CHALLENGING AFRICA'S GROWING HUMAN TRAFFICKING CRISIS-THE ROLE OF BANKS AND FINTECHS

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Introduction & Key Definitions.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which came into force on 25 December 2003 and 173 jurisdictions have ratified or acceded to it as of January 2018, **defines human trafficking as: "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".**

The Protocol against the Smuggling of Migrants by Land, Sea and Air defines in its article 3 **"smuggling of migrants" as "the procurement, in order to obtain - directly or indirectly - a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident, with illegal entry referring to crossing borders without complying with the necessary requirements for legal entry into the receiving State."**

In accordance with the Financial Action Task Force (FATF) Recommendations, all countries must apply serious offences including human trafficking as a predicate offence for money laundering.

It is challenging to estimate the scale of human trafficking, largely due to the hidden nature of some types of the human trafficking crime and difficulties in identifying victims. There are, however, global estimates on various exploitation types of the internationally recognized definition of human trafficking, which, when aggregated, can provide an estimate of the scale and scope of human trafficking. In September 2017, the International Labour Organization (ILO) and Walk Free Foundation, in partnership with the International organization for Migration, published "The Global Estimates of Modern Slavery". The report indicates that an estimated 24.9 million people were in forced labour and sexual exploitation at any moment in time in 2016. Out of the total estimate of 24.9 million:

- **16 million people (64%) were estimated to be in forced labour exploitation in the private sector such as in domestic work, construction or agriculture (compared with 14.2 million in the 2012 ILO estimate).**
- **4.1 million people (17%) were estimated to be in forced labour imposed by state authorities**

(compared with 2.2 million in the 2012 ILO estimate).

• 4.8 million people (19%) were estimated to be subject to sexual exploitation (compared with 4.5 million in the 2012 ILO estimate).

Distinction between Migrant Smuggling and Human Trafficking

It is also important to note that the offence of migrant smuggling has several distinct aspects that differ from other offences, and in particular human trafficking. Firstly, migrants have consented to be transported, whereas the victims of human trafficking have not; secondly, the smuggling ends with the arrival of the migrant in the destination, whereas human trafficking often involves ongoing exploitation in some other way; and thirdly, migrant smuggling is always transnational whereas human trafficking may not be. In addition, the routes and amounts of proceeds that are generated are often different. Nevertheless, there are some linkages between the two crime types, for example the same criminal networks may be involved in both migrant smuggling and human trafficking.

FATF Report on Money Laundering and Terrorist Financing Risks Arising from Migrant Smuggling

In a report issued in March 2022 by the FATF(https://www.fatf-gafi.org/media/fatf/documents/ML-TF-Risks-Arising-from-Migrant-Smuggling.pdf) the following key issues are worth highlighting;

Over the last decade, regional conflict, political instability and repression, poverty, and the impact of climate change have led to increasing numbers of migrants and refugees seeking to move elsewhere. This has led to numerous crises associated with the illegal smuggling of migrants and resulting in thousands of deaths. Every year, millions of migrants in search of a better future put their lives in the hands of migrant smugglers who see them as an opportunity to make huge financial gains. **While it is difficult to quantify the exact amount of the proceeds generated, recent increases in migration may mean proceeds currently exceed USD10 billion per annum.**

Key findings of the study include:

(i) Migrant smuggling has grown in recent years but the number of smugglers arrested remains very low. Many countries do not consider migrant smuggling a 'high risk' crime for money laundering and only very few investigations or prosecutions are initiated or concluded. This is due to a range of factors including a lack of effective international cooperation and often a lack of focus and resources to support a 'follow the money' approach.

(ii) An informal money transfer system, known as ***hawala,*** is the most common method of transferring funds generated from migrant smuggling between jurisdictions. This makes it extremely hard for law enforcement agencies to perform financial investigations. Other methods include the physical transportation of funds via cash couriers or money mules.

(iii) In recent years, smugglers have started to widely use social media and encrypted digital communication services in their operations for recruitment and coordination. This provides opportunities for smugglers to enhance their efficiency, but also opportunities for law enforcement to detect and trace the activity of smugglers including financial flows.

(iv) Migrant smuggling groups also appear to increasingly outsource their money laundering activities to professional laundering networks.

(v) There is limited information available on the connections between terrorist financing and migrant smuggling. However, there is evidence of terrorists receiving money from smugglers along various African migration routes in the form of 'tolls' for safe passage through the territory they control, and links with facilitation of Foreign Terrorist Fighters

(vi) Many countries face difficulties in understanding the money laundering/terrorism financing (ML/TF) risks they face from migrant smuggling. While some countries have access to qualitive information and case studies, a large percentage of countries were unable to provide complete statistics on aspects of the performance of their (Anti-Money Laundering/Counter Terrorism Financing) AML/CFT systems in relation to migrant smuggling.

(vii) Migrant smuggling is a transnational crime, yet national and international collaboration between relevant authorities has been challenging for many countries. To prevent migrant smuggling, countries need to proactively follow the money linked to migrant smuggling. The report identifies a number of good practices and recommendations. These include strengthening inter-institutional, international and regional cooperation, with a particular focus on supporting countries that are directly affected by migrant smuggling.

(viii) The report also highlights the importance of strengthening cooperation with the private sector and providing them guidance and information on the specific methods that the smugglers are using to transfer and conceal proceeds**. Financial institutions and in particular banks and money or value transfer services have an important role to play in providing accurate and targeted suspicious transactions reports that can help authorities profile migrant smugglers' financial behavior.**

The FATF concludes that whereas migrant smuggling might not yield as high sums compared to other major transnational crimes, it often causes significant physical harm and suffering. Countries need to take action so that they are more effective in pursuing, disrupting and recovering the illicit profits that incentivize criminals to smuggle migrants.

FATF APG Report on Financial Flows from Human Trafficking

In this 2018 Joint FATF/APG Report (https://www.fatf-gafi.org/media/fatf/content/images/Human-Trafficking-2018.pdf) the following key points are highlighted.

(i) In addition to its enormous human cost**, human trafficking is estimated to be one of the most profitable proceeds generating crime in the world, with the International Labour organization estimating that forced labour generates USD 150.2 billion per year.** While in the past, many aspects of the crime went 'unseen', there is now an increased understanding of the breadth and gravity of human trafficking, particularly with respect to domestic human trafficking and human trafficking for labour exploitation. Human trafficking is also one of the fastest growing forms of international crime. The increased displacement and vulnerability of people in, and around, conflict zones increases instances of human trafficking, including potential involvement by opportunistic terrorist organizations.

(ii) As we learn more about the way human traffickers operate and exploit vulnerable humans, it is clear that this phenomenon affects nearly every country in the world. The Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG) jointly undertook this study to improve global understanding of the financial flows associated with the crime of human trafficking, both as a money laundering predicate and potential source of terrorist financing. This study updates the FATF's 2011 report. **This study has brought granularity to indicators of suspected money laundering of the proceeds of human trafficking by separating human trafficking into three categories in line with the Palermo Protocol: human trafficking for forced labour, sexual exploitation or for the removal of organs.**

(iii) The project team found that the proceeds from each of these types of exploitation are realized in a different manner, and required different laundering mechanisms. In addition, each of these three types of exploitation could be better understood and detected through the financial activities of the various actors and/or roles involved to conduct each of the three types of exploitation. Further segmentation based on roles and actors provided a second opportunity to develop a more detailed understanding of the offence. **The report also provides a more precise set of global money laundering indicators for use by reporting entities (such as banks and fintechs), Financial Intelligence Units and other national authorities.**

(iv) This study also identifies the challenges national authorities frequently face in detecting, investigating and prosecuting money laundering and terrorist financing from human trafficking. The study identifies good practices, and in particular the two primary good practices, to mitigate some of these challenges:

(a) Assess the diverse money laundering risks from human trafficking, share with stakeholders (such as banks and fintechs) and ensure that they are understood.

(b) Leverage expertise, capabilities and information through partnerships between the public sector, private sector (including banks and fintechs), civil society and NPO communities.

(v) This study updates the FATF Global Network's understanding of the financial flows from human trafficking, and provides tangible indicators and best practices for national authorities to improve their effectiveness in combatting money laundering and terrorist financing from human trafficking.

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<u>*An Example of What needs to be Done*</u>

A London-based nurse currently serving an 18-year prison term for trafficking Nigerian women to Europe and forcing them into sex work has been ordered to hand over almost £184,000.

Josephine Iyamu, 54, was the first British national to be convicted under the Modern Slavery Act for offences committed overseas, in a landmark prosecution led by the UK National Crime Agency (NCA) in 2018.

Iyamu was handed a confiscation order totaling £183,806.06 at Birmingham Crown Court on Friday 4 March, 2022.

The confiscation amount took into account her available assets, which include a large house in Benin City, Nigeria, where she employed household staff.

If she fails to pay the full sum within three months, she will serve an additional two years in prison and still be liable for the money.

Josephine Iyamu specifically targeted vulnerable women and put them through the most horrific experience, only to profit considerably from their misery.

Iyamu's expenditure on travel and properties far outweighed her legitimate earnings as a nurse and the NCA's investigation into her finances proved she made hundreds of thousands of pounds from her criminality.

Confiscation orders are a key tool which provide law enforcement agencies with the capability to really hit criminals where it hurts – in the pocket.

Iyamu was calculated, manipulative and motivated by money. Not only is she serving a hefty prison sentence, but she won't be living a luxury lifestyle when she comes out.

The NCA's investigation into Iyamu began in July 2017 following information from the German Police who had identified one of her victims working in a brothel in Trier.

After locating Iyamu, AKA Madame Sandra, in London, NCA investigators worked with the Nigerian Agency for the Prohibition of Trafficking in Persons (NAPTIP) to look into her activities in Nigeria.

Enquiries identified that she had positioned herself as a rich and powerful woman in Nigeria and had launched a political campaign, through which she claimed she wanted to empower women and families.

Using her status, Iyamu recruited vulnerable women from rural villages and promised them a better life in Europe. She charged them up to 38,000 Euro for facilitating their travel and forced them to work as prostitutes in Germany to pay off their debts.

Before they left, she put her victims through a Juju ceremony - a humiliating ritual designed to exert control over them. The women believed serious harm would come to them or their families if they broke their oath to Iyamu or tried to escape.

She was arrested by NCA officers after landing at Heathrow airport on a flight from Lagos on 24 August 2017.

Whilst in prison, she made attempts to trace and intimidate the victims and their families, together with bribing law enforcement officers, into proving her innocence.

Prior to Iyamu's trial, NAPTIP officers secured a video of a Juju priest conducting a revocation ceremony taking away the oath Iyamu's victims felt bound by. This supported all five women in giving evidence in court via video link.

They detailed the horrendous conditions they endured whilst travelling over-land across Africa, and then by boat to Italy before flying to Germany using false ID documents provided to them by Iyamu's associates.

She was convicted of five counts of facilitating the travel of another person with a view to exploitation and one count of attempting to prevent the course of justice and jailed for 14 years in July 2018.

Following an appeal, her sentence was increased to 18 years two months later.

Suspicious Transaction/Activity Reports & Large Cash Transactions Reports- A Tool that Banks/Fintech's Need to Use More

In all countries with AML/CFT legislation, banks are required to file unusual or suspicious transaction/activity reports (STR/SAR) and large cash transaction reports (LCTR) to their respective financial intelligence units (FIUs). The same requirements also apply to fintechs in most countries. The international standards set out by the Financial Action Task Force require that STR's/SAR's be filed with the FIUs within 48 hours of **confirmation** of the suspicion, and as soon as practically possible with regards to the LCTRs, with many countries requiring that these be reported within one week intervals.

The main objective of fighting money laundering and terrorist financing is to protect the integrity of the global financial systems and reduce the available markets where the proceeds of crime, including human trafficking, can be spent and enjoyed. Therefore, anti-money laundering initiatives are intended to ensure that there is no opportunity for money launderers to commit their illegal activities by closing as many loopholes as possible. Currently, there is a lot of pressure on countries to implement international standards on money laundering and terrorist financing measures to identify suspicious transactions or activities so as to; detect, investigate, and prosecute these criminals.

Banks and Fintechs play a very important role in the development of a country's economy, where they facilitate growth, provide financial stability and enable free markets. At the same time, banks are the primary places where the proceeds of crime are introduced into the economy and legitimized. This is mainly attributed to the combination of banking secrecy law (in some jurisdictions) and client confidentiality, lack of transparency of beneficial ownership of corporate schemes that enable the concealment of proceeds of crime, tax avoidance and evasion through complicated shell companies and offshore financial services.

International anti money-laundering standards, as applied through legislation in different countries, place responsibilities on banks and fintechs to prevent abuse of the financial sector by launderers.
The preventative measures require banks to comply with these standards, which include the following:

a) **Appointment of or designation of money laundering control officers as focal point persons for reporting ML/TF suspicious transactions/activities.**

b) Establish clear responsibilities to ensure that policies and internal controls are introduced and maintained which deter criminals from using their facilities for ML and TF

c) **Put in place sound "Know Your Customer" (KYC) procedures to be able to identify the true identity of their customers before opening any account to reduce the likelihood of them being used as vehicles for laundering the proceeds of criminal activities (including human trafficking) or moving terrorist funds.**

d) Establish procedures to meet record keeping obligations for ten years or more. This is aimed at safeguarding the documentary evidence to prove that the financial institution has sufficient knowledge of its clients and an effective audit trail; for instance, with respect to wire transfers, the names of the originator and beneficiary should be clearly identified.

e) **Develop a thorough understanding of ML/TF risks present in its customer-base, products, delivery channels, services, and jurisdictions with which they or their customers do business (including typologies that human traffickers use).**

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f) Design and implement policies for customer acceptance, due diligence and effect ongoing monitoring to adequately control ML/TF risks.

g) Carry assessment of ML/TF risks, of not only an individual customer but also at an enterprise wide level and allocate adequate resources to mitigate AML/CFT risks identified.

h) File suspicious activity records when required, and carry ongoing monitoring of accounts and transactions.

i) Provide ongoing training to their staff to discharge their statutory duty for taking appropriate measures to prevent their services from being used to launder money or for terrorist financing, and the various predicate offences, including human trafficking. This is particularly pertinent because many banks/fintechs tend to focus a lot more on the money laundering crime itself, without much attention being paid to the underlying crime(s) that generate the funds being laundered.

j) Conduct a periodic review to verify the effectiveness of the AML/CFT Compliance Program.

Conclusion(s)

The banking and fintech sectors must continue to rise to the challenge of ensuring that their corporate governance structures and risk management systems are designed and constantly redesigned to take care of the growing threat of ML/TF across the globe, while Regulatory Authorities, including Financial Intelligence Units and Central Banks must ensure that technology and globalization does not give money launderers an opportunity to explore new techniques to commit and cover their crimes.

Therefore, the maximum cooperation and coordination within the banking industry and fintech sector to implement the international standards will go a long way in harnessing domestic and international cooperation in the fight against money laundering and its predicate offences such as human trafficking.

Banks and Fintechs need to be vigilant in the fight against money laundering and its predicate offences (including human trafficking) to avoid the negative consequences which include but not limited to;

a) **Reputation risk -** banks and fintechs become vulnerable to reputation risk because they easily become a vehicle for or a victim of illegal activities perpetuated by their customers. Once banks and fintechs are associated with such activities, their reputation in the market becomes tainted and they risk losing legitimate customers.

b) **Legal risk –** banks and fintechs may become subject of lawsuits resulting from failure to observe 'know your customer' standards or from failure to practice due diligence in customer evaluation and acceptance. As a result of this, banks can suffer from criminal liabilities, supervisory fines and other penalties.

c) Lack of strong Anti-Money Laundering practices/policies, including robust suspicious activity/transaction detection systems, in a bank may also affect its relationships with correspondent banks because reputable international banks would not want to be associated with banks that do not practice basic anti-money laundering techniques, and therefore be a threat to their own operations.