicious transaction report is being filed before the financial intelligence unit. Banks are also obliged to keep the record of their customer and all

[40] Proclamation 780/2013, supra note 35, Art. 13(1-3).
[41] Yusarina, supra, n, 15, p.11.
[42] Office of the Comptroller of the Currency, *Money Laundering: A Banker's Guide to Avoiding Problems* (2002), p.9.

transactions for a certain specified period which is stipulated by the law.[43] The existing anti-money laundering legislation substantially focuses on delineating aforementioned responsibilities and their enforcement by banks. It has also established financial intelligence unit for the purpose of enhancing the enforcement of the relevant rules in fighting the commission of money laundering through banks.

Despite the efforts pointed out above, there are some pertinent defects in fighting money laundering in Ethiopia. On October 2017, the EU issued report that determines Ethiopia as third-country jurisdictions which have strategic deficiencies (high-risk third countries) in their AML/CFT regimes that pose significant threats to the financial system of the Union.[44] The European commission by taking into account the recent FATF Public Statements,[45] FATF documents (Improving Global AML/CFT Compliance: on-going process), and the mutual evaluation report carried out by FATF and FSRBs determine the risks posed by individual third countries in line with Article 9(4) of the directive. On this occasion, Ethiopia was identified as presenting strategic deficiencies in its anti-money laundering and countering financing of terrorism regime.[46] The Commission considers that Ethiopia meets the criteria set in article 9(2) of the Anti-Money Laundering Directive.[47] Hence Ethiopia should be added on the list of high-risk third countries presenting strategic deficiencies in their AML/CFT regime that pose significant threats to the financial system of the Union. The consequence of adding Ethiopia to such list as per article

[43] FATF (2012), supra note, 22, Recommendation 21.

[44] EU Commission Delegated Regulation Report, *amending Delegated Regulation (EU) 2016/1675, as regards adding Ethiopia to the list of high-risk third countries*, (2017).

[45] Under the February 2017 public statement issued by the FATF, Ethiopia once again categorized as strategic deficiency jurisdiction on the implementation of National Risk Assessment results, confiscation of proceeds and instrumentalities of crime and failure to establish and implement Weapons of Mass Destruction related targeted financial sanctions available at FATF, *http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2018.html* accessed on May 17, 2018. By using this statement as aground in addition to article 9(2) of 4AMLD of EU which provided that the Commission has the power to identify high-risk third countries by taking into account strategic deficiencies in their 1) the legal and institutional AML/CFT framework 2) the effectiveness of the AML/CFT system in addressing money laundering or terrorist financing risks of the country, by having those criteria the commission believe it is appropriate to protect the Union by categorizing Ethiopia as high risk jurisdiction on which ECDD rule is applicable while transacting from every person in the above specified jurisdiction

[46] FATF,http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2017.html#ethiopia accessed on January, 31, 2018.

[47] Art. 9(2) of the Directive empowers the Commission to adopt delegated acts in order to identify those high-risk third countries, taking into account strategic deficiencies. On 14 July 2016, the European Commission adopted the Delegated Regulation (EU) 2016/1675 which identifies a number of third countries that have strategic deficiencies in their AML/CFT regimes that pose significant threats to the financial system of the Union among them Ethiopia was one.

18 of the Directive (EU) 2015/849 is that entities in all Member States will be bound to apply enhanced customer due diligence measures (ECDD) when dealing with natural persons or legal entities established in high-risk third countries as defined in Delegated Regulation (EU) 2016/1675. [48]

1.3. Research Questions

This study has one central research question and four secondary questions.

Central Research Question:

How does the Ethiopian law combats the commission of the crime of money laundering through using Banks as intermediaries?

Secondary Questions

- How comprehensive is the Ethiopian legal framework in preventing and repressing money laundering?
- What are the responsibilities required from banks to prevent and repress the commission of money laundering?
- What supervisory and control mechanisms are put in place to prevent the commission of money laundering through banks?
- Are the mechanisms, if any, adequate?

1.4. Methodology

The study employs mixed methodology — both doctrinal analysis and qualitative methods are employed. Doctrinal analysis is used to provide a detailed technical commentary of the relevant legislations discussed in this research. Analysis of the law is identified as the relevant method to answer the question as to the adequacy and comprehensiveness of the Ethiopian legal framework dealing with the prevention and repression of money laundering. Besides, reports of various international and regional organs will be conducted to support the analysis of the domestic law. The research will also review journal articles, books in order to establish a complete picture of how the Ethiopian legal frame work aims at preventing and repressing money laundering.

[48] EU Commission Delegated Regulation Report, supra note 44, p.3.

To achieve the other main aim of the paper, which is assessing the compliance practice of banks, the researcher has employed a qualitative method. The research has focused on gathering and analyzing information from both banks and regulatory organs. As for banks, both private and public banks operating in Ethiopia are considered. For selecting the private banks random sampling technique is selected, the reason is, that all private banks are almost at a comparable level of development.[49] Therefore, random samples are used to avoid bias that might affect the research finding. Through the technique of random sampling, the researcher has selected eight private banks out of sixteen.[50] This sample size amounts to 50 percent of the overall private banks operating in Ethiopia, and, thus, it can be comfortably regarded as representative for the purpose of this research.

With regarding to the Commercial Bank of Ethiopia, purposive sampling is employed as it is the only government owned commercial bank in the country.[51] The other organs, responsible to supervise the anti- money laundering activities of banks are the FIC and the NBE. The research examines data collected from both of these organs.

Questionnaires and interviews were employed as specific data collection tools. This methodology is necessary to answer the question of assessment of the practice of selected banks concerning their compliance with anti-money laundering laws. So, to clearly depict the practice of those banks, interview is made with the two regulatory organ officers, that is the FIC and the NBE. The reason why the researcher opted this method is there is a possibility to get more data in greater depth, even though this could be time consuming.[52] The interview is conducted with officers of regulatory organ, i.e. NBE[53] and FIC.[54]

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[49] Bezabeh, A and Desta, A 'Banking Sector Reform in Ethiopia' 3 *International Journal of Business and Commerce* 8 (2014), p.26.

[50] These are: Abay Bank, Abyssinia Bank, Dashen Bank, Nib International Bank, Oromia Cooperative Bank, Oromia International Bank, Wegagen Bank, and Zemen Bank.

[51] *Supra note*, 49.

[52] Kothari, C *Research Methodology: Methods and Techniques*, 2nd.ed. (New Age International publisher, 2004), p.99.

[53] National Bank of Ethiopia is the regulatory authority mandated to supervise the compliance of financial institutions as per article 2(30) and has duties and powers enshrined under article 22 of proclamation No. 780/2013.

[54] As per article 6(1) of Regulation 171/2009 the center has the duty to exercise power and duties given under proclamation 780/2013, though the directive was adopted before the revision of the proclamation article 2(21) of the same proclamation referred the directive while defining the term "center". So, the center has responsibility to receive report from concerned bodies about suspicion of money laundering.

1.5. Review of the Literatures

The subject of money laundering is not a novel at the same time fully discussed issue under the Ethiopian legal tradition. There are some theses written on the subject of money laundering. For example, Biniam Shiferaw did his LL.M. thesis on title "Money Laundering and Countermeasures: A Critical Analysis of Ethiopian Law with Specific Reference to the Banking Sector".[55] In his study, Biniam employed a doctrinal research method to achieve the objective of his paper. In his paper, finally, he concluded that the Ethiopian anti-money laundering law is not fully-fledged and is not compatible with some internationally accepted principles.[56] However, the researcher did the analysis of this anti-money laundering law with regards to the sufficiency and comprehensiveness of the Ethiopian anti-money laundering law and to value the law as to its compatibility with the internationally accepted principles. And the analysis made by this particular research is on proclamation no. 657/2009 which is repealed by the current proclamation even though our aim is to examine the sufficiency of the law to avert the danger. There is also another article written by Biniam Shiferaw titled Crimes should not Pay: Confiscation under the AML/CFT Law of Ethiopia but the author discusses the adequateness of anti-money laundering law specifically provisions related to confiscation of asset.[57]

Besides Biniam, there is also another thesis written by Ashenafi Lakew on the implementation of AML/CFT regime. The thesis is entitled "Anti Money-Laundering and Countering the Financing of Terrorism Regime: Practices by the Ethiopian Financial Intelligence Center".[58] The researcher employed qualitative research methodology; specifically, the author used questionnaires and interview. Ashenafi's thesis assesses the implementation of AML by FIC and eight selected commercial banks in Addis Ababa. The research finding is the FIC as well as selected commercial banks' practice of complying with the rules of the anti-money laundering legislation is good despite of challenges that the center may face from different organs such as lack of cooperation from the law enforcement agencies and regulatory organs. However, this author is of the opinion that the above works do not fully address the objectives that this paper aims to achieve.

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[55] Shiferaw, B 'Money Laundering and Countermeasures: A Critical Analysis of Ethiopian Law with Specific Reference to the Banking Sector' (2011) LLM Thesis on file at Addis Ababa university.

[56] The FATF recommendations were the basis to examine the adequacy of Ethiopian AMLL.

[57] Shiferaw, B 'Crimes should not Pay: Confiscation under the AML/CFT Law of Ethiopia' (2015).

[58] Lakew, A 'Anti Money-Laundering and Countering the Financing of Terrorism Regime: Practices by the Ethiopian Financial Intelligence Center' (2015) LLM Thesis on file at Addis Ababa university.

1.6. Delimitation of the Study

The study primarily aims to analyze the adequacy of Ethiopian anti-money laundering law to thwart money laundering and assess the practice of the same in selected banks (both private and government owned). Geographically, the research is limited to those banks which are found only in Addis Ababa. Although, Ethiopia as a whole is designated as vulnerable for money laundering, the choice to focus on banks located Addis Ababa is justified based on fact that it is a host to large businesses. Moreover, compared to other cities of the country, there is a high concentration of banks in Addis Ababa. The fact that the head-offices of all of the private banks and the commercial bank of Ethiopia are found in Addis Ababa further justifies this choice. In addition, the compliance office mandated to train employees of the bank, made STR and CTR reports is located in the head offices.

In addition to banks, several institutions may fall under the category of the financial institutions, however, owing to different feasible constraints such as resources the scope has to be limited but without compromising the quality of the research. To this end the researcher opts to conduct the research on practice of banks as they have more vulnerable services for laundering and they are more expanded business in Ethiopia than the other financial institutions.

1.7. Objective of the Study

As money laundering can cause irreparable damage on the country as well as banks through deviously appear legitimate ill-gotten assets. Examining the adequacy of the law to fight money laundering and scrutinize the existing practices of anti- money laundering tools by banks is the main concern of the study.

1.8. Significance of the Study

The paper has the following illustrative significances:

- It serves as a reference material for both academicians and practitioners as the issue of money laundering is rarely studied in the country
- It initiates other fascinated researchers to carry out more extensive studies in the area; or
- It initiates the concerned organizations/regulatory bodies to reassess AML existing practices and adjust their concerns such as FIC and NBE

- It provides awareness as money laundering offences and techniques are complex

1.9. Structure of the Study

This being the first chapter, this thesis has four chapters. This chapter has introduced the research by presenting the statement of the problem and by framing the questions and the methods to answer them. It has also delineated the scope of the study. The second chapter discusses mainly the domestic laws applicable for fighting money laundering in Ethiopia. The third chapter scrutinizes the adequacy of Ethiopian to regulate and fight the threat of money laundering. It also examines how banks are in practice complying with the law in taking measures to prevent the commission of money laundering by abusing their system and the existing practice of banks regarding anti money laundering. The fourth chapter concludes the study by summarizing the main findings and also by providing recommendations.

Chapter Two

The Ethiopian Legal Framework Governing Anti-Money Laundering Committed via the Banking Sector

2.1. Introduction

Money laundering is the end result which is aimed by criminals to be achieved after committing predicate offences.[59] The fact that profit is the main aim, and to avoid confiscation it has to be changed its nature via laundering. Countries respond to this great threat by stressing on the profit disrupt the problem from its source.[60] This approach has got acceptance as it is logically correct to believe that there is highly unlikely that the criminal would persist in doing the same acts if there is no way to use those profits due to his/her inability to make it appear as legal profit. The same token, Ethiopia also promulgates its own domestic legislation to thwart money laundering and becomes party to different international treaties adopted to this end. Therefore, next, the research discusses the major international legal instruments enacted with the aim of fighting money laundering to with Ethiopia become parties to it.

2.2. International Legal Frameworks

The main purpose of this section is to give a brief overview about international and regional anti money laundering initiatives to which Ethiopia is a party to it. Some of these international legal responses are binding and some of them legally speaking is not binding, however, there is *opinio juris* element from the side of the state to be bound by its term.

The UN Convention on Narcotic Drugs which was adopted in 1961 and later amended by 1972 protocol and the 1971 UN Convention on Psychotropic Substances was the principal law that regulate drug trafficking. However, it was gradually becoming apparent that this conventions were inadequate to deal with the range of complex issues rose by modern international drug trafficking;

[59] Leong (2007), supra note 9, p.30.
[60]Angela, I 'Money Laundering', 6 *South African Mercantile Law J*ournal (1994), p. 302; See also James, R *Transnational Criminal Organizations, Cybercrime, and Money Laundering* (1999, CRC Press), p. 65; Stessens, G *Money Laundering: A New International Law Enforcement Model* (Cambridge University Press, 2003), p.3.

[61] this resulted in the adoption of the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances or alternatively known as Vienna Convention. The Convention entered into force on November 11, 1990. To date 190 countries are parties to the 1988 Vienna Convention and Ethiopia become party on October 1994.[62]

Whilst the main rationale for adopting the 1988 Vienna convention was suppressing the trafficking of drugs, at this time the international community was also aware of the fact that the main factor that helps criminals to persist their evil action was the huge sum derived from drug trafficking. So, to avoid the problem of drug trafficking from the source, targeting the profit also makes the weapons aimed at alleviating drug trafficking meets its goal of hitting the backbone of the criminal. To this end, the Vienna Convention contains provisions that criminalize the conversion of asset derived from drug trafficking.[63]

The international community also adopted the United Nations Convention against Transnational Organized Crime (also known as Palermo convention) adopted by General Assembly resolution 55/25 of 15 November 2000 as a main international instrument in the fight against transnational organized crime. [64] This instrument plays great role in strengthening war against money laundering by widening the predicate offences. Apart from the proceeds of illicit drug trafficking, it covers the proceeds of all serious crimes.[65] Furthermore, the Convention urges States for the formulation of comprehensive domestic supervisory and regulatory regime for banks

[61]Vienna Convention, supra note 7, preamble para.13 states 'Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences' needs to strength and enhance the existing legal measures.

[62] https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VI-19&chapter=6&clang=_en accessed on May 14, 2018.

[63] Vienna Convention, supra note 7, preamble para. 5 states that "Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels. Also under article 3 (b (I and II)) provides that the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences; shall be criminalized by each state party under its domestic law.

[64] General Assembly resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime and two of its supplementary Protocols.

[65] The convention covers wide range of predicate offences (all serious crimes) as compared with the provisions of Vienna convention which contains only drug crimes. Serious crime includes an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

and other financial institutions, as well as any entities particularly susceptible to being involved in a money-laundering scheme. Ethiopia becomes party to this convention on 23 July 2007.[66]

The third international legal response against money laundering is the FATF recommendations. The FATF was established in 1989 by G7 Summit to prevent money laundering. The initial mandate of FATF was limited to fighting money laundering. In doing so, it has developed the most comprehensive set of anti-money laundering standards known as 40 FATF recommendations. Later on, in 2001, FATF indebted to deal with the financing of terrorism and the financing of proliferation of weapons of mass destruction, after the 9/11 terrorist attack against the world trade center and come up with Nine special recommendations targeted at suppressing financing of terrorism. As more countries accepted the FATF Recommendations, it became the global minimum standard for an effective anti–money laundering system.[67] In addition the FATF also consisting of Eight FSRBs. [68] The FATF has comprehensive legal framework for fighting money laundering resulted in its recognition as international minimum standard on fighting money laundering and terrorism financing. The FATF task got harder when its recommendations accepted as standards necessary for the work of the IMF and World Bank in 2002.[69]

The last response was the Basel Statement of Principles[70] and Wolfsberg Anti-Money Laundering Principles for Private Banking. [71] The Basel principle is made to prevent perpetration of money laundering by using banks and other financial institutions as intermediaries for either transferring or depositing the ill-gotten funds. Even though the individuals meet at Basel[72] are not

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[66] United Nations Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en accessed on May 14, 2018

[67]It has endorsed by more than 180 countries become universally recognized as the international standard for anti-money laundering and countering the financing of terrorism (AML/CFT). Available at
FATF(2012), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, available at www.fatf-gafi.org/recommendations.html/pdf , p. 7.

[68] FSRBs are task forces with regional jurisdiction that are modeled on the FATF in their mandate, functions, and methods of operation. These are Caribbean, Europe, Asia/Pacific, Eastern and Southern Africa, South America, Eurasia, the Middle East and North Africa, and Western Africa.

[69] The decision acknowledged the FATF Recommendations as an international standard for money laundering control and prevention; and included an assessment of compliance with this standard in financial sector assessment programs that the Bank and the IMF carry out.

[70] The Basel statement of principles of 12 December 1988, issued by the Basel committee on banking regulation and supervisory practices available at https://www.scribd.com/document/339353825/Basel-Statement-of-Principles accessed on April 13, 2018.

[71] The Principles were initially formulated in 2000 (and revised in 2002) to take into account certain perceived risks associated with private banking.

[72] The Basel committee of banking supervision participated were twelve western countries. These are Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Sweden, Switzerland, the UK and the USA.

entrusted with the power of issuing principles, to avoid its nefarious effect of money laundering on the nation as well as the institutions itself they found it necessary to take action against money laundering. The Wolfsberg anti-money laundering guidelines specifically designed for private banking. Private banking involved a unique relationship with clients in which banks tended to focus very strongly on maintaining the confidentiality of clients' banking details. This has the potential to undermine attempts to investigate money laundering, particularly where numbered, unnamed accounts are utilized.

2.3. Ethiopia's Anti-Money Laundering Legislation

Ethiopia had enacted its first comprehensive criminal code in 1957, i.e. the Penal Code of 1957.[73] Nevertheless, this Code did not contain a provision on money laundering. The concept of money laundering was introduced in Ethiopia following the promulgation of the 2004 Criminal Code of Ethiopia.[74] The Criminal Cod explains the crime by enumerating the requirements for an act to be a money laundering offence. As it can be inferred from the provision, money laundering is "the process of disguising the true origin of ill-gotten money or property into seemingly legitimate money or property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime or knowingly alerting, remitting, receiving or possessing such tainted money."[75] This provision contains three basic circumstances, namely, *i*) disguising the source of money derived from corruption, drug trafficking, arms smuggling or other serious crimes through investment, transfer or remission; [76] *ii*) aiding in concealment of proceeds of crime; [77] and *iii*) acquisition, use and possession of property or money while knowing the unlawful source.[78]

Predicate offences for money laundering are all serious crimes. For the purpose of punishing money laundering, serious crime means a crime punishable with rigorous imprisonment of ten or more years or where the amount of money or the value of the property involved in the

Their primary function was to maintain overall the financial stability of the banking system rather than to ensure that individual financial transactions are legitimate.

[73] The 1957 Penal Code of the Empire of Ethiopia, proclamation No.158/1957, Extraordinary Issue No. 1 OF 1957 of the Negarit Gazeta, 23 July 1957, *entered into force* 5 May 1958.

[74] The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, *entered into force* 9 May 2005, Art. 684, [herein after FDRE Criminal Code].

[75] Ibid.

[76] Ibid, Art. 684(1).

[77] Ibid, Art. 684(5).

[78] Ibid, Art. 684(2).

crime is at least fifty thousand Birr. It is true that as the code follows different definition for the term serious crime for different criminal acts. [79] Nonetheless, it is not clear why the Criminal Code uses a different threshold for defining serious crimes in case of money laundering than what is normally established. Normally, the Code recognizes as serious any crime punishable by rigorous imprisonment for a period of one to twenty-five years. [80]

The Ethiopian law's deviation from the common definition of 'serious crimes' provided under Article 108 of the Criminal Code, appears to be a deliberated deviation from what the FATF requires in this regard. In this regard, the FATF requires the predicate offences be all serious offences. The difference lies on the question of what serious offence constitutes. Under its interpretive note 3 paragraph 3, the FATF states that serious crimes comprise crimes punishable by a maximum of more than one-year imprisonment or for those countries with a minimum threshold in their legal system predicate offences should comprise offences which are punishable with a minimum penalty of more than six months imprisonment.[81] Therefore, the FDRE Criminal Code contains only few predicate offences and is not compatible with the minimum threshold required by the FATF.[82] As also argued by Biniam, the definition given for the word serious crime under the FDRE Criminal Code is too narrow; because, it exempts offenders of different crimes that generate huge amounts of money like trafficking in women for prostitution from being prosecuted on money laundering and other similar acts as they did not fall under the category of serious crimes unless the profit derived go beyond 50,000 Birr. [83]

2.3.1. **Special Anti-Money Laundering Proclamations**

To cope up with the changing world phenomena, the Ethiopian government has promulgated in 2009 a specific proclamation aimed at effective implementation of the Criminal Code's provision on the prevention and repression of the crime of money laundering.[84] As such, this new proclamation did not come up with a new definition for the crime of money laundering; rather, it

[79] Ibid, Art. 684(7). For instance, 'serious crime' for the sake of crime of conspiracy refers crimes which are punishable with rigorous imprisonment for five years or more are taken as serious crime.
[80] Ibid, Art. 108(1).
[81] FATF (2012), supra note 22, Interpretive Notes to the FATF Recommendation 3, p.34.
[82] The Ethiopian case, however, is ten or more years of imprisonment or if the amount of money or property involved is more than 50,000 birr without regard to year of imprisonment.
[83] Shiferaw (2011), supra note 53, p. 45.
[84] Proclamation No. 657/2009, supra note 32, preamble para. 2 provides that 'it has become imperative to legislate special law to have an effective implementation of the provisions of the Criminal Code criminalizing money laundering as an offence.'

cross-referred to Art 684 of the FDRE Criminal Code. Therefore, from a definitional point of view of the crime, the proclamation had introduced no change.

Since proclamation no 657/2009 was not comprehensive enough, Ethiopia promulgated Proclamation No. 780/ 2013 [85] which is the law currently enforce in relation to money laundering. Under this law money laundering refers to:

> an offence, or any person who knows or should have known that a property is the proceeds of a crime and who converts or transfers the property for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions; conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to the property; acquires, possesses or uses the property; or participates in the commission, conspires to commit, attempts to commit or aids, abets, facilitates or counsels the commission of any of the elements of the offence.[86]

Under this provision, money laundering refers to the act of obscuring the true source of the criminal proceeds to make them appear as legal. Compared to its predecessor, the current law bestowed a wider definition of money laundering, which includes acquisition, possession or use of the property which at the time of acquisition, possession or usage of that property, the individual knows or should have known that the thing is the proceeds of a crime. [87] Counseling, assisting any person involved in the commission of that offence and even conspiracy to commit money laundering is also an offence and punishable.[88] The definition given for the crime is broad but the issue of terrorism financing is not clearly addressed. The current anti-money laundering law of Ethiopia has come up with some new improvements. For example, inclusion of legal persons to be punished in case of money laundering (corporate liability) is included. [89]

[85] Ibid, Para. 3.
[86] Proclamation No. 780 /2013, supra note 35, Arts.2(10) and art. 29.
[87] Ibid, Art. 29(1(c)).
[88] Ibid, Art. 29(1(d)).
[89] Ibid, Art. 2 (31).

I. Elements of the Crime of Money Laundering

For successfully fighting every crime having legal ground is the first step. In doing so, the specific act to be regarded as a crime has to fulfill three basic elements of crime. The maxim '*actus non facit reum nisi mens sit rea*' makes it clear that, *"no man may be found guilty of crime and therefore legally punishable unless in addition to having brought about a harm which the law forbids, he had at the same time a legally reprehensible state of mind"*. These are legal element, *mens rea* and *actus reus*. When it comes to legal element, the act of money laundering is criminalized by the proclamation under article 29.

The second element of crime is a mental element (*mens rea),* in the FDRE criminal code governing the mental elements contains two grounds to be punishable i.e. intention[90] and negligence.[91] However, intention can be direct or indirect intention. As per Article 29 of the Proclamation, 'any person who knows or should have known that the property is proceed of crime and who transfers or converts the property to conceal its illicit origin…' is punishable for committing money laundering. [92] From this provision, it is clear that intent to conceal the illicit asset is necessary to establish a criminal liability.[93] As the person is aware of his act and also wants the result followed his acts of transferring or converting the illegal asset which is the concealment of the dirty asset. Article 29(3) dictates that the mental element i.e. intent, knowledge or drive for committing money laundering is inferred from the objective circumstances. This means the mental element of the crime of money laundering is presumed as fulfilled when the prosecutor proofs the *actus reus* element or conduct of conversion or transfer of the property.

Negligence also suffices as a mental element required to punish money laundering, as can be inferred from the above provision. The use of the phrase 'should have known that a property is a proceed of crime' indicates that an offender need not have specific knowledge of the crime. Instead, negligence is sufficient to establish criminal liability. Even more, by using the phrase,

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[90] FDRE Criminal Code, supra note 72, Art. 58 provides 'A person is deemed to have committed a crime intentionally where: (a) he performs an unlawful and punishable act with full knowledge and intent in order to achieve a given result; or (b) he being aware that his act may cause illegal and punishable consequences, commits the act regardless that such consequences may follow.'

[91] Ibid, Art. 59 provides 'A person is deemed to have committed a criminal act negligently where he acts: (a) by imprudence or in disregard of the possible consequences of his act while he was aware that his act may cause illegal and punishable consequences; or (b) by a criminal lack of foresight or without consideration while he should or could have been aware that his act may cause illegal and punishable consequences. But negligence is punishable if the law expressly provided so.'

[92] Proclamation No. 780/2013, supra note 35, Art. 29.

[93] Ibid, Art. 29(3) reads 'ለዚህ አንቀጽ ንዐስ አንቀጽ (1) ድንጋጌ አፈፃፀም ሲባል፡- ሀ) የተከሳሽ የሀሳብ ክፍል ወይም ወንጀልን ለመፈጸም የተነሳበት ዓላማ ከተጨባጭ የሁኔታዎች ክስተት በመነሳት ግምት የሚወሰድበት ይሆናል፤

'should have known' the law considers sufficient the existence of a mere negligence, which, as opposed to conscious negligence, does not require the existence of awareness as to the fact that the property is a proceed of a crime.[94]

The last element, *actus reus*, of money laundering is the act of conversion or transfer. The act of a person who fulfill the above three elements is liable and punishment for crime of money laundering. Money laundering is a crime punishable when it is committed by both natural and juridical persons. The fact that the law recognizes corporate criminal liability for money laundering is significant in the sense that a corporation (including financial institutions) are at the forefront in the commission of a crime and the rise of organized criminal groups, for which punishing natural persons may not bring an end to the crime as it does not affect that corporate interest in continuing laundering dirty money. Any person convicted of money laundering by fulfilling the necessary legal requirements, is subjected to serious criminal punishment.

II. Predicate Offences

When it comes to the predicate offences, the new Ethiopian law defines it as 'any offence capable of generating proceeds of crime and punishable at least with simple imprisonment for one year'.[95] It goes even further than the standards of the FATF. Suppression of financing of terrorism, as already discussed earlier, was not the initial mandate of the FATF. In 2001, the FATF came up with 9 special recommendations against financing of terrorism. [96] The triggering factor behind these recommendations was the September 11, 2001 terrorist attack against the World Trade Center. The attack results in immediate legal responses from concerned organs. Following the same international trend, Ethiopia also criminalized terrorism financing under its Anti-Terrorism Proclamation. The proclamation prohibits rendering support for terrorism in any form. The Anti-Money Laundering Proclamation also criminalize the same act more broadly who gave support for terrorists or terrorist organization directly or indirectly provides or collects fund with the intention or knowledge that it may be used for carrying out terrorist activities is punishable with rigorous imprisonment from 10 to 15 years and with fine not exceeding Birr 100,000. [97] In this respect, as

[94] For details on the types of negligence, see in general Article 59 of the FDRE Criminal Code.
[95] Ibid, Art. 2(4).
[96] October 30, 2001 FATF decide to adopt special recommendation to provide legal measures to criminalize and prosecute persons who engage in the financing of terrorism.
[97] Proclamation 780/2013, supra note 35, Art.31.

the researcher mentioned in the above paragraph, it is not clear whether terrorism financing is a predicate offence or only an independent crime under the Ethiopian law.

Though, it may be possible to say that terrorist financing can be included in the definition given for predicate offences.[98] Given the fact that money laundering is all about making ill-gotten asset appear legitimate by tunneling it through various process, the question with regard to terrorist financing is: Is there an asset to be laundered in this case? Is there any way that the asset will appear legal? Terrorism financing is an offence that results from his/her act of supporting either materially or morally to the terrorist or terrorist organization. The asset may come from the individual's legal or illegal asset. When it comes to the first one, it does not fall under the category of money laundering because to be liable for money laundering the income shall be derived out of criminal acts.

The second scenario, when the person funds the terrorists from ill-gotten assets, also it does not fulfill the criteria of obscuring or concealing the true nature and makes it reappear as licit because the individual did other criminal acts by using the criminal asset. Therefore, terrorism financing either from legal or illegal income would not make the crime predicate offence as there is no income to be derived out of it.

2.3.2. Implementing directives and regulations: Organs Responsible to Supervise the Enforcement of the AMLL

The Ethiopian AMLL established institutions responsible for overseeing the enforcement of anti-money laundering measures. A closer look at the proclamation reveals that a considerable emphasis has been paid to governing how financial institutions (banks) may or may not conduct financial transactions in a manner aimed at avoiding use of banks in the commission of money laundering. In that sense, banks are considered the principal institutions liable for applying different anti-money laundering measures.

The law has regarded the establishment of compliance regulatory organs as indispensable in fighting money laundering, in particular in assisting and supervising banks' effort to implement preventive measures. In implementing the Proclamation, Council of Ministers' have in 2009, established, The FIC, by Regulation no. 171/09 as a supervisory organ. The FIC has the power of

[98] Ibid, Art. 2(4). Terrorist financing is punishable with rigorous imprisonment from 10 to 15 years and with fine not exceeding Birr 100,000 it may be argued that terrorist financing is predicate offence to money laundering.

ensuring the compliance of banks as per the requirements set in the proclamation.[99] Its powers include raising public awareness on matters of money laundering and terrorist financing as well as receiving and collecting information from banks. [100]

The FIC is established with the aim of organizing and analyzing information received from banks in relation to money laundering and terrorism financing. The regulation establishing the center provides for the establishment of branch offices whenever necessary.[101] However, there is only one center based in Addis Ababa for analyzing and investigating cases allegedly involving money laundering and financing of terrorism. This nevertheless appears to be an inadequate implementation of the law as a single center may not be able to receive, investigate, and analyze reports relating to money laundering and the terrorism financing all over the country.

Besides, receiving and analyzing reports, the FIC conducts workshops for banks on how to identify suspicious transactions.[102] It also works closely with the office of Attorney General (used to be known as Ministry of Justice) to improve the prosecution of money laundering cases.[103] The FIC has applied for a membership with the Egmont Group, the group that was established in 1995 with the aim of sharing and fostering the implementation of domestic programs in combating money laundering.

The regulatory organs established to analyze and control information received from banks can be categorized into three models, law enforcement model, administrative model or judicial model and the FIC of Ethiopia fall in the second category. The center is independent, which means has its own legal personality[104] and got budget allocated from the government and is accountable to the prime minister. Following this approach may result in undue pressure from the side of the government as money laundering and politics had links.[105]

The National Bank of Ethiopia (NBE), a body that is responsible to control the overall activities of banks in the country, also takes part in the effort to prevent banks' involvement in money laundering. In fact, the NBE is authorized to punish banks or their employees in case of failure to properly comply with the AMLL. In doing so, it may receive the relevant information from the

[99] Ibid, Art.13.
[100] Ibid.
[101] FIC Establishment Regulation, supra note 39, Art. 4.
[102] Aregawi D, Anti-money laundering and countering terrorism financing in Ethiopia (2012),p.57.
[103] Ibid.
[104] Proclamation No. 780/2013, supra note 35, Art. 16.
[105] Shiferaw (2011), supra note 53, pp. 98-99.

FIC or conduct its own observation.[106] In this regard, the FIC has an obligation to cooperate with the NBE.[107] The punishment ranges from written warning or ordering to comply with specific obligation to revoking license or suspend business operation. It can also bar individuals from getting employed in similar businesses or profession depending upon the gravity of the circumstances. Further discussion will be made in the Chapter three below.

[106] Proclamation No. 780/2013, supra note 35, Art. 16.
[107] Ibid, Art. 22(2(c)).

Chapter Three

Responsibilities of Banks in Combating Money Laundering and Its Enforcement in Ethiopia

3.1. Introduction

This chapter delineates the responsibilities of banks to fight commission of money laundering by using their system. These responsibilities aimed at preventing the abuse of banks by the criminal for criminal use. In the past, secrecy rule of the banks created great opportunity for criminals to hide their illegally amassed asset in banks. However, in the 1980s due to the development of the FATF recommendations and states individually started to abolish bank secrecy rule to fight economic crimes such as money laundering. Currently, the anti-money laundering discourse makes it clear that bank secrecy cannot be as strict as it used to be. Now it allows exception with the aim of fighting the menace of money laundering.

Abolishment of bank secrecy rule by the proclamation plays important role in hunting the proceeds of the crime. Banks are not liable for disclosing customer's information for successfully follow the money and punish the perpetrator. To this end, disclosing the transaction of customer appears suspicious and also keeping every transaction made by the customer is mandatory. The Ethiopian AML indebted the financial institutions in general and banks in particular with many preventive measures from unwittingly being used for cleaning dirty asset. Next, with the objective of achieving one of the main objectives of the study, the researcher scrutinizes the adequacy of the Ethiopian anti-money laundering law in light of the responsibility of banks.

3.2. The Responsibilities of Banks to Thwart Money Laundering: Critical Appraisal

3.2.1. Implementation of Risk-Based Approach

Under the FATF, countries are required to follow risk-based approach while fighting money laundering. This approach enables countries to identify their risk and level the respective risk in order to take effective action to mitigate it in other words national risk assessment shall be made. Risk-based approach has the advantage of allocating the scarce resource to the customers with

highest money laundering risks[108] which in turn enables banks to prevent the commission of money laundering via them efficiently. According to this approach, banks shall assess the risk posed by each customer as high and low risk by having types of customer,[109] types of business he is doing the product and geographical location of the customer as a basis for such categorization.[110] Depending upon their risk level, the implementation of appropriate mitigation measures differs. The review of the risk rating for high risk customers may be undertaken more frequently than for other customers.[111]

As already stated above, countries are tasked with conducting a national risk assessment of the money laundering and financing of terrorism risks posed in their respective countries. Accordingly, countries shall identify and assess the money laundering and financing of terrorism risks on a continuous basis. National risk assessment has three benefits. These are: notifying changes to the country's anti-money laundering laws, regulations and other measures, helps for implementation of risk-based approach and lastly, it provides banks and other responsible institutions information which is important to them to make their own risk assessment. [112]

Conducting risk assessment is important to have a common understanding of the available risk of money laundering in the country by different stakeholders and to work on such identified risk which has in turn implies on use of scarce resources. In Ethiopia, since its establishment, the FIC has been doing its duty of identifying the country's risk of money laundering. To this end, it has collected relevant data. However, the ESAAMLG alleged that the collected data has lapsed many years and may fail to depict the current risk and ordered for review of collected data.[113] The center responded positively by deciding to update the data collected to explicate the up to date risk and vulnerabilities of Ethiopia for money laundering. The national risk assessment of Ethiopia finalized at the end of 2016 though not made publicly available as to the identified risk areas.

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[108]FATF (2012), supra note 22, Recommendation 1 and interpretive note to recommendation 1.

[109]For money laundering politically exposed person or his/her close relative and family, and certain civil servant will not have same risk of money laundering. The first individual will have high risk of committing laundering. So, the institutions shall have made enhanced customer due diligence while dealing with him than the civil servant.

[110] Parkman, T "*KYC and Risk Based Approach" in Mastering Anti-Money Laundering and Counter Terrorist Financing: Compliance guide for practitioners*" (Pearson, 2012), P.192.

[111]Federal financial Institutions Examination Council Bank Secrecy Act Anti-Money Laundering Examination Manual available at https://www.ffiec.gov/bsa_aml_infobase/pages_manual/manual_online.htm accessed on April 12, 2018.

[112] FATF, *Guidance on National Money Laundering and Terrorist Financing Risk Assessment* (2013), pp.7-8.

[113] ESAAMLG (2015), supra note 23.

3.2.2. Know Your Customer (KYC)

To combat money laundering, every institution with risk of manipulation by criminals, the starting point is knowing and identifying their customers. The aim in this respect should be the elimination of anonymous accounts and the identification of hidden principals or beneficial owners. Institutions should establish the actual ownership of accounts and should refuse to enter into transactions with clients who fail to provide proof of their identity. Institutions should be required to obtain proof of a client's identity when a business relationship is established or a single transaction is concluded with that client. KYC has two basic elements; the first one is customer identification whereas the second is CDD.[114] Customer identification for natural person involves.[115]

There are also separate requirements needed for identifying legal persons such as, name, legal form and proof of existence, some form of official identification number such as tax identification number (if available), address (which includes country, City/Town/*Wereda*/ Kebele in which the head office is located and if available, house number, mailing address, telephone number and fax number) and identification of those who have authority to operate the account.[116] These relevant information have to be collected by the respective banks while they start relation with customers for both natural and legal persons.[117] Apart from collecting the above specified piece of information; banks shall verify the validity of the information provided by the customer.[118] But the appropriate mechanism necessary for verification is not indicated by the law. However, the simplicity with which fraudulent documents can be obtained may make things easier for identity fraud in Ethiopia and this may bypass the objective of KYC procedure. The law imposes a duty to verify the veracity of the required information by the customer on financial institutions in general and banks in particular. But the absence of a national identity system will contribute a lot and the manner in which the required proof is to be obtained should be prescribed by regulation.

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[114] Sullivan, K *Anti–Money Laundering in a Nutshell: Awareness and Compliance for Financial Personnel and Business* (Apress, 2015), p.71.

[115] Financial Anti-Money Laundering and Countering the Financing of Terrorism Compliance Directives Number 01/2014, herein after FIC CDD Directive, Art.16 (1) lists necessary requirements such as: given or legal name and all other names used; permanent address; telephone number, fax number and e-mail address, if available; date and place of birth, if possible; nationality; occupation, public position held and/or name of employer; type of account; and signed statement certifying accuracy of the information provided.

[116] Ibid, Art. 17 (2(C)).

[117] Ibid, Art. 16 and 17.

[118] Ibid.

The second element, CDD, is also among the preventive measures to be employed by banks to prevent or at least mitigate the commission of money laundering and helps to protect the reputation of the institution.[119] Banks have to know who their customers are. In other words, they are responsible for verifying the identity of their customers and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. As these institutions are obliged to adopt Risk-Based Approach to categorize their customers based upon their risk for this crime; and by considering their risk level banks should implement adequate CDD measures.

CDD is not one-time obligation, but the institution shall take necessary measures to review and update customer's information after a certain interval.[120] Depending on the updated information, the risks associated with these accounts shall have to be assessed again without any delay. The more the risk of the customer the most frequent review shall they have to use to avert the danger.

As pointed out by the FATF and other regional bodies established for suppressing money laundering and terrorist financing, some clients such as PEPs [121] should be subjected to ECDD measures as they are more vulnerable to corruption and other crimes. The banks while establishing relationships or maintaining the existing relation with PEPs, it has to be made with high caution. FATF dictates that the same measure shall also be applied to their close family members and close associates without defining who those close family members and close associates are.[122]

The same works in Ethiopia, where a customer is identified as PEP, the bank must request the approval of senior management before it establishes a business relationship with such customer. In the event that the bank establishes a business relationship with PEP, the institution must take reasonable measures to establish the source of the PEP's wealth and conduct ongoing enhanced monitoring of its relationship with the PEP. PEPs in Ethiopia mean any natural person

[119] Stensens, G *Money Laundering: A New International Law Enforcement Model* (Cambridge University Press, 2003), p. 146.
[120] Kevin S, *Anti–Money Laundering in a Nutshell: Awareness and Compliance for Financial Personnel and Business* (2015), p.71.
[121] International legal instruments show that there is no consistent terminology or comprehensive definition of PEPs. Even they use different phrases such as Politically Exposed Persons, Senior Public Official. Politically Exposed Persons (PEPs)refer to "Individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials."
[122] FATF (2012), supra note 22, Recommendations 12.

who has or have been entrusted with prominent public function in any country or international organization and includes members of his/her family and any person closely associated with.[123]

However, the Ethiopian AML does not give the definition of "family members and close associates" that may fall under this domain but simply included under the definition of PEPs. But the basic question in this regard is 'do these PEPs are duly informed by those responsible institutions to made due care.' Even assuming that those public officials are known by those banks, but what about their close relatives and families? This gap on the side of the law will enable those PEPs to clean their ill-gotten asset by using their relatives and even family members, banks will not also able to conduct the proper CDD measures as the risk of these individuals is not clear. And it may be irrational to expect a senior government official to accumulate and transact huge amount of money, which is not commensurate with his/her monthly income in the presence of asset disclosure requirements for public officials. This issue is intensified by the fact that the asset disclosure proclamation defines 'family' to include 'spouse, dependent child under the age of 18, adopted children and spouse in irregular union. So, he/she can accumulate the asset in his/her child who is above 18. Therefore, it is pointless to oblige financial institutions in general and banks in particular to make enhanced due diligence measures on PEPs as well as their families and close relatives without notifying them who they are.

The other issue worth of discussing under customer identification is identifying customers from high risk jurisdictions. FATF stipulates that financial institutions afford special attention to their business relationships and transactions with both natural and legal persons from countries which fail to comply sufficiently with the FATF Recommendations.[124] The background and purpose of these business relationships and transactions must be examined when their business or legal purpose is not apparent. The findings of the examination must be recorded in writing and be made accessible to the competent authorities. In Ethiopia also, customers from high risk jurisdictions are subject to ECDD measures.[125] This is due to lack of proper anti-money laundering regulation in their country and these customers may pose danger to Ethiopia. The FIC is responsible to provide lists of these jurisdictions for the banks in order to carry out what is expected from them, but in the CDD directive the FIC only include the issue under categories that need

[123] Proclamation 780/2013, supra note 35, Art. 2 (11).
[124] FATF (2012), supra note 22, Recommendation 21.
[125] FIC CDD Directive, supra note 112, Art.12(b(i).

ECDD measure and/or approval of senior management approval to establish relation with the customer. [126]

3.2.3. Reporting of Suspicious Transactions (STRs)

STR is a fundamental element of international anti-money laundering systems, Banks are with the responsibility to report suspicious transaction made by customers. Reporting would facilitate the detection of predicate offences and consequently prevent and/or reduce crime. It is also undeniable that compliance with AML laws would protect the banks' reputation and integrity. All suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction. As some authors said, 'suspicious transaction is the backbone of preventive measures under the FATF Standard.' [127]

However, it must be noted that a transaction that appears unusual is not necessarily suspicious. Even customers with a stable and predictable transactions profile will have periodic transactions that are unusual for them. Many customers will, for perfectly good reasons, have an erratic pattern of transactions or account activity. So, the unusual is, only a basis for further inquiry, which may in turn require judgment as to whether it is suspicious or not. The personal judgment of the person who faced with this situation is necessary at this time and the issue of competency to identify whether the money is the proceeds of crime or not needs further training unless it may result in having a lot of unnecessary reports.[128] The FATF interpretative note to Recommendation 20 clarifies that the term criminal activity should be understood as any predicate offense for money laundering, as defined by the national laws of the individual countries.[129] Therefore, banks shall notify, the FIC, established for receiving and analyzing suspicious report if they suspect that the money is proceed of any crime to which the respective nation categorize it as a predicate offence.

In this respect Ethiopian AML law with regards to suspicious transaction, oblige banks to made report made its report on mere suspicion. As already stated above, the problem of this reporting method is that reporting institution in their quest to comply with the law will send false positive reports to the financial reporting center and overwhelm it with unnecessary reports. In this

[126] Ibid.
[127] Braun, J et.al 'Drivers of Suspicious Transaction Reporting Levels: Evidence from a Legal and Economic Perspective' 2 *Journal of Tax Administration* 1 (2016), p.98.
[128] Yusarina (2015), supra n. 15, p. 10.
[129] FATF (2012), supra note 22, Interpretive note to Recommendation 20, para. 1.

regard, the ability of the frontline officers to assess money laundering risk given their existing knowledge and skills raises the issue of competency and begs the question of the necessity to have consistent trainings for those individuals with responsibility to assess the risk of money laundering lies on the shoulder of the regulatory organ established to undertake this task.

In many jurisdictions, it is the compliance officer with the power of the reporting any suspicious transaction to the authority. The responsibility to ensure compliance with anti-money laundering rules is a relatively new function in the banks. Therefore, the employees are obliged to work diligently with high precaution of identifying and preventing the commission of money laundering by using banks. In case when the frontline officers fail to detect posed by each customer used the services of the institution other remedy is devised by the law, i.e. compliance officer to analyze transactions made by customers and report will be made by this individual when there is suspicion. Making the compliance officer to report for suspicious transaction has advantage, as it creates an opportunity to assess before reporting to the authorities would reduce the number of low risk reporting. In this regard the AMLL takes good move.

3.2.4. Record Keeping

Maintaining record is important for both prevention and detection of money laundering and terrorist financing purposes. The record shall consist full customer identification information, account opening forms, copies of identification documents, business correspondence and other relevant details. This record maintenance helps to detect those involved and provides a financial trail to help competent authorities pursue those involved. Putting differently, it serves as evidence for prosecution of criminal activity.[130]

FATF required banks to keep all records for at least five years after the termination of the business relationship or after the date of the occasional transaction. But the period of retention of the recorded information may be extended depending up on the domestic regulation. Article 10 of Proc. 780/2013, requires retention of the record for at least 10 years from the date of the attempt or execution of the transaction, and in case other laws require maintaining of the record for longer

[130] Proclamation No. 780 /2013, supra, n, 35, Art. 55.

periods, such laws have effect. [131] This move on the side of the law enables the country to successfully fight money laundering.

3.2.5. Tipping Off

Employees of banks who are with the knowledge of report of suspicious transaction shall keep the information in secret.[132] This prohibition is necessary for the preventing loss of evidence and possible interference in the investigation process. But this prohibition is not without any exception; divulging information between and among directors, officers and employees of the financial institutions and appropriate competent authorities regarding suspicious money laundering or financing of terrorism is allowed. [133]

Tipping off is criminal act, but the FATF advised countries stating that while they criminalize tipping off it should be made in due care. The criminalization should not adversely affect the anti-money laundering struggle by imposing undue fear on professionals such as bankers. For example, a banker who conducts its CDD obligations may unintentionally tipped off the customer. However, this should not be at the same time a scapegoat for gross negligence. Therefore, if banks form a suspicion that transactions relate to money laundering or terrorist financing, they should take into account the risk of tipping-off when performing the CDD process. If the bank reasonably believes that performing the CDD process will tipped off the customer or potential customer, it may choose not to pursue that process, and should file STR.[134] Banks should ensure that their employees are aware of, and sensitive to, these issues when conducting CDD.

The Ethiopian AML, too, prohibits disclosure of information that shows reports has been made or will made to that suspected person or third parties is liable and subject to punishment.[135] But this prohibition has to be put in careful way as the reporting persons may fail to do CDD measures while suspicion has arisen as to the link between the money and crime for the fear that he/she will face prosecution because the customer may aware of something bad is going to happen for him while they try to follow the anti-money laundering rules specifically CDD which is

[131] It requires retention of the record for at least 10 years from the date of the attempt or execution of the transaction and incase other laws require maintaining of the record for longer period such laws have also effect.
[132] Ibid, Art. 20(1)
[133] For instance, the Ethiopian anti-money laundering law under its article 20(2) allows communication of acquired information regarding suspicious money laundering or financing of terrorism with the financial institution itself or even for other competent organs.
[134] FIC CDD Directive, supra note 112, Art.39.
[135] Proclamation No. 780/2013, supra, n, 35, Art.20.

mandatory when they suspect this will be proceed of crime or CTR. Therefore, the law shall only criminalize intentional tipping off and our law failed to do so.

3.2.6. Cash Transaction Report (CTR)

Banks should be responsible to report for FIC each transaction made with them by a customer which comprises the receipt of payment or payment of an amount of money exceeding a set of amounts.[136] Unlike to STR for filing reports of CTR, there is no need to suspect the money is the proceeds of crime, but the mere fact that the transaction that meet the minimum threshold stipulated by the center either in a single transaction of several but linked transaction is sufficient.[137] The linkage requirement is developed to cope up with evolving techniques of laundering such as smurfing.

Countries should consider the possible benefits of requiring all cash transactions that exceed a fixed threshold amount to be reported for the fight against money laundering.[138] Each country or jurisdiction establishes its own reporting threshold based upon its own circumstances. Likewise, Ethiopia also obliged financial institutions to report all cash transactions in any currency above the sum of ETB 300,000.00 or USD 15,000 or equivalent foreign currency for both individuals and legal persons to the Center whether conducted as a single transaction or several transactions that appear to be linked.[139]

3.2.7. Correspondent Banking

A correspondent bank is a financial institution that provides services on behalf of another financial institution.[140] It can facilitate wire transfers, conduct business transactions, accept deposits and gather documents on behalf of another financial institution. In most cases, large international banks act as correspondent banks for numerous banks around the world. [141] Banks are required while they had relation with cross-border correspondent banking and other similar relationships, is expected to verify the reputation of the institution by consulting the absence of punishment related

[136] Ibid, Art. 18 and FIC CDD Directive Art. 26(2).
[137] Ibid.
[138] FATF (2012), supra note 22, Recommendation 19.
[139] FIC CDD Directive 01/2014, supra note 112, Art. 26(2).
[140] General Glossary - International Standards on Combating Money Laundering the Financing of Terrorism and Proliferation: The FATF Recommendations (2012), p.115.
[141] Ibid.

with money laundering and terrorism financing.[142] This means that the correspondent bank must gather sufficient information in relation to the respondent bank, specifically to determine the reputation and supervision of the respondent bank and if it is subject to anti-money laundering investigation or regulatory actions.

The AMLL goes further and prohibits entering into or continuing cross-border correspondent banking relation with bank registered or licensed in a foreign jurisdiction where it is not physically presented or a respondent bank in a foreign jurisdiction that permits its accounts to be used directly by a bank registered and licensed in a foreign jurisdiction but that is not physically present and is not affiliated with a regulated financial group.[143] Therefore, before entering into relation with correspondent banks, Ethiopian banks are expected to verify the reputation to prevent the use of banks for criminal purpose and protect the bank's integrity.

3.2.8. Obligation arise from Wire Transfers

Banks are also required to have accurate originator information, and required beneficiary information, on wire transfers and related messages, and that the information remains with the wire transfer or related message throughout the payment chain.[144] To this end, banks shall obtain and verify the full name, account number, and address, or in the absence of address the national identity number of the originator and beneficiary. Banks shall refrain from conducting wire transfer transactions with designated persons and entities, as per the obligations set out in the relevant United Nations Security Council resolutions, such as resolution 1267 (1999) and its successor resolutions, and resolution 1373(2001), relating to the prevention and suppression of terrorism and terrorist financing and take freezing action.

3.2.9. Identification of Beneficial Ownership

A beneficial owner is someone who essentially owns or controls a customer and/or the natural person on whose behalf a transaction is concluded.[145] A person who exercises ultimate effective control over a legal person or arrangement also constitutes a beneficial owner.[146] In the context of

[142] FATF (2012), supra note 22, Recommendation 7.
[143] Proclamation No. 780/2013, supra, n, 35, Art.4.
[144] Ibid, Art. 8.
[145] General Glossary, supra, n, 137, p.113.
[146] Proclamation No. 780/2013, supra, n, 35, Art. 2 (18).

the money laundering crime, a beneficial owner is someone who controls or has an interest in illicit proceeds but conceals this fact through the misuse of corporate vehicles. Corporate vehicles refer primarily to companies, foundations, trusts, fictitious entities and unincorporated economic organizations.[147] Given the increased risks that accompany alternative money laundering techniques, the use of corporate vehicles has become the preferred method to launder ill-gotten gains. In the light of this, when the FATF revised its Recommendations in 2012, it expanded significantly the ambit of the requirements in relation to the establishment of the beneficial owner. But it is mandatory to exactly know who those beneficial owners are, and some jurisdictions use quantitative method (possession of certain percentage or share or voting rights in corporate vehicle) to qualify as the beneficial owner. For instance, the 4th EU money laundering directive provides a guideline to identify beneficial owners in corporate vehicle as 25 + 1 % of the share.

In Ethiopian AML also, Banks are required only to identify and verify the identity of any person who acts on behalf of the customer. And they shall take appropriate measure to determine if beneficial owner is a politically exposed person and if so, they shall obtain approval from senior management before establishing a business relationship with the customer. The same problems with direct PEP customers also see here as a beneficial owner because those PEPs are not made known for those responsible institutions to make those measures applicable. Therefore, merely imposing a duty without providing appropriate mechanisms of enforcing such duty is pointless.
The minimum threshold that helps financial institutions to identify beneficial owners in case of corporate vehicles is not regulated in the AML. This lacuna will help launderers to use different companies to clean and wash out their dirty money using the company as a layer. The European Union quantitative threshold mentioned above can be example and by taking the pragmatic truth of the country the responsible organ has to determine the minimum numbers of shares. This will help the financial institutions to easily identify as well as verify the true beneficial owner.

3.2.10. Obligation to assess the Risk of Money Laundering during the use of New Technologies

Technology makes life easy by performing huge tasks in the most efficient way, but it can also use in facilitating criminal acts. This advancement is visible in the financial sector. Recent development witnessed the exploitation of technology for facilitating finance related services.

[147] FATF, *The Misuse of Corporate Vehicles, Including Trust and Company Service Providers*, (2006), p.1.

Mobile phones can be a good instance for clearly showing the recent inclination. Mobile banking can be defined as 'financial services delivered via mobile network and performed on a mobile phone.'[148] Money launderers may benefit out of this development for wash away their dirty asset and recognizing this fact internationally it is responsibilities of financial institutions to made risk assessment of every new technologies adopted for money laundering and terrorism financing. On the same token Ethiopia also obliges financial institutions in general and banks in particular to make risk assessment of money laundering and terrorism financing on the new technology.[149]

Banks shall assess the vulnerability and risk of money laundering and terrorism financing while adopting new technology as their system of operation. These days, electronic devices such as mobile phones play an important role in facilitating as well as providing financial services, whether domestic or international transaction, withdrawal, transfer or payment of bills. But always criminals have been upgrading themselves to benefit out of any lacuna created while regulating the issue. That is why FATF and its styled regional bodies are obligating states to assess the risk and vulnerability of new technology. Being technologically advanced is not an evil thing by and in itself, but as FATF and other regional initiatives dictates, banks have to make a risk assessment and vulnerability of the new technology for money laundering and even for terrorist financing or any other transnational organized crime. [150] Ethiopian law adopts this measure, but banks are always busy in developing more efficient banking technologies every time. The FIC CDD directive regulates the issue specifically and obliges financial institutions in general and banks in particular to make risk assessment while having new technology.

3.3. Compliance Practice of Banks

As one of the research objectives is assessing the compliance practice banks, eight private banks are randomly selected. Moreover, CBE; which is a governmentally owned bank, is also included. Questionnaires are distributed to the compliance officers and frontline officers of each selected bank. Therefore, herein under, the data collected are interpreted as follows.

A. Awareness Creation Training

It is true that for the proper implementation of a certain law, awareness is a condition precedent.

[148] Vivienne, L 'Mobile Money, Financial Inclusion and Financial Integrity: The South African case' 8 *Washington Journal of Law, technology & arts* (2013), p.319.
[149] FIC CDD Directive, supra note 112, Art. 7.
[150] FATF (2012), supra note 22, Recommendation 15.

The interview held with FIC shows, the center only trained compliance and risk management officers of banks.[151] Similarly, banks are responsible to give training for their employees regarding on the importance of fighting money laundering and their respective responsibilities. The newly recruited bank employee is expected to get the awareness creation training within one month since the commencement of employment.[152] The compliance officers have an important role in fighting money laundering and all compliance officers of all banks have trained by the FIC on the basic concepts of money laundering, techniques of laundering and the nefarious consequences of money laundering on the banks as well as the country at large. Having those information and materials prepared by the center as a guide for understanding money laundering the compliance officers trained their fellows. The bank employees get training on anti-money laundering programs.[153]

B. Know Your Customer (KYC) and the Banks' Practice

The Ethiopian AML obliged banks; apart from knowing their customers, they have to verify the truthfulness of collected information. The generic obligation KYC refers to three specific obligations in it under different circumstance. First, the KYC rule, which is customer identification, banks have good compliance practice. While they start business relation with the customer, banks had good compliance practice. For opening book account (saving account or credit account) they ask a copy of identity card and take all required information dictated by the law. [154]With regard to verifying the veracity of the information provided by prospective customers, there is an incompatibility with the law. It is identified that banks verify the information taken from the identity card only when the identity card adduced by the customer has observable defects like the seal of the authority which provide the identity card is not on the photograph or the name is not easily readable. For example, they do not check whether the identity card itself is legal or not. They seem to assume that the identity card is legal. Given the fact that identity fraud and forgery are among the highly prevalent crimes in Ethiopia.[155] This problem is intensified by the

[151] Interview with Ato Kidane Mariam G/ tsadik, FIC Financial Transaction Inspection and Analysis officer on
[152] FIC CDD Directive, supra n, 112, Art. 42(4).
[153] For further information, see annexes below.
[154] See annex no. 1.
[155] Immigration and Refugee Boards of Canada report, Ethiopia: Availability of Fraudulent identity documents; state efforts to combat document fraud (2016), available at www.refworld,org/docid/589444d84.html accessed on June 1, 2018; see also ESAAMLG(2015),P.55.

failure of the government to issue a national identity card which enables these institutions to easily verify the name and address of the customer.

Second, updating and reviewing the information given by customers while the bank form business relation with the individual is the other subset of obligation to KYC. Updating customer information will of great help even not only for fighting money laundering in general, but also for applying risk-based approach which in turn has implication on the use of scarce resource where it is used. Based on the data collected, this research revealed that owing to the presence of a large number of customers, it is almost difficult for banks to review and update their customers' information. In most of cases, the information provided by customers did not updated even in case of when the customer changes book account. They simply copy paste the previous information without any further investigation.[156] Since the risk and vulnerability of the customer for money laundering varies from time to time; depending on the circumstance she/he may be in, this practice of banks is not consonant with the law. The above practice of banks has one exception. The data collected from banks confirmed that there is a practice of updating the customers' information regarding those individuals on whom the banks have filed a suspicious transaction report.

Third, ECDD rule is applicable only on some category of customers depending on their risk level. One of such groups of persons are PEPs. Where a customer is identified as a PEP, the bank must request the approval of senior management before it establishes a business relationship with such customer. In the event where the bank has already formed a business relationship with PEP, the institution must take reasonable measures to establish the source of the PEP's wealth and conduct ongoing enhanced monitoring of its relationship with the PEP. The data collected evidenced that, let alone applying ECDD measures and identifying the source of their wealth, it is difficult for banks to know whether he/she is PEPs or not. The problem starts with determining those individuals who can be regarded as PEPs. The definition given for PEPs in Ethiopia includes 'any individual entrusted or have been entrusted with prominent public function in any country or international organization as well as family members and any person closely associated with him.'

However, neither proclamation 780/2013 nor the FIC CDD directive provides any procedure or yardstick as to how someone can identify them. Regarding the scope of family members, the FIC directorate responded for such claim raised by bank employees and the fact that which organ shall provide a list of PEPs and their close relatives and families is not stipulated in

[156] Interview with Ato Gobena Worana, Vice Governor of the National bank of Ethiopia.

our law and FIC is not empowered to do so and accept the criticism as valid and true. Therefore, CDD measures which are mandated to be applicable to these individuals when they come to start relation with the bank or even in case of existing relation; the provision is not made applicable by those banks for the above specified reasons. The same problem holds true in identifying PEPs when they are the beneficial owners.

Once an individual is designated as PEPs, it will remain as it has been forever because the definition given for PEPs in Ethiopia includes persons who lost their public function. [157] With regards to enhanced customer due diligence applicability on PEPs, the respondents informed the researcher that there is no an official document that shows the list of PEPs.[158] Owing to this; except in case of those notable public officials that they know by their identity card, it is hardly possible to conclusively say banks made ECDD.

C. Reporting Suspicious Transaction (STR) Responsibility and Banks' Practice

Reporting suspicious transaction is a base for thwarting money laundering. Owing to this, the Ethiopian AMLL impose the duty to identify transactions appear suspicious and report in case it appears. Initially, when the proclamation comes to application, there was fear on the part of private banks that this obligation will chase away their customers.[159] But intensive awareness creating training was given by the FIC for the compliance and risk management officers of each bank minimized.[160] From collected data it is clear that, to file the STR the fact that an unusual change in the pattern of customer's transaction is necessary. However, no further inquiry is made by the frontline officers, they believe that if he/she is criminal the effort to know the reason for the change of pattern will aware and try to move his asset to avoid prosecution. So, they prefer to simply report the situation to the compliance officers and then they report to the FIC.

Regarding the STR, the FIC claims that the reports they received from banks is not clear enough and inadequate. The problem may be related to lack of pre-investigation for the cause of abnormal change or frequency customer's transaction. There are red flags identified by the banks to file STR such as:

[157] Proclamation No. 780/2013, Art. 2(11).
[158] Respondents from all selected banks have the same response in this specific obligation.
[159] Interview with Ato Kidane Mariam G/ tsadik, FIC Financial Transaction Inspection and Analysis officer.
[160] Ibid.

- ✓ having many transactions (deposit or withdrawal) five times within a day, though the amount is too minimal,
- ✓ accounts which remain inactive for long time, but starts to make frequent transaction,
- ✓ a customer who sends money for many individuals unless it's *per diem*, or salary or he/she has relation with them.

The possible danger of the criteria developed by the bank unless they are relatives will create opportunity of being left unregulated the acts of possible launderers using their relatives as a shield.

If there is any which reaches the minimum threshold stipulated by the FIC; which is 300,000 ETB or 15,000 USD or in any currency which can be the same amount of money in Ethiopian currency, banks are under a duty to make a report.[161] The transaction will be made either in a single transaction or in multiple transactions that may be related to each other. This approach is very interesting due to the presence of money laundering techniques like smurfing and structuring. The banks have good practice because there is automatic software that detect a transaction above 300,000 ETB and manually check only structured transactions to identify whether they are related or not.[162]

The law requires banks to take ECDD measures regarding customers from high risk countries. Customers from high risk countries are subjected to ECDD measures. The reason is to protect the integrity of financial institutions and the country in general from abuse by criminals as the control system in these jurisdictions is lenient. However, the first thing that should be done is checking credibility of the sources that categorize the state as high-risk country such as mutual evaluation or detailed assessment reports or published follow-up reports. Often the FATF releases public statement on jurisdictions that does not have adequate legal framework for fighting money laundering risks every year. But banks under study are not practicing the ECDD measures on these customers for the fact that they did not know these jurisdictions.[163] The list may change each time while the FATF made its evaluation so the status of customers from these countries is subject to change and renewal by banks. The failure to give due notice to these banks has resulted in failure to comply.

[161] See annex no. 1 and 2.
[162] All the selected banks have automatic software to identify the transaction made by each customer which reach the threshold.
[163] The FIC officials said there is no obligation to make the assessment result public that is why the center fails to do so. For further detail see the annex no.2.

The national risk assessment is important input for banks to make their own risk assessment of money laundering. Nonetheless, banks in which the researcher has made assessment does not know the national risk assessment result of Ethiopia conducted by the FIC. [164] Article 11 of proclamation No.780/2013 while imposing a duty to have internal policies and controls that helps to mitigate effectively the risks identified by the bank itself under Article 6(1) or by the FIC under Article 13(1) of Proclamation No. 780/2013. But practice revealed that the FIC finalized its assessment but do not make banks aware of the identified risk and this fact oblige the banks to do their own assessment.[165] These two institutions did not work as dictated by the law.[166]

D. Caution and Use of New Technology and Banks' Practice

Use of technology by banks for providing financial services is increasing rapidly in Ethiopia. New technologies are helpful for criminals to easily introduce the dirty money into the financial system and transfer to where ever they want and thought safe from prosecution. Following the development of internet, new forms of laundering (Cyber laundering)[167] have been emerging. Internet banking, mobile Banking and stored value cards are used by both private and government owned banks in Ethiopia.

To discuss each of the three newly emerging services separately, internet banking is the use of the internet to deliver banking services.[168] Both private and government owned banks in Ethiopia also develop internet banking as a mode of providing their services. The other most common service provider mechanism is mobile banking. Mobile phones have provided an unprecedented opportunity for financial development and access and are set to become a common tool for conducting financial transactions in the near future. Among the services are domestic and international money transfers; deposits and withdrawals; bill and retail payments. However, concerns have been raised about possible misuse of mobile technologies for criminal purposes. Mobile phones are used by billions of people around the world to communicate, including criminals and terrorists. Mobile banking as defined by Vivienne refers to 'financial services

[164]The FIC officials said there is no obligation to make the assessment result public that is why the center fails to do so.
[165] See annex no. 1.
[166] Ibid.
[167] Cyber laundering is use of technology payment system for laundering criminal asset.
[168] Kumar, A et.al 'Internet Banking - Benefits and Challenges' 1 *International Journal of Advance Research and Innovative Ideas in Education* (2016), p.148.

delivered via mobile network and performed on a mobile phone.'[169] Stored value cards are also used for financial purpose in Ethiopia though it is on infancy stage. Stored value cards and prepaid card are used interchangeably; however, there is a slight difference between the two. To give its definition stored value cards is a system in which a customer stored value (money) and can access using physical card. [170] In Ethiopia VISA and Master Cards are the common types of stored value cards, however, the former one has large number of users than the latter. Stored value cards are highly susceptible for money laundering activities. [171]

The practice of selected banks above reveals that users of these new technologies are progressively increased. When the researcher collected the data from different banks as to the assessment of these new services like mobile banking, internet banking and even ATM services, they admit that they recognize their vulnerability. [172] Accordingly, they took preventive measures like limiting the amount that a customer can transact within a day. The respondent told that there is no independent risk assessment made for principally identifying the vulnerability of these new technologies for money laundering at the bank level, however, the limitation on the amount of the transaction that the customer can make in 24 hours[173] and for some services the system automatically notifies the bank that specified amount of money has transferred or payment is effected by the service user. But this procedure is not free from pitfalls as laundering techniques like smurfing will benefit out of the gaps.

E. Record Keeping and Banks' Practice

Record keeping is one of the preventive measures taken by banks. The records are helpful and even used as evidence in the proceedings and this activity of these banks needs encouragement as the record keeping has both preventive and punitive roles. The banks keep the necessary and required information as per the law. The FIC acknowledges this activity, while the center need

[169] Vivienne, supra note 148.
[170] Wolfsberg Group Guidance on Prepaid & Stored Value Cards, (2011), p.2.
[171] Ibid, p.1.
[172] See annex no.2.
[173] In the selected banks the amount that a customer can withdraw per a day is not similar. it varies from 6,000 ETB to 10,000 ETB and transferring to other account it go to 100,000 ETB and for internet banking the amount also varies from 50,000 to 200,000 ETB within 24 hours. But the CBE allows the withdrawal from the ATM up to 10,000 within a day and internet banking up to 500,000. So, their vulnerability to abuse is not the same.

additional information and wants to consult the recorded document all is made available by the banks. [174] Therefore, banks are complying with the record keeping requirement.

Generally, one can submit that the practice of anti-money laundering measures of the selected is good or satisfactory. It goes without saying that it needs, however, some positive efforts for better compliance practice. While some of the problem emanated from the absence of clarity and comprehensiveness on the part of the governing law, the others are the result of the regulatory organ's capacity for properly supervising and the failure of banks. So, the FIC is expected to create awareness about money laundering activities with its up-to-date knowledge of laundering operations. Training and awareness on the role of the responsible persons in combating money laundering, the potential benefits of doing so and helping bank staffs to detect suspicious transaction are the duty for the FIC to be more effective in its career.

3. 4. The Practice of Regulatory Organs

NBE and FIC are responsible to supervise the activities of banks with respect to anti-money laundering measures. This section is aimed at giving some practical issues that both organs are carried out in overseeing and supporting banks' effort to fight money laundering. FIC started its activity in 2012 and hence then it receives CTRs and STRs and activate inspection and analysis on money laundering and terrorism financing. The NBE is established as per proclamation no. 591/2008 (amends Proclamation No. 83/1994) has a power to give license and supervise banks. Though the main aim of this paper is to assess the implementation practice of money laundering by banks, to depict the practice of banks better, the researcher conducted personal interview with FIC officials who have a mandate to analysis, investigate reports brought by banks.

Initially the private banks are not as such willing to make those responsibilities applicable for the fear that these stringent procedures may scare away their customers.[175] Later on, intensive awareness raising trainings for bank employees by the FIC for compliance and risk management officers conducted.[176] These trainings at least arguably have minimized the knowledge gap. The trainings were limited to compliance and risk management officers.[177] The banks are also

[174] Interview with Ato Kidane Mariam G/tsadik, FIC Financial Transaction Inspection and Analysis officer.
[175] Ibid.
[176] Ibid.
[177] Ibid.

mandated by customer due diligence directive to train all its employees for better understanding of the aim of the law which is necessary to comply with the rules.

In addition, the relations of these banks with international correspondent banks contribute a lot to the practice. In most cases, international banks strictly applied the anti-money laundering rules in their respective countries and also require the existence and practice of anti-money laundering rules as a prerequisite to establish business relation with domestic banks. Therefore, they had good performance even though there are some deficiencies in application of some the responsibilities. The FIC gave training for compliance and risk management officers only due to limited resource and those trainees are mandated to give for their fellows. By this procedure the center trained all compliance and risk managers of all banks.[178]

The central problem that the FIC is facing in regulating the applicability of anti-money laundering regulations is lack of skilled manpower. The center has already delegated its role to the NBE arguing that it has capacity problem.[179] As a reason, the FIC invokes limited capacity. There are so many STR and CTR reports from both public as well as private banks investigating and analyzing those reports has proved to be a huge and time taking process.[180]

However, the delegation of the power of the FIC to the NBE has its own problem. To start with, there is no law that laws such power. The center raises the capacity problem as a reason for delegation but the researcher believes that it is imperative to make the center better and efficient than delegating its power for the NBE. Even the competency issue may arise here. The NBE has the responsibility to ensure the observance of those laws by banks and in case of violation by banks and their employees depending on the gravity of their fault it imposes different punishments. Therefore, it may be difficult for the NBE to receive these STR and CTR from banks all over the country to analyze and investigate whether the report has probability for connection with money laundering and terrorism financing and then in case of violation to penalize them would make it not in a better condition than the center has already in. The researcher believes that it is much better to strength the capacity of the FIC than shifting its mandate to other institution.

In some cases, though not always the center has got reports made for merely observing the formality requirements without any further pre-investigation made by the reporting banks. This

[178] Ibid.
[179] Ibid.
[180] Ibid.

resulted in duplication of unnecessary reports which in turn has implications on the scarce human and material resource of the center. With respect to KYC rules the FIC acknowledges the effort of banks to comply with this requirement.[181] Their effort will not bear fruit in the absence of National Identity Card and the ease for obtaining a forged identity card. The role of the government is for immediately issuance of this National Identity Card is bold as the identity card has pivotal role for a reliable way for customer identification.

Banks has problem in updating the information given by the customers while establishing relation or conducting single transaction, the main reason for their failure is the number of their customers is huge.[182] But this can be avoided if they properly follow the risk-based approach rule. The frequency for updating and reviewing the information of their customer varies depending on the risk exposed by the respective customer. Depending on their category, high risk customer should be subjected to frequent review.

The other most important question forwarded for FIC is regarding the mutual evaluation report. The ESMAAG[183] report concluded that the STR and CTR reports did not link with the risks of Ethiopia and the risk-based approach is not effectively implemented. The response is the evaluation report was made before the finalization of the National Risk Assessment of Ethiopia and the risk assessment report finds out those 21 major risk areas of money laundering in Ethiopia. Among them corruption, human trafficking, arms smuggling, livestock outbound, illegal Hawala, forgery, tax evasion, robbery were identified as risk areas. But the point of difference comes here, the ESMAAG did not consider, especially illegal Hawala as a serious risk for money laundering crime but the finding of NRA pointed out this clearly. The STR and CTR mainly related to those which has gotten much less attention by the ESMAAG.

There is serious knowledge gap even from the side of law enforcement bodies. The judges refuse to punish accused persons for both predicate offences as well as money laundering for the reason that it violates double jeopardy principle.[184] And the officer said the center has given and also planned to give intensive awareness creating trainings for those professionals in the justice sector. The prosecution and determination of money laundering and terrorist financing offences require personnel who are well versed in the intricacies of such offences. Currently, there is a

[181] Ibid.
[182] See the annexes attached below. The NBE also shares the practice as legitimate
[183] ESAAMLG Report (2015), supra n, 23, p.6.
[184] Interview with Ato Kidane Mariam G/tsadik

general lack of competence in terms of skills and tools to investigate, prosecute and determine such offences. There were more than 30 cases investigated by the center as well as respective investigative organ, but among them only in 7 cases criminals are convicted for money laundering but the rest is only for predicate offences. The first reason raised by the judges as well as prosecutors is the principle of prohibition of double jeopardy. For the existence of money laundering, the commission of predicate offences are mandatory. The proceeds are derived out of committing predicate offences. Therefore, the person will be held liable and subjected to punishment for both crimes.

As already tried to mention in the former paragraphs the center has delegated its power to the NBE. Apart from its regulatory role given by proclamation 780/2013, the bank is mandated to receive and analyze the reports made by every financial institution in Ethiopia. Having this fact in mind, the researcher forwarded some questions for the NBE officials to know the practice of anti-money laundering rules by banks.

The vice governor of NBE said the mandate is delegated in the last few (4) months. Due to this, the NBE has not yet receives reports from those banks.[185] But the bank is on-site visit to supervise the implementation of the anti-money laundering rules on six randomly selected banks, i.e. Abyssinia bank, Abay bank, Commercial bank of Ethiopia, Wogagen bank, Awash bank and Zemen bank. The on-site visit takes some time to finalize their findings as to the compliance level of each bank.[186] The vice governor also lined there is a procedure for the banks (subject to on-sight visit) gave the opportunity to reply to the findings of the board. As to banks' activity of updating and review requirement, the NBE responded that there are millions of customers for each bank so it is very difficult to know whether the bank updated the customer's information, but the bank only see samples and strictly follow whether the banks had KYC manual and it meets the standard is the main target. [187]

The other important question raised for the vice governor is the capacity of the NBE as the power of the FIC is delegated to the bank for lack of capacity but is the NBE capable enough. Because even when the researcher approaches the bank the response is the duty comes at the end of December but in the half of May, 2018 the bank did not start to receive reports. This lacuna on

[185] Interview with Ato Gobena Worana, Vice Governor of the National Bank of Ethiopia.
[186] Ibid.
[187] Ibid.

the side of regulatory organs will create conducive environment for launderers and those banks will unwittingly manipulate by criminals. To generalize, the mandate has to keep stable by a separate and independent organ. The researcher believes that the government shall provide necessary things to the FIC; to strength its capacity and transferring the duty to another institution may result in a grave mistake.

3.5. Remedies in Case of Banks' Failure to Comply with The Law

3.5.1. Criminal Prosecution

A criminal punishment for the failure to comply is recognized in the proclamation. Under article 30 any person who fails to comply with different responsibilities intentionally or by gross negligence is punishable by rigorous imprisonment from three to five years and fine from Birr 5,000 to Birr 10,000.[188] And barring the person's involvement in the business to the maximum of five years is allowed irrespective of the administrative penalties imposed by the NBE as per article 22. It is clear that there is no defense of mistake of law, the lack of training given by the FIC to the banks and their failure to implement the responsibilities will not let them free of punishment.[189]

3.5.2. Administrative Sanctions

Failure to comply with the different anti-money laundering rules by banks and its employees followed punishment from regulatory organ. The Ethiopian AML also recognizes the imposition of penalty on individuals who failed to properly comply with preventive measures. The organ with the power to punish those who failed to comply is the NBE.[190] The recognized penalties under the legislations are administrative in nature. It includes giving written warning, instructing for the compliance of a specific obligation, ordering periodic reports from the concerned institution, fine not less than 10,000 or not greater than Birr 100,000 or barring individuals from employment in the sector and restricting managers and directors with a power to assign *ad hoc* administrator. The bank may impose one of or more than one penalties illustrative penalty.[191]

[188] See Proclamation No. 780/2013, Art.30.
[189] See in general, the FDRE Criminal Code, Art. 81.
[190] Proclamation No. 780/2013, Art. 22.
[191] Ibid.

Chapter Four
Conclusion and Recommendations

4.1. Conclusion

Money laundering is the process of obscuring the true origin of criminal asset and makes it reappear as a legal one. It has so many negative effects on the nation as well as the world that is why there are plenty of legal responses developed to fight it. Among them, the 1988 Vienna Convention, Palermo Convention, the FATF 40+9 recommendation to mention some. Similarly, Ethiopia takes different legislative measures targeted in thwarting money laundering. The main objective of this paper is examining the comprehensiveness of the law and to assess the compliance practice of banks.

Those legal measures taken for cracking down money laundering put the banks at the front in their war against such escalating crime. The rationale is the vulnerability of banking institution for perpetuating different techniques of washing out the dirty asset to make it white and clean. On an equal footing, Ethiopia tries to fight money laundering by having legislative measure and make some institutions liable for properly complying with the anti-money laundering rules to thwart money laundering committed in banks. To this end, the proclamation imposed many preventive measures and the study is conducted to assess the practice of banks.

The Ethiopian AML has some inadequacies with regard to preventive measures such as customer identification in case of PEPs, high risk jurisdiction customers, verification of the veracity of customer information, lack of minimum threshold to identify beneficial owners. Weak capacity of regulatory organs established with the aim of coordinating responsible institutions involved in the fight against money laundering and to supervise their activities are impaired of capacity problem and resulted in the delegation of its power. The FIC face a considerable challenge from both sides, the first is, poor quality STRs and very minimal conviction for the crime of money laundering due to lack of proper understanding of the nature of the crime.

The findings in this study revealed that the banks found in the selected study area have been taking their responsibilities in money laundering compliance preventive measures significantly. The practice of banks shows that the failure to properly and meaningfully apply the responsibilities is resulted from lack of clarity on the side of the law. Banks included in the study

have good awareness about the techniques, reprehensible consequences of money laundering on the country and the bank and different preventive measures that minimized if not avoided at all the abuse of the banking system for criminal purpose specifically to clean ill-gotten assets. Record keeping, has played both preventive and repressive roles in fighting money laundering; banks have good performance in keeping records in consonant with the terms of the law. KYC with its three elements under its umbrella, is the important step. Customer identification is practiced in a very interesting manner; banks take all necessary information from customers while they start to establish business relation with them. However, updating and review the information even for high risk customers such as PEPs is not performed well. These activities of the banks have implication on effective application of ECDD measures also. Lack of proper risk and vulnerability assessment of money laundering while developing new technologies by banks as a mode of providing their financial service in Ethiopia will create a possibility to abuse by launderers. STRs and CTRs monitoring and reporting practice of banks is good, but absence of preliminary investigation on STRs made by bankers, results in of unnecessary duplication of reports. Hence, constant monitoring by the regulatory authority is deemed as impactful to the banks compliance. Therefore, the regulatory organ shall work closely to get good result in the near future.

5.2. Recommendations

The study makes the following recommendation to address the key findings.

- It is not uncommon for banks not to comply with all the rules on money laundering and hence regulatory organs take the lion's share in this respect. The shifting of regulatory power from one organ to another has created a loophole for banks and the government shall reconsider it to strengthen the capacity of the center.
- The center/NBE shall create a mechanism for creating an information exchange between and among different banks to avoid the lacuna and cope up with the updating techniques of laundering
- The center shall have made the results of national risk assessment available publicly and especially for banks in order to use it as reference and guideline for identifying their own risk level
- The center has to be made accountable to the parliament to avoid unnecessary influence
- Training for concerned organs such as bank staffs, especially for newly joined staffs and giving up to date information once trained, prosecutors and judges shall be given to go further in our effort of fighting money laundering.
- Awareness for the general public is good input for the fight against money laundering and the center shall work more on the issue.
- For identifying the beneficial owners in case of corporate vehicles, the center shall take lesson from other jurisdictions to stipulate a minimum number or value of shares hold by an individual to easily identify the beneficial owners
- Banks shall limit (the possible shortest time) the expiry date for visa card or number of Prepaid Cards offered to one person that helps the individual to process large amounts of value and is more susceptible to money laundering abuse. To this end, Record keeping shall be upgraded to avoid multiple bank accounts by a single customer to avoid abuse by launderers.
- The broadening of payment methods has resulted in greater complexity for regulators and for banks, in relation to assessing the risks attached to them and the application of, and responsibility for, anti-money laundering controls, particularly if the transactions flow

through one or more jurisdictions. It should be designed in a way to ensure traceability by investigative authorities for investigating individual transactions

- The government shall keep its promise of providing standard national identity card till that the banks shall work to minimize the identity fraud by requesting other corroborative evidences like utility bills and other though not work for all customers.
- The law provides special and additional requirements for banks to establish business relation with PEPs which must be approved by a senior management member of the bank and subjected to ECDD measures, but the definition given for PEPs does not delineate who are family members and 'any person closely associated with him' is an urgent issue which needs a response.

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