

# **Uganda: Report on Observance of Standards and Codes—FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism**

## **I. Introduction**

1. This Report on the Observance of Standards and Codes for the FATF *Forty Recommendations on-Money Laundering* and *Nine Special Recommendations on Terrorist Financing* (FATF 40+9) was prepared by a team composed of staff of the World Bank (Bank) and an expert not under the supervision of the Bank, who was selected from a roster of experts in the assessment of criminal law enforcement and non-prudentially regulated financial activities<sup>1</sup>. The report provides a summary of the level of observance with the FATF 40+9, and provides recommendations to strengthen observance. The views expressed in this document are those of the assessment team and do not necessarily reflect the views of the government of Uganda or the Boards of the Bank or the Fund.

## **II. Information and Methodology used for the Assessment**

2. The assessment is based on the review of laws and regulations, which have relevance to anti-money laundering and combating the financing of terrorism (AML/CFT), and supervisory and regulatory systems in place to deter money laundering and financing of terrorism among prudentially regulated financial institutions. The assessment is based solely upon information available at the time the assessment was completed on February 23, 2005.

## **III. Main Findings**

### **A. General Observations**

3. There have been some efforts, especially by the Ministry of Finance and the Bank of Uganda to facilitate putting in place an AML/CFT regime, although much more work is required to meet international standards. Uganda has been, and still is, the victim of domestic terrorism. As a result of Uganda's geographic position, it is also susceptible to being used as a transit point for funds and resources that may be used to destabilize central African countries and to perpetuate war in these areas. Arms trafficking involving Somalia, southern Sudan and eastern Democratic Republic of Congo (DRC) is prevalent. Human trafficking (including children) and smuggling (including protected species) are significant components of the cross-border criminal activity, which sometimes use Uganda as a transit stage. Drug trafficking is also emerging as a major problem.

4. Acquisitive crime has shown a sharp rise in recent years. Duty fraud and smuggling are estimated to be of a scale that is causing serious loss of revenue to the Ugandan authorities and the size and frequency of these crimes suggest that they are undertaken by

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<sup>1</sup> The mission team members were Mr. Theodore Greenberg (Head of Mission – Legal Expert, Bank), Mr. Martin Comley (Law Enforcement Expert, Consultant, Bank), Ms. Janet Love (Financial Expert, South African Reserve Bank), and Mr. Martin Josefsson (Junior Professional Associate, Bank). Due to the resignation of Ms. Love from the South African Reserve Bank, Paul Allan Schott (Financial Expert, Consultant, Bank) assisted in the drafting and completion of this report

organized crime groups. Generally, the proceeds from these crimes, and corruption, are being expended on land, buildings, houses, cars, shops and other forms of businesses, which are used to disguise the origins of criminal proceeds.

5. Uganda is a largely cash based economy. Only a small proportion of the population has bank accounts and the percentage having insurance policies or owning securities is even lower. As a result, the absence of effective AML/CFT controls in the formal financial sector gives rise to a major vulnerability in practice. (The CFT position is harder to assess). However, there are plans for the development of the economy which would lead to more transactions being effected through the formal financial sector. The use of cash for transactions within the country and across the borders remains a significant risk area. Ugandan shillings are accepted as 'legal' tender in neighboring countries such as southern Sudan, Rwanda and eastern DRC. This encourages cross-border movement of cash and increases Uganda's vulnerability to AML/CFT.

## **B. Legal Systems and Related Institutional Measures**

6. Uganda has deployed significant resources to institutions established to combat corruption. Ugandan officials recognize that money laundering and corruption are inextricably linked. Although Ugandan anti-corruption agencies have broad powers of investigation, prosecution and forfeiture, anti-money laundering legislation would significantly enhance the ability to combat corruption and related crimes.

7. On 11 December 2002, the Cabinet approved the principles for the Uganda Anti-Money Laundering Framework, which formed the basis of the "Proposed Anti-Money Laundering Bill, 2004" (draft AML bill 2004). On 27 January 2005, the Cabinet approved the draft AML Bill 2004. It also set up a Sub-Committee, which is to:

- a. Work with the relevant Parliamentary Committee in studying the Bill to assess its impact on "the economy, politics, and security in Uganda ..."
- b. Consult with the private sector; and
- c. Identify possible amendments to the Non-Governmental Organizations Act to make it consistent with FATF Special Recommendation VIII<sup>2</sup>.

8. According to Government authorities, the Ugandan Parliament is facing significant Constitutional issues. The focus of Government and Parliament is on the Constitutional Amendment Bill, which is due to be debated and decided upon in time for both Presidential and Parliamentary elections to be held around March 2006. The Mission has been told that it is unclear when the AML Bill is likely to be dealt with by Parliament. The MOF was waiting to receive the extract of the minutes of the proceedings of Cabinet." Thereafter, the MOF

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<sup>2</sup>Letter of the Minister of State, MOF, dated February 7, 2005. The Sub-Committee of Cabinet is scheduled to meet the Sub-Committee of Parliament to address issues raised (1-3) only after the draft bill has been presented to the floor of Parliament for the first reading. Thereafter, as is the procedure, the Speaker of Parliament is supposed to pass it to the Sub-Committee of Parliament for in-depth scrutiny, at which stage the meeting with the Sub-Committee of Cabinet is held.

will forward the Bill to Parliament<sup>3</sup>. While the Cabinet Memorandum included a section on financial implications, the MOF and the AML Committee have informed the AML/CFT FSAP Team that the financial implications of the Act are yet to be addressed in detail. The FSAP Team was assured that resolution of cost issues will not slow the process of submitting the Bill to Parliament.

9. Although Uganda passed the amended Financial Institutions Act 2004 (FIA) and the Anti-Terrorism Act of 2002, these measures do not adequately address the core issues of the 40 Recommendations on Money Laundering and the 9 Special Recommendations on Terrorist Financing. Indeed, Uganda has been working on a draft anti-money laundering law for at least two years and the draft still has not been introduced into the Parliament or had a date been set for hearings and passage. Government authorities have also not undertaken sessions to build awareness and educate Parliamentarians on features and implications of the law and why it is necessary. Discussions were conducted with donors on possible assistance to undertake such efforts.

10. The FIA has a number of provisions that could be used to help detect and deter money laundering as a “stop gap measure” until proper legislation is enacted. However, to date, it has not been used by the BOU to introduce and enforce measures in this area.

11. Ugandan authorities clearly state that they have the necessary political will and support from the Cabinet of Ministers to pass legislation that will meet the 40+9 FATF Recommendations. Yet the bill has not been introduced into Parliament. Until legislation is passed which meets the international standards, Uganda will, as in this assessment, be non-compliant with the international standards.

12. During the assessment, the mission team did not enough time to review the draft money laundering law in detail. However, at the request of the BOU, the mission did identify some comments following the on-site mission visit. There are several deficiencies that need to be addressed in the draft. For example the draft law does not comply with FATF Recommendation. 1 in that the necessary predicate offenses are not included. In many instances this is apparently because such predicate offences do not yet exist as offenses in the Penal Code or related laws.

13. In view of the considerable time that had already passed since Uganda's initial commitment to the implementation of a FATF Compliant regime in August 1999 and the fact that Uganda is vulnerable to ML and TF, the prospect of a further significant delay in the enactment of appropriate legislation is a major concern.

14. Although there is an Anti-Terrorism Act, No. 14/ 2002, its coverage, among other things, does not include any person or entity on the UN Terrorist Lists except “Al Qaeda”.

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<sup>3</sup> Following the on-site visit, the team was advised by Ugandan authorities that the draft bill was forwarded to the office of the First Parliamentary Counsel on March 1, 2005, Thereafter, the team was informed that it would be submitted to Parliament for consideration and debated subject to Parliament’s time table. As of October 18, 2005, it had not been submitted to Parliament.

The Minister of Internal Affairs has the power to expand the list but, to date has not done so. A decision has been taken to amend the Anti-Terrorism Act, but there is no timeframe for drafting or enacting the legislation.

15. There are some legislative provisions for seizure and confiscation powers for corruption cases, domestic terrorism and drug crimes. The FIA Act (S.8) provides for freezing of proceeds of crime but does not deal with forfeiture.

### **C. Preventive Measures – Financial Institutions**

16. The Bank of Uganda (BOU) is the institution responsible for supervising banks, other financial institutions and micro-finance deposit-taking institutions (MDIs)<sup>4</sup>. Money remitters operating through other licensed financial institutions are also covered by BOU supervision. Non-bank financial institutions that are subject to supervision by BOU, under the Financial Institutions Act (FIA) include Credit Institutions, Acceptance, Discount and Finance Houses. Regulations, guidance notes and annual reports on supervision are issued regularly. The BOU conducts an on-site annual examination of each bank at least once a year. Off-site supervision involves an electronic reporting system and the FIA requires all supervisory returns to be verified by external auditors. Consolidated supervision is being implemented.

17. There has been a major change of emphasis in the supervisory processes from compliance with regulation to identifying the risks faced by financial institutions and assessing the capacity of the institutions to manage those risks. Risk management is regulated through the 'Risk Management Guidelines' (2003), which, *inter alia*, require banks to prepare and the Board to approve the risk management policies. At this stage, such policies are not specifically required to deal with AML/CFT. The CAMEL (Capital, Assets, Management, Equity and Liquidity) rating system is still used to assess performance.

18. In 2002, BOU issued the Anti-Money Laundering Guidelines, for financial institutions and, in 2003, it issued such guidelines for foreign exchange bureaus. These guidelines can be enforced through the use of Section 29 of the 1994 version of the FIA, which entitled the BOU to impose civil money penalties in the event it found that a bank was failing to comply with an order (which term includes guidelines) of the BOU. Section 134 of the FIA provides that orders issued prior to the adoption of the FIA amendments remain in effect until changed or rescinded. It was only after the FIA amendments of 2004, that the BOU believed that it had the necessary statutory authority to address AML issues. The FIA of 2004 makes direct reference to money laundering<sup>5</sup> and, on the basis of this, the BOU has prepared draft regulations to address the matters covered in the 2002 Guidelines.

19. The amended FIA 2004 is comprehensive, clearly written, and, together with the Micro Finance Deposit-taking Institutions Act 2004 (MDI Act), provide the basis for the

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<sup>4</sup> During the on-site meetings BOU representatives agreed to provide the mission team with the information that, in their view, should have been included by them in the pre-visit Questionnaire. This information was never provided.

<sup>5</sup> s129-130

BOU's supervision of financial institutions and micro finance deposit-taking institutions (MDIs). The process of drafting and making the consequential regulations is now well advanced, although not yet complete. While these regulations have not yet been promulgated, they cover a number of aspects of AML requirements, although they do not yet meet all international standards. Amongst others, the existing draft deals with CDD requirements; disallows anonymous accounts; and disallows tipping off in the event of a suspicion being reported. In addition, the BOU's supervisory principles are stipulated in sufficient detail to enable banks to know to a large extent what is expected of them.

20. Banks obtain and keep customer identification documents on opening accounts, and make further reference to this information either in monitoring or updating of accounts. This is required by the FIA of 2004 and the Anti-Money Laundering Guidelines of 2004. In addition, Uganda does not have a national identity document and the documents that need to be relied upon to ascertain identity are not controlled and are easy to abuse. Internal control systems, including the appointment of AML Compliance Officers, are supervised by the BOU as part of the AML procedures.

21. Two sections in the FIA 2004 require banks to report "to the national law enforcement agencies any suspected money laundering activity related to any account held with the financial institution."<sup>6</sup> Money laundering is defined as including "all activities and procedures designed to change the identity of illegally obtained money so that it appears to have originated from a legitimate source."<sup>7</sup> Any institution that fails to make such reports is liable to "a fine not exceeding two hundred and fifty currency points."<sup>8</sup> Under the FIA 2004, the BOU has enforcement powers. These enable it and/or any of its officials, without warning, to enter, search and/or seal any premises in which it has reason to believe that the business of a financial institution business is being conducted without a license. Such officials can copy or seize any document (including money) and question any person present on the premises. Any person obstructing or failing to comply with a request, including the refusal to answer questions, is liable to a fine of around \$1,175<sup>9</sup> and/or one year in prison. Furthermore, the BOU can instruct, in writing, any financial institution to freeze any account of a person the BOU believes is carrying out such unlicensed financial institution business<sup>10</sup>. Unfortunately, procedures for freezing and/or unfreezing and subsequent forfeiture are not set out in the Act.

22. The BOU has played the key role in the establishment and on-going facilitation of the Uganda Anti-Money Laundering Committee (UAMLC), which comprises a core of 9

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<sup>6</sup> s129(1)(b) and s130(1). The text is repeated exactly in 2 separate sections of the legislation for no reason.

<sup>7</sup> s130(2)

<sup>8</sup> Which is around \$3,000- as one currency point equals Ush20,000. S130(3)

<sup>9</sup> The FIA specifies the fine in terms of 100 currency points.

<sup>10</sup> s8.

different agencies.<sup>11</sup> The UAMLC developed a work-plan and established five sub-committees: legal, public awareness, training and capacity building, funding and technical assistance, and typologies, strategy and statistics. It has committed itself to initiating a process to develop a clear direction in order to have greater certainty about the most appropriate structure and location of the FIU, the resource implications and the possible phasing in of the legislation.<sup>12</sup> Although the UAMLC has inadvertently failed to include several agencies, and experienced uneven attendance at its meetings, the UAMLC has always had a quorum for its meetings and key AML/CFT stakeholders are adequately represented at its meetings. The team was told that in the coming period there would be concerted efforts to ensure that all relevant agencies are fully involved. In order to facilitate the work of UAMLC, it should have adequate funding. The team was advised that this could only be accomplished by giving them a legal status in the AML law. The team recommends that this change should be effected.

23. BOU has since August of 2000 been the Chair of the UAMLC, which spearheads AML activities in Uganda. However, in respect of the AML Bill 2004, the BOU did not have any direct responsibility in terms of the finalization of the Bill and the formulation of its implementation plan. (Legislation is the responsibility of the Ministry of Finance.) BOU officials, continued efforts to build skills of its staff, particularly staff of the Supervision Department, who received training from the U. S. Treasury Department in 2004 in AML examination procedures. This training covered, among other things, all aspects of suspicious transaction reporting. BOU officials receive, analyze and take follow-up action on suspicious transaction reports that are filed by commercial banks and Forex bureaus, although almost all such reports involve fraud against banks. Banks also have AML/CFT compliance officers, an indication of their willingness to adopt AML/CFT compliance programs. In the absence of an appropriate law, however, enforcement efforts are limited to moral suasion.

24. Although both the Capital Markets Authority (CMA) and the Insurance Commission have issued AML guidelines for their respective sectors, they have not assumed their AML/CFT regulatory and supervisory obligations (See explanation below).

#### **D. Preventive Measures – Designated Non-Financial Businesses and Professions**

25. There is no AML or CFT supervision of lawyers, accountants, casinos, real estate agents or dealers in precious metals and stones. According to the Economist Intelligence Unit Uganda Country Profile 2004, Uganda exported approximately US\$ 35million worth of “gold and gold compounds” in 2002. The mission team asked for more details (i.e. verification of amount, where gold is mined, and how it is exported). The authorities did not elaborate on the subject.

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<sup>11</sup> From time to time, the UAMLC has invited the participation of other organizations.

<sup>12</sup> The UAMLC indicated that this process will be concluded by June 2005.

## **E. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS**

26. Registration of non-profit organizations or Non-Governmental Organizations (NGOs) is undertaken by the National Board for Non-Governmental Organizations (NGO Board), which was formed in 1989. The NGO Board is under the Ministry of Internal Affairs, through its Immigration Service, and undertakes the role of secretariat and registry. In total, there are 5,563 NGOs registered with the Board.

27. The process of registration is manual. For domestic NGOs, registration requires the completion of a basic application form, a letter of support from district councils and other documentation regarding the NGO (its establishment, budget and function for year one), registration of the NGO name, plus the payment of a fee. For foreign NGOs, there must be supporting documentation from the NGO's home government and, thereafter, the same process that applies to a domestic application needs to be followed.

28. The secretariat of the NGO Board, upon receipt of an application, manually registers and administers the file for review by the Board, which sits once a month to consider on average, approximately 90 new cases and 90 renewals. If the application is accepted, a certificate of registration is issued. The secretariat also deals with all enquiries regarding the registration process, "walk-in" visitors at the office, enquiries from other government departments and the day-to-day administration of the registry and registration process, which involves a manual book ledger and paper file system.

29. The secretariat of the NGO Board is very understaffed and under-resourced. The complete secretariat and registry function is carried out by 3 immigration officers and one administrative support officer who are effectively on loan to the secretariat. In cases of urgency these Immigrations Officers have been recalled to undertake other work within their parent organization. With these limitations, the staff is only able to act as a registration agency and has no capacity to undertake detailed vetting of applications, supervision of registered applicants or keep meaningful statistics.

## **F. Summary assessment against the FATF Recommendations**

30. Uganda is significantly deficient with regard to meeting the requirements of the 40+9 Recommendations. It does not have an anti-money laundering regime and its terrorist financing law does not meet FATF requirements. The Financial Institutions Act 2004 has a number of provisions that could be used to help detect and deter money laundering in a "stop gap measure" until proper legislation is enacted. However, to date, it has not been used by the BOU to enforce in this area. Ugandan authorities clearly state that they have the necessary political will to pass legislation that will meet the 40+9 Recommendations. Draft legislation has been prepared, however it has not been introduced into Parliament

**Table 1. Recommended Action Plan to Improve Compliance with the FATF Recommendations**

Reference to FATF Recommendation	Recommended Action
<b>40 Recommendations for AML</b>	
General framework of the Recommendations (FATF 1-3)	<p>Comprehensive AML/CFT legislation needs to be enacted as soon as possible. The legislation on money laundering needs to include a clear list of predicate offences, which is at least as broad as the list in revised FATF Recommendations. More particularly, the Penal Code Act does not contain all of the types of offences or conduct referenced in Recommendation 1. The mission orally provided some detailed comments during the course of meeting with some of the agencies.</p> <p>Uganda needs to enact and implement legislation to comply with Recommendation 3.</p>
Customer Due Diligence measures and record-keeping rules (FATF 5-11)	<p>AML legislation and the associated regulations that are envisaged would go a long way to dealing with a number of the gaps above. Therefore, the urgency of this legislation cannot be over-emphasized. In addition, the need for AML to be properly integrated into the supervisory process and for statistics to be completed is essential.</p> <p>Regulations in terms of the Financial Institutions Act and the MDI Act that deal with AML/CFT need urgent promulgation.</p> <p>MDI Act that deals with AML/CFT needs urgent promulgation.</p> <p>The draft Financial Institutions Act AML Regulations need to be promulgated as soon as possible.</p>
Designated non-financial businesses and professions (FATF 12)	<p>Any proposed legislation regarding casinos/gaming should look at and take account of AML/CFT requirements during drafting, parliamentary proceedings and implementation.</p>
Reporting of suspicious transactions and compliance (FATF 13)	<p>The requirements for STRs should be clearer and more extensive with a view to assisting financial institutions in prevention and detection of ML/FT.</p> <p>Technical assistance to the Customs service with regard to AML/CFT.</p>
Other measures to deter money laundering and terrorist financing (FATF 17)	<p>FT needs to be specifically included in the existing Guidelines and the FIA Regulations and AML/CFT needs to be integrated in the supervisory risk matrix used.</p> <p>Technical assistance to training supervisors with regard to AML/CFT.</p>
Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations (FATF 22)	<p>The BOU needs to ensure that both internal and external audits assess and test AML/CFT procedures. Procedures should be put in place to enable the LEA to assist the BOU to assess the high standards of employees in financial institutions.</p>

Reference to FATF Recommendation	Recommended Action
Regulation and supervision (FATF 23)	<p>BOU regulations/guidelines need to come into force to fully enable more comprehensive supervision of AML/CFT.</p> <p>FIA Act regulations need to come into force</p> <p>Regulations/guidelines need to take into account CFT matters.</p>
International Cooperation (FATF 36-39)	<p>There are no legal prohibitions or conditioning on rendering mutual legal assistance upon request. There is, however, no statutory or other mechanism in place to provide for mutual legal assistance in AML or CFT matters procedural framework that guarantees the consistency, efficiency and effectiveness of the assistance.</p> <p>While government authorities stated that such assistance would be provided, no concrete examples of similar assistance were provided.</p> <p>The 1964 Extradition Act provides for taking evidence in criminal and civil matters pending in foreign courts or tribunals. However that law makes dual criminality a prerequisite for extraction. There is no other law to provide such in the AML or CFT areas. In addition, The list of extraditable crimes does not include money laundering or terrorist financing. While the Act permits the Ministry (not identified) to amend the schedule of extraditable crimes by adding or deleting there have been no amendments.</p> <p>There is no clear statutory framework for confiscation in general or for mutual legal assistance in confiscation matters. The Uganda legal framework on confiscation is vague and leaves many questions with regard to the scope of confiscated property and value confiscation without answers. There are no arrangements for coordinating confiscation measures with other countries.</p> <p>Uganda has not taken action yet to implement the extradition provisions of the Vienna and Palermo Conventions. There is no case law to suggest alternative practice on this matter.</p>
<b>9 Special recommendations on terrorist financing</b>	
I. Ratification and implementation of UN Instruments	No effort to implement UNSCR 1373.
II. Criminalizing the financing of terrorism and associated money laundering	<p>The Uganda law does not include an offence on money laundering. While the overall framework of liability for assisting and facilitation could have somewhat mitigated this shortcoming, there is no evidence that the current legal framework has been used to prosecute financiers of terrorism. There is therefore no evidence of effectiveness to be taken into consideration in determining the rating of compliance.</p> <p>The Anti-Terrorism Act (2002) will need to be amended.</p>

<b>Reference to FATF Recommendation</b>	<b>Recommended Action</b>
III. Freezing and confiscating terrorist assets	<p>The definition of funds subject to confiscation does not address adequately funds indirectly held and controlled. There are no safeguards for bona fide third parties.</p> <p>There is not a clear process publicly known for delisting or reviewing the decisions to defreeze mistakenly frozen funds.</p> <p>The process of informing the banks and other relevant persons of their obligations and how to implement them is not adequate.</p> <p>No clear procedures have been set up to ensure access to the frozen funds where necessary consistently with Resolution 1452 (2002).</p>
IV. Reporting suspicious transactions related to terrorism	<p>The law does not provide for STRs in terms of FT.</p>
V. International cooperation	<p>Uganda should introduce a statutory framework for mutual legal assistance that guarantees consistency and efficiency of cooperation.</p> <p>The statutory framework for mutual legal assistance should adopt a non-restrictive principle of dual criminality.</p> <p>MLA in freezing, seizing and confiscation matters should be clarified and established on statutory basis.</p>
VI. Alternative remittances	<p>CFT is not catered for in the guidelines and FIA regulations are still to be promulgated. AML/CFT supervision is inconsistently applied and not integrated into the supervisory process.</p>
VII. Wire transfers	<p>There was no evidence of monitoring by the BOU of the inclusion by banks of originator information in SWIFT messages.</p>
VIII. Non-profit organizations	<p>While there is a legal framework for registering NPOs and obtaining information on their ownership and management structure the system is under resources and does not serve the function effectively.</p>
IX. Cash couriers	<p>No provision exists regarding cash couriers.</p>