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# Using anti-money laundering frameworks to fight illegal wildlife trade in Uganda

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## Abstract

In February 2020, Uganda made a high-level political commitment to work with the Financial Action Task Force (FATF) and Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) to strengthen the effectiveness of its anti-money laundering (AML) regime. Among other commitments, Uganda undertook to demonstrate that law enforcement agencies and judicial authorities apply the money laundering offence consistent with the identified risks.

Studies show that Uganda has high risks for cross-border movement of illegally obtained wildlife and wildlife products, both as a source and transit country.<sup>1</sup> In addition, Uganda and the East African region in general have made some massive seizures of illegal wildlife products, which points to organised criminal activity. Notably, no money laundering prosecutions have to date arisen out of illegal wildlife trade (IWT) as a predicate offence in Uganda, Kenya and Tanzania.

This short policy brief provides an outline of how the AML framework (intelligence, investigations and prosecutions) can be utilised to help combat IWT and the corruption that facilitates it. The insights are drawn from the Ugandan context, but can be applied with appropriate adjustments to other jurisdictions seeking to strengthen efforts to combat IWT and related corruption/money laundering.

## Intelligence stage

Uganda's Anti-Money Laundering Act, 2013 (the Act) provides for a robust framework of preventative measures that can be used to identify illicit money and assets generated from IWT and related crimes, including the corruption that facilitates IWT offences.

The Act designates financial institutions and other businesses and professionals such as lawyers, insurance companies, dealers in real estate, dealers in precious metals, casinos, registrars of companies, registrars of land, forex bureaus, etc., as "accountable persons".

Apart from the obligation to report suspicious transactions, accountable persons are obliged to carry out due diligence and know-your-customer (KYC) procedures and to preserve records. Effective supervision of accountable persons to ensure they comply with those obligations inevitably leads to the generation of additional intelligence regarding the location of illicit assets and funds from organised crimes like IWT.

## Early financial profiling

Many seizures of wildlife or wildlife products start with information that is developed into intelligence. At times, the suspects are surveilled over extended periods to catch them in possession of wildlife products.

<sup>1</sup> See for example the literature review in Kassa, Saba et al. 2020. "A worm's-eye view of wildlife trafficking in Uganda – the path of least resistance". Working Paper 33, Basel Institute on Governance.

It is essential that from the very onset of intelligence gathering, investigators should begin to financially profile the suspects. Open-source intelligence (OSINT) research can be invaluable in identifying assets belonging to people under investigation.<sup>2</sup>

### Intelligence on assets and money flows

Covert methods of gathering intelligence like surveillance, trash runs (searches), use of informers and email/telecommunications tracing and analysis are (or should be) used in the early investigation of potential IWT cases. It is crucial that as well as gathering information on the predicate IWT offences, these methods should be used to collect information on the location and ownership of criminal assets and the movement of funds derived from IWT crimes and/or used to commit them, for example by paying poachers or giving bribes to park authorities and border/customs officials.

### Civil society and local communities

Intelligence regarding the location of such assets and funds could potentially be sourced from local community members and civil society organisations. However, it is essential to carry out a proper risk assessment and implement mitigation measures to avoid endangering such informants, who may be at risk of reprisals from organised crime groups or complicit public officials.

## Investigation stage

### Parallel financial investigations

FATF Recommendation 30 enjoins law enforcement authorities to conduct “parallel financial investigations” alongside the traditional criminal investigation.<sup>3</sup>

The financial investigation should determine the extent of the criminal networks, identify and trace the proceeds of crime, and develop evidence which could be used in criminal proceedings. In Uganda and countries with similar legal and institutional frameworks, it is

recommended that the financial investigation of IWT crimes should be prosecution led or guided. This will ensure that only the most relevant evidence is pursued and the correct procedures followed.

### Inter-agency cooperation

Furthermore, inter-agency cooperation is essential in any financial investigation and subsequent effort to recover illicit assets. In specific deserving cases, it is recommended that a multidisciplinary task force with professionals like criminal investigators, lawyers, accountants, auditors and financial analysts drawn from various government agencies conduct the investigation.

Open discussion and trust between the agencies are vital. In addition, each agency should look to use its powers to gather financial information to support the investigation.

**A financial investigation is always required in order to bring money laundering charges. This is the main focus of this Policy Brief. However, a financial investigation could also be conducted for other reasons. For example, to support tax evasion proceedings, or to generate evidence to be used in any asset recovery proceedings, whether they are conviction or non-conviction based.**

### Financial evidence searches

As part of the financial investigation, when arrests, searches or seizures in IWT cases occur, investigators should look for any documents that could provide financial leads.<sup>4</sup> Examples of such documents in the IWT crime context include bank statements, withdrawal and deposit slips, wire transfer documents, cash registers, books of accounts, credit card receipts, mobile money transaction documents, sale orders and invoices.

In addition, shipping documents such as waybills, letters of credit, bills of lading, certificates of origin, certificates of insurance, etc., could all provide

<sup>2</sup> The Basel Institute’s free self-paced eLearning course on OSINT is based on a fictional illegal fishing case. Find it at: [learn.baselgovernance.org](https://www.baselgovernance.org). See also Medina, Manuel. 2020. [Quick guide to open-source intelligence](#). Basel Institute on Governance.

<sup>3</sup> See the [FATF website](#) for the full 40 FATF Recommendations and accompanying guidance.

<sup>4</sup> For further practical tips, see Jones, Phillip. 2019. [“Quick guide to fundamental skills in tracing assets.”](#) Basel Institute on Governance.

valuable financial leads. Other relevant documents include passports, ID cards, documents regarding the ownership of assets (titles, share certificates, bonds) and Powers of Attorney.

### Digital forensic analysis

During searches and seizures, it is also essential that all digital devices in possession of the suspect are seized and subjected to digital forensic analysis. Such digital devices include computers, mobile phones, iPads, storage devices, etc. The forensic examination of the digital devices of a suspect may reveal information concerning his or her finances and assets.

There are strict requirements regarding the seizure and chain of custody of electronic devices: care should be taken to ensure that the relevant legal procedures are followed and that people who have the necessary expertise conduct the seizures.

### Cryptocurrency transactions

Further, IWT investigators need to look out for and seize any devices that could indicate the suspect is engaged in cryptocurrency transactions.<sup>5</sup> Cryptocurrencies are increasingly popular with criminals due to the belief that they are harder to trace.

During searches and seizures, private keys for crypto accounts may be recovered from hardware and paper wallets. Private keys could also be discovered during the forensic analysis of digital devices in text files, emails, etc.

### Investigation tools

Investigation tools like production, monitoring, information and document search orders are useful in obtaining bank account information. All bank accounts controlled or linked to the suspect must be analysed. Such bank accounts could be in the names of the suspect, his or her relatives, friends or corporate structures like companies and trusts.<sup>6</sup>

Further checks should be done at the Lands and Companies Registries to understand whether the suspects hold any shares or interests in real estate that could be linked to IWT crime proceeds. The immigration records of the suspect and his associates might also provide useful leads. For instance, the fact that a suspect frequently travels to known destination countries for IWT products might imply that they make transactions or have acquired assets in those countries.

### International cooperation

IWT is a transnational crime. Uganda and the East African region, in general, must better utilise available regional and international cooperation channels.

Financial intelligence and evidence may be obtained through formal and informal cooperation. Informal channels include networks that connect Financial Intelligence Units (FIUs) such as the Egmont Group,<sup>7</sup> as well as police-to-police channels, INTERPOL, diplomatic channels, regional AML networks such as ESAAMLG and the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA), etc.

Formal mutual legal assistance (MLA) requests should be based upon substantial domestic investigation and used alongside informal communication networks. The objective of international cooperation in the IWT crime context should be to recover criminals' illicit assets wherever they may be situated.<sup>8</sup>

### Asset seizure and management

The identified assets must be seized or restrained as soon as possible. Funds in the bank can quickly be transferred and should be urgently restrained. For cryptocurrencies or other virtual assets, the time pressure is even more intense as these can be transferred out of reach within seconds.

5 See Paesano, Federico. 2021. "Quick guide to cryptocurrencies and money laundering investigations." Basel Institute on Governance.

6 See Atkinson, Phyllis. 2020. "Quick guide to offshore structures and beneficial ownership." Basel Institute on Governance.

7 To understand the role of FIUs in both investigating money laundering and recovering illicit assets, see Ravalomanda, Thierry. 2019. "Quick guide to the role of FIUs in asset recovery." Basel Institute on Governance.

8 The Basel Institute's free self-paced eLearning course on international cooperation and MLA in criminal matters provides a hands-on introduction. Find it at [learn.baselgovernance.org](https://learn.baselgovernance.org). See also: Nainappan, Shane. 2019. "Quick guide to international cooperation in asset recovery." Basel Institute on Governance.

In many countries, FIUs can use their powers to temporarily halt the transfer of funds while restraining orders are pursued in court.

Other assets that may be seized or restrained include vehicles, land, businesses, etc. A streamlined asset management system is crucial for any asset recovery efforts. Asset management must be clearly thought through, particularly before the seizure of immovable properties and businesses.<sup>9</sup> In the case of live animals, their care and management may require specialist expertise and facilities.

## Prosecution and post-trial stage

### Building a strong case

Although under the Ugandan Anti-Money Laundering Act, and most other jurisdictions' AML laws, money laundering may be prosecuted as a standalone offence, it is most likely that a suspect will be arraigned on a charge of money laundering in the same indictment as the predicate IWT crime. The same applies where corruption is a predicate offence to money laundering. In drawing up the indictment, particularly the money laundering charge, prosecutors must be clear on what evidence proves criminal conduct for both the predicate offence and the laundering of the proceeds of such crime.

For IWT offences, the evidence gathered in the parallel financial investigation will mostly prove the money laundering charge. Prosecutors must ensure that the evidence proves all the elements required to sustain a money laundering conviction, even if the IWT offence itself fails in court.

Preparatory meetings between the prosecutors, investigators and witnesses to review the evidence are necessary for the case to be efficiently presented.

### Witnesses and protections

To successfully prosecute the real kingpins of IWT crime in Uganda and the region, it might be necessary that certain accomplices turn prosecution witness.

Therefore, mechanisms must be put in place to protect such accomplices and other vulnerable witnesses.

### Asset management

Assets that may be seized or restrained include vehicles, land, businesses, etc. A streamlined asset management system is crucial for any asset recovery efforts. Asset management must be clearly thought through, particularly before the seizure of immovable properties and businesses. In the case of live animals, their care and management may require specialist expertise and facilities.

### Efficient judicial processes

Law enforcement authorities and the judiciary must ensure that serious IWT cases, especially those that pass the organised crime threshold, are quickly dealt with. Long trials result in witnesses becoming untraceable or dying, magistrates being transferred, suspects absconding, etc.

### Asset forfeiture without a criminal conviction

Many countries have laws that allow the forfeiture of assets without a criminal conviction. In Uganda, Section 85 of the Ugandan Anti-Money Laundering Act contains provisions that allow prosecutors to apply for asset forfeiture where a suspect has died or absconded.

Therefore, financial investigations resulting in the restraint of assets would make it possible to forfeit the assets of IWT suspects, or their corrupt facilitators, who absconded after being released on bail or during investigations.

### Use of recovered assets

Currently, all the money recovered from criminals in Uganda and due to the State is ultimately returned to the government's consolidated fund. It is recommended that a substantial portion of any funds recovered from IWT-related crimes and money laundering be reinvested in conservation or programmes to improve the welfare of communities living near wildlife and at risk from organised crime groups engaged in IWT. Recovered funds could also support initiatives to improve the capacity of law enforcement authorities in combating IWT.

<sup>9</sup> For insights into how prosecutors in Uganda overcame significant challenges of asset management in a landmark money laundering case, see Walugembe, Tom. 2020. "Breaking new ground: prosecuting the first money laundering case in Uganda." Basel Institute on Governance.

Visibly investing the illegal proceeds of IWT crimes in this way would bring tangible benefits to the fight against IWT and send a strong message that crime doesn't pay.<sup>10</sup>

### The bottom line

Efforts to combat organised IWT crime in Uganda and East Africa can only be effective if the economic incentive that attracts criminals to these activities is removed. Using the AML framework against IWT criminals will ensure that the illegal assets acquired from these crimes are confiscated and put to better use.

### Keywords

Illegal wildlife trade

Corruption

Money laundering

Law enforcement

Financial investigations

Asset recovery

Uganda

East Africa

### About this Policy Brief

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L I E C H T E N S T E I N



<sup>10</sup> For more on the debate about using recovered assets in tangible and relevant ways, see Fenner, Gretta, Keith Oliver, and Amalia Neenan. 2020. "Asset recovery and wildlife trafficking." Basel Institute on Governance; International Academy of Financial Crime Litigators. Examples of how assets recovered in corruption and money laundering cases have been used to support sustainable development and the criminal justice system are found in Marsh, Simon. 2022. "Smarter use of confiscated assets would multiply their impact." Basel Institute on Governance.