

LEGAL ANALYSIS ON MONEY LAUNDERING AND TERRORIST FINANCING AS THREATS TO NATIONAL SECURITY OF SRI LANKA

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Abstract

Terrorist Financing (TF) and Money Laundering (ML) remains a challenge in modern society. The difficulty in ascertaining the perpetrators precisely and the transnational nature of the crimes is impeding justice. Sri Lanka has a plethora of laws to combat ML and TF. Nonetheless, this does not guarantee the prevention and reemergence of the crime. In order to deter, as well as obstruct ML and TF, it is imperative to examine the application of the legal system. When analyzing available legal provisions, it is clear that there are lacunas in the legal system that deserves examination and rectification. The objective of the research is to identify the threats to national security posed by ML and TF and to examine the laws relating to ML and TF, to identify lacunas in the laws and to provide recommendations to rectify the lacunas in the legal system relating to anti-ML and prevention of terrorist financing.

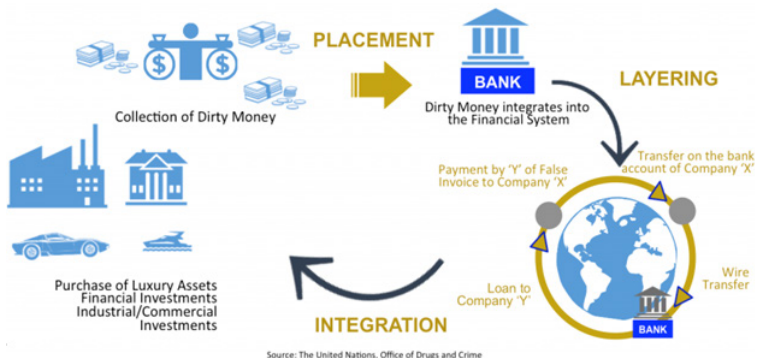
*Keywords : Money Laundering, National Security,
Terrorist Financing, Transnational*

1. Introduction

Money Laundering (ML) and Terrorist Financing (TF) are crimes that go hand in hand. Unlike in the past, at present Sri Lanka has become an end destination for the drug trade, illegal weapon and firearm trade, rather than being a transshipment hub. This was witnessed during the war between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE). Moreover, it goes beyond war. According to Saferworld, “The flow of arms into Sri Lanka is closely linked to the long-running conflict between the Sri Lankan state and the Liberation Tigers of Tamil Eelam (LTTE). However, the use of small arms is not simply confined to the conflict. There is a thriving market for illicit small arms concerning armed crime characterized by a violent political culture”¹. Extortion, kidnapping, robbery, human smuggling, weapon trade and abduction

¹Saferworld.org.uk. 2021. Publications. [online] Available at: <<https://www.saferworld.org.uk/resources/publications/188-small-arms-and-light-weapons-challenges-in-sri-lanka-and-options-for-the-future>> [Accessed 7 November 2021].

facilitates TF by generating black or dirty money. Therefore, the problem arises whether the country is all set to react, as well as counteract those threats. It is crystalline that ML and TF are pernicious crimes. Violence is recurring; this was seen during the Easter Sunday Attack 2019. “The Easter attacks nevertheless represented a massive security failure by the Sri Lankan state”². Therefore, both the acts and omissions relating to ML and TF cannot be taken trivially. “It disrupts the economy, political stability, the justice system and society as a whole. Therefore, it is evident that ML, as well as TF, should be averted without further delay. Financial Action Task Force (FATF) defines the term “Money Laundering” as “the processing of criminal proceeds to disguise their illegal origin to legitimize the ill-gotten gains of crime”³. The process of ML is three staged as per the image below,



The three stages of money laundering are Placement, Layering and Integration. In Placement, funds adduced by crime are incorporated into the financial system. Simply stating it is placed in the legitimate channels. Next, layering is the ‘process of effecting a large number of transactions

with the funds to distance them from their criminal origin’. Finally, in the stage of Integration, laundered money enters the financial system as legitimate money. Moving on to TF, it can be defined as, “The use of the financial system to facilitate the funding of terrorist acts, and to disguise both the origins and intended purpose of the funds used”⁴.

² “After Sri Lanka’s Easter Bombings: Reducing Risks of Future Violence”. 2021. Crisis Group. <https://www.crisisgroup.org/asia/south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence>.

³ “Money Laundering - Financial Action Task Force (FATF)” <<https://www.fatf-gafi.org/faq/moneylaundering/>> accessed 1 October 2021.

⁴ Tim Parkman, Mastering Anti-Money Laundering and Counter-Terrorist Financinga Compliance Guide for Practitioners (Pearson UK 2012).

Terrorist financing as well as Money Laundering happen in numerous ways. The modes of crime are narcotics trade, collecting funds from Diaspora (Al-Qaeda, Sri Lankan rebels), illegal selling of firearms, nonprofit organizations, human smuggling and abductions with ransom demands (Colombian paramilitary groups, groups active in the republics of the former Soviet Union). Furthermore, trafficking precious stones (Khmer Rouge, rebel groups in Sierra Leone and Angola), credit card frauds, prostitution and Cybercrimes are ways which ML and TF occur. When perusing the predicate offences, it is clear that these are detrimental to national security.

2. Limitations

The research has only dealt with Sri Lankan legal context. Furthermore, this research has only analyzed the Prevention of Money Laundering Act No 05 of 2006 and Prevention of Money Laundering (Amendment) Act No 40 of 2011.

In addition, Conventions on the Suppression of Terrorist Financing Act No 25 of 2005 (CSTFA), Convention on the Suppression of Terrorist Financing (Amendment) Acts No 41 of 2011 and

Conventions on the Suppression of Terrorist Financing Amendment) Act No 03 of 2013 are critically analyzed.

3. Analysis

3.1 Threats posed to national security by ML and TF

ML has a direct impact on financial security. The company form and nature can be deceptive and incurring culpability to the guilty companies becomes a hard task. Hence, it is important to look into the true nature and objective of the company. According to Vinchiworks Blogs, 'A customer who wishes to launder money may use one of a number of structures to obscure or disguise the beneficial ownership of assets⁵. For Example, Shell companies, Front companies, double invoicing, Trusts, Bearer bonds, securities, cheques, Charities and non-profits. These companies generate revenue and there will be no record of transactions or it can be illegal money taken out through a legitimate channel. Therefore, due to the intermingling of legitimate money and impure money, the state may face detrimental consequences in the long run such as corruption of the financing sector. Due to this reason, during the investigation stage property derived out of

⁵ 2018 Kaspersky Fraud Prevention Report

money laundering will be confiscated. As a result, the public will lose faith in the banking system leading to a lessening of depositors as well as investors.

Tax evasion is another security threat to financial, as well as economic security. It widens the gap between low-income members and high-income members as high-income generators are capable of concealing large sums of money through illicit multiple companies. This leads to a deficit in tax revenue in the government. Explaining, 'Reduced tax income for the state, disproportionate distribution of the tax burden, and rise of social differentiation' give rise to social division⁶. Moreover, 'According to the vulnerability tracker of Illicit Financial Flows (IFFs) of the Tax Justice Network, Sri Lanka ranks mid-high at the financial secrecy index, being number 39 out of 133 countries globally, and with a score of 72 on financial secrecy haven'.

An emerging, as well as another present risk, is cyber security. Where money launderers, as well as terrorist financiers, are using the cyber domain to thrive their pockets safely. Due to digital currencies such as Bitcoins and Cryptocurrencies, criminalizing the perpetrators is a challenge. This is due to the cardless nature of the transaction and the extraterritorial nature. "The time has come to stop the use of Bitcoin as a pirate currency before it spreads further into not only the U.S. economy but into the entire global financial system". Even though Sri Lanka is not using virtual currencies such as Cryptocurrency and Bitcoins, there are investors of those currencies in Sri Lanka. Therefore, it is now high time to regulate and monitor currency patterns vigilantly.

Another risk is, in platforms such as the dark web, predicate offences takes place on a large scale. Such as human smuggling, identity theft, illegal weapons and murder. This is disastrous to human security. Money generated from those illicit sources is deposited in a legitimate financial body where money is 'purified'. However, in reality, the money is dirty and the whole process of the transaction has happened completely online. Due to these reasons, national security is endangered.

According to the United Nations Development Programme 2015, Human security is achieved by (I) protecting individuals from violence, armed conflict, civil wars, and internal and external terrorism and by (ii) confronting poverty and unemployment, hunger, diseases, pandemics, and natural disasters⁷. Due to that system, facilitating terrorism by committing terrorism, aiding or abetting terrorism must not be tolerated.

⁶ ibid

⁷ Rula Odeh Alsawalqa, 'Dialectical Relationship Between Terrorism and Human Security: A Sociological Approach' (2021) 26 *Utopía y Praxis Latinoamericana* 275 <<https://www.redalyc.org/journal/279/279666119027/html/>> accessed 2 October 2021.

Even though the Sri Lankan government militarily defeated the LTTE, LTTE international network remains intact. The traditional strategy of LTTE consisting of propaganda, funding, procurement and shipping has now shifted to lobbying, litigation and lawmaking. All the acts of lobbying, litigation, as well as law-making conducted by LTTE international network and LTTE sympathisers, are raising funds on a massive scale. One of the major challenges Sri Lanka has to face is to criminalise the acts of terrorist financing. The reason is, LTTE affiliates have been successful in attracting Tamil youth and donors to fund their campaigns. Even though LTTE funding is not seen publicly in Sri Lanka especially in countries such as Canada, Italy and the United States of America it is the opposite. The majority of the donors have not witnessed the war, yet the radicalization and exclusivism had led them to believe a ‘Tamil Genocide’, which is a fictitious claim. These campaigns are run by organisations that are front, covered, as well as sympathetic in nature. Therefore, the government is vested with the task to identify and reveal the LTTE links and criminalising them.

Adding burden, many of these funding campaigns and calls for donors happen totally online leaving no evidence of physical participation. This is adverse to national security. The question arises on why is it arduous to identify and penalize the perpetrators. The reason is, due to the concept of ‘beneficial ownership. since terrorist financing mainly happens by way of charity organizations, ‘anonymous donors’ and youth organizations. Due to that reason, ascertaining the perpetrators as to who deposited the money, who withdrew it, who brought assets, who invested it becomes complicated. As a result, facilitating terrorism does not only affect military security, but it also affects the financial sector. The reason is, in a situation like this, ‘know your customer’ (KYC) becomes a failure. Banks are unaware of who deposit money since charity organizations are unregulated. Hence, in reality, the presence of terrorists needs to be revealed by stringently applying the legal framework and disallowing weaknesses to disrupt the justice process.

Money laundering, as well as terrorist financing, was obvious during the April 21st Easter Sunday Attack 2019 which displayed the gruesome nature of terrorism and extremism. According to; ‘Sri Lanka Attacks: The Family Networks behind the Bombings’ 2021^{NTJ} managed to secure donations from overseas, particularly from the Middle East, India and Malaysia. ‘The culprits of Easter Sunday Attack was Zaharan’s Kattankudy-based network which mainly consists of his family built around his family and also Jamathei Millathu Ibrahim (JMI) organization. The main perpetrators were two brothers Ilham and Inshaf Ibrahim ‘from a prominent Colombo business family. Much or all of the money needed to fund the attack reportedly came from the Ibrahim brothers’⁸.

⁸ ‘After Sri Lanka’s Easter Bombings: Reducing Risks Of Future Violence’. 2021. Crisis Group. <https://www.crisisgroup.org/asia-south-asia/sri-lanka/302-after-sri-lankas-easter-bombings-reducing-risks-future-violence>.

The atrocity committed by the extremists including Zaharan, as well as the Ibrahim brothers is a clear depiction of the failure of the security sector, as well as financial institutions to trace the terror networks.

The problem arises why there were no early warning signs. The terror links of this massive scale penetrated the security sector without any early sign. It was only after the coordinated suicide bombings, Sri Lanka understood the grave-ness of the issue, which was under the ashes. The aftermath of the Easter Sunday attack ‘Even though there are no reports of Sri Lankan madrassas preaching violence or anti-Buddhist or jihadist ideology, Muslim leaders tend to agree that, as a precautionary step, the curriculum, faculty and funding of madrasas should be subject to government regulation’⁹. The perception of Muslim leaders showcase the need for regulating funding to the institutions since irregularities can lead to devastating situations just as happened in Easter Sunday Bombings.

As cited by Nishadi Thennakon; ‘According to Timothy O’ Brien, Al Qaeda has used the Hawala system to fund the American Embassy bombings in Kenya and Tanzania in 1998. Columbian drug traffickers have also used Hawala as their main remittance system. The Irish Times reported (2016) that Hawala was used to fund the Paris attack in 2015. As per the International Business Times (2015) the Boko Haram Organization in Nigeria is known to receive money through Hawala’¹⁰. When looking at Sri Lanka’s predicament aftermath of the Easter attack country must pay attention to informal, as well as illegal remittance schemes and deter them accordingly by criminalizing the fund transfer by terrorists. Hence, the Hawala banking system in Sri Lanka must be monitored swiftly. Moreover, financing of terrorism by the illegal drug trade, weapon trade, gem trade, training and information sharing are threats to national security that needs to be countered.

In addition to economic security, financial security and cyber security, the political security of a country can also be disrupted due to ML and TF. If the people representatives or people holding authority are guilty of ML and TF, the public will lose faith in the government. (Ex-Central Bank Governor Arjun Mahendran the head of Perpetual Treasuries (Pvt) Ltd. Arjun Aloysius Bond Scam). The resultant effect is destabilizing legitimately elected governments giving rise to erosion of the rule of law.

⁹ ibid

¹⁰ “Combating Invisible Financing For Terrorism | Daily FT”. 2021. Ft.Lk. <https://www.ft.lk/Columnists/Combating-invisible-financing-for-terrorism/4-679070>.

3.2 Laws relating to Anti ML(AML) and TF

3.2.1 International framework

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
- United Nations Convention For the Suppression of Financing of Terrorism of 1999
- United Nations Convention Against Transnational Organized Crime, 2000
- Security Council Resolutions starting with 1373 (2001)
- Financial Action Taskforce (FATF) Forty Recommendations on ML and Nine special recommendations on TF

3.2.2 Sri Lankan context

The statutes dealing with anti ML and TF are as follows

- Conventions on the Suppression of Terrorist Financing Act No 25 of 2005
Conventions on the Suppression of Terrorist Financing (Amendment) Act No 41 of 2011.
Conventions on the Suppression of Terrorist Financing (Amendment) Act No 03 of 2013
- Prevention of Money Laundering Act No 05 of 2006,
Prevention of Money Laundering (Amendment) Act No 40 of 2011
- Financial Transactions Reporting Act No. 06 of 2006 (FTRA).
(All three Acts were prepared in line with the FATF's 40 Recommendations for Prevention of ML and its 9 Special Recommendations for combating the financing of terrorism)
- Regulations pertaining to United Nations Security Council Resolutions(UNSCR) 1373 and 1267 in Extraordinary Gazette Nos: 1758/19 and 1760/40
- Gazette orders relevant to Financial Intelligence Unit(FIU)
- A Targeted Financial Sanctions (TFS) Committee has been appointed to implement Targeted Financial Sanctions on TF and Proliferation Financing of Weapons of Mass Destruction (WMD)

- SAARC Regional Convention on the Suppression of Terrorism Act, No 70 of 1988. SL has also established the South Asian Association for Regional Co-operation (SAARC) Terrorist Offences Monitoring Desk.
- SAARC Convention on Mutual Assistance
- Bay of Bengal Initiative for Multi-sectoral Technical and Economic Co-operation (BIMSTEC) Convention in Combating International Terrorism, Transnational Organized Crime and Illicit Trafficking was ratified by Sri Lanka.

a. Prevention of Money Laundering Act No 5 of 2006 (PMLA)

Section 2 of the Act is on applicability and jurisdiction. The section is wide in scope and includes persons, as well as institutions. It extends to acts done while being a resident, as well as outside. Moreover, institutions that are listed or incorporated outside, as well as inside Sri Lanka, are taken into consideration. Furthermore, the Act entertains branches of banks too. Hence, applicability is extraterritorial as the crimes are transnational.

The offence of Money Laundering is enumerated in section 3, which is, wide in scope. The section penalizes both the guilty act (*Actus Reus*) and the guilty mind, which can be, the knowledge to commit the crime, guilty intent to commit or attempt to commit a crime. 3(1) of the Act states that “ Any person, who engages directly or indirectly in any transaction about any property which is derived or realized directly or indirectly, from any unlawful activity or the proceeds of any unlawful activity; receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realized, directly or indirectly, from any unlawful activity or the proceeds of any unlawful activity, knowing or having reason to believe that such property is derived or realized, dire directly from any unlawful activity or the proceeds of any unlawful activity, shall be guilty of the offence of ML. the guilty Act is wide in scope. It covers, “receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers”. In addition, guilty intent is also broad in nature, knowing or having reason to believe”.

However, the offence of ‘conspiracy’ is not recognized separately, which is a lacuna in the system. In comparison, United Kingdom’s anti-money laundering scheme is extensive. (Segarajasingham 2018) states that ‘The PCA/UK defines money laundering as an act which constitutes an offence under sections 327-962 and includes attempt, conspiracy, aiding, abetting, counseling and procuring the

commission of the offence which are called principal offences. In addition, there exist non-reporting offences and tipping-off offences under the Act. Thus, it is of utmost importance that Sri Lanka must embrace ‘conspiracy’ as way which money laundering happens.

In R v Joseph Ashman & Others (2016), ‘Three of the four defendants (including the principal defendants’ wife and sister) were convicted.’ Similar position is accepted in Sri Lanka, which is progressive and standard. Law recognizes the element of ‘aiding, abetting’. In the case of Wele Suda ‘[a case was] filed against three accused including drug dealer Gampola Vidanage Samantha Kumara alias Wele Suda and his wife’¹¹. Moreover, when ‘The mother, of underworld criminal Janith Madusanka de Silva alias ‘Podi Lassi’, was arrested by the Western Province North Crime Division, on charges of handling money earned from drug trafficking’¹². This is crystalline from the words of ‘knowing or having reasons to believe incorporated in Sri Lanka’s Anti Money Laundering Act. Nevertheless, incorporating the element of ‘conspiracy’ will pave the way for a high number of prosecutions leading to a conviction. Thus, this is significant due to the reason where most of the laundering activities are committed together rather than by a single person.

As per the Act, the penalty for ML is on, “conviction after trial before the High Court be liable to a fine which shall be not less than the value of the property in respect of which the offence is committed and not more than three times the value of such property, or too rigorous imprisonment for a period of not less than five years and not exceed twenty years or both such fine and imprisonment”. As per the section, due to criminal activities, the property from ML (E.g.: house, apartments, vehicles), as well as assets derived will be subject to forfeiture.

Section 4 deals with ‘presumptions’. As per the Act, for any proceedings under this Act, it shall be deemed until the contrary is proved, that any movable or immovable property acquired by a person has been derived or realized directly or indirectly from any unlawful activity, or are the proceeds of any unlawful activity if such property (a) Being money, cannot be or could not have been (I) part of the known income or receipts of such person; or (ii) Money to which his known income or receipts has or had been converted; or (b) Being property other than money, cannot be or could not have been (I) property acquired with

¹¹ “Money Laundering Case Against Wele Suda, Relatives Fixed For Trial”. 2021. Lankainformation.Lk. <https://lankainformation.lk/news/latest-news/item/17707-money-laundering-case-against-wele-suda-relatives-fixed-for-trial>.

¹² “Podi Lassi’S Mother Arrested In Kottawa”. 2021. Dailymirror.Lk. https://www.dailymirror.lk/print/front_page/Podi-Lassis-mother-arrested-in-Kottawa/238-194539.

any part of his known income or receipts; and (ii) Property which is or was part of his known income or receipts; and (iii) Property to which is any part of his known income or receipts has or had been converted.

As per the Act, any “property” is inclusive of, “Currency or asset of any kind whether movable, immovable, tangible or intangible, whether situated in Sri Lanka or elsewhere. This also, includes legal documents or instruments in any form whatsoever including electronic or digital form, evidencing title to or interest in such assets.”

In the cases of acts of ML committed by a body of persons “every director or other officers of that body shall be guilty of ML, every, collaborate with every member of an unincorporated body, such as an association or club. The defence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. The assets of any person found guilty of the offence of ML shall be liable to forfeiture in terms of the commission of the unlawful activity”.

Act has a list approach; there is a list of predicated offences. As per the PMLA No 5 of 2006, an “Unlawful activity” means any act, which constitutes an offence under below mentioned Acts that are predicate offences.

- a. The Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218);
- b. Any law or regulation for the time being in force relating to the prevention and suppression of terrorism;
- c. The Bribery Act (Chapter 26);
- d. The Firearms Ordinance (Chapter 182), the Explosives Ordinance (Chapter 183) or the Offensive Weapons Act, No. 18 of 1966.
- e. The Exchange Control Act (Chapter 423), and any Rules, Orders or Regulations made the Act
- f. An offence under Section 83C of the Banking Act, No. 30 of 1988;
- g. Any law for the time being in force relating to transnational organized crime;
- h. Any law for the time being in force relating to cyber-crime;
- i. Any law for the time being in force relating to offences against children;
- j. Any written law for the time being in force relating to offences connected with the trafficking or smuggling of persons;

- k. The Customs Ordinance (Chapter 235) and any Regulation, Rule or Order made thereunder;
- l. The Excise Ordinance (Chapter) 52 and any Regulation, Rule or Order made thereunder;
- m. The Payment Device Frauds Act No 30 of 2006 and any Regulation, Rule or Order made thereunder;
- n. The National Environmental Act No 47 of 1980 and any Regulation, Rule or Order made thereunder
- o. An offence under any other written law for the time being in force which is punishable by death or with imprisonment for a term five years or more; provided however that, notwithstanding anything to the contrary in the preceding provision, any offence under section 386, 388, 399, and 401 of the Penal Code (Chapter 19) shall be deemed to be an unlawful activity for this Act; and
- p. An act committed within any jurisdiction outside Sri Lanka, either which would constitute an offence in that jurisdiction or which would if committed in Sri Lanka amount to an unlawful activity within the meaning of this Act.

In the case of *Director of Public Prosecutions v Elladius Cornelio Tesha and others* [2016], it was held that ‘it is permissible to charge both money laundering and its predicate offending’. A similar situation prevails in Sri Lanka, where a person can be tried for drug-related offences, as well as laundering money. Furthermore, in the case of *Director of Public Prosecutions v AA Bholah* [2011], it was held that “Money laundering may be charged and proved without proof of a particular predicate offence”.

Additionally, under Section 27 of the PMLA, Sri Lanka may assist commonwealth countries in investigations and prosecution of offences. Sri Lanka will give the same assistance to countries other than Commonwealth countries upon agreeing with such countries. This displays the impact of transnational crime, where countries need extra-territorial mechanisms to administer justice.

b. Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 (CSTFA)

This Act deals with the offence of financing terrorists or terrorist organizations according to the Act, “terrorist” means any person who (a) directly or indirectly and willfully commits or attempts to commit a terrorist act; (b) participates as an accomplice in committing a terrorist act; (c) organizes, directs or aids or abets the commission of a terrorist act; or (d) contributes to the commission of a terrorist act by a group of persons acting with a common purpose where the contribution is made intentionally and to further the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;” According to this section, Actus Reus, as well as Mens Rea, is covered. Commission of the act, attempting to commit, aiding, abetting, being an accomplice or acting for a common purpose is taken into account. The intent is taken into attention; this is proved by the words ‘willfully’, ‘intentionally’. As per the section, “terrorist act” means— (a) an act which constitutes an offence (b) any other activity intended to within the scope of or within the definition of any one of the Treaties specified in Schedule I to this Act; cause death or serious bodily injury, to civilians or any other person not taking an active part in the hostilities, in a situation of armed conflict or otherwise and the purpose of such act, by its nature or context is to intimidate a population, or to compel a government or an international organization, to do or to abstain from doing any act; or (c) the use or threat of action— (I) which is designed to influence the government or to intimidate the public or a section of the public; and (ii) which is made to advance a political, religious or ideological purpose, and such action, (aa) involves serious violence against a person; (bb) involves serious property damage; (cc) endangers the life of another person, other than the person committing the action ;(dd) creates a serious risk to health or safety of the public or a section of the public; or (ee) is designed seriously to interfere with or seriously to disrupt an electronic system.” One of the clear reasons behind the implementation of the convention is there is no clear policy direction, as well as capacity. Hence, to reap the full benefits of the Act, it is pivotal to have a clear policy. If so, there will be no issue in prosecution, as well as confiscation. In reality, there is very less amount property confiscation via the Act. Hence, it is of utmost importance to prosecute criminals by using special investigation techniques. Police are subjected to limitations due to their inability to use “special” techniques. For that reason, it is important not to be progressive to deter emerging and existing challenges.

1. The Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on December 16, 1970.
2. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971.
3. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.
4. The International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.
5. The Convention on Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980.
6. The Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988.
8. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

3.2.3 The institutional framework

The institutional framework relating to Anti ML and TF is as follows,

- Attorney General's Department
- Central Bank of Sri Lanka (CBSL)- Department of Banking Supervision, Department of Supervision of Non-Bank Financial Institutions
- Commission to Investigate Allegations of Bribery or Corruption
- Department of Cooperative Development, within the Ministry of Food Security
- Department of Immigration and Emigration:
- Department of Inland Revenue,
- Insurance Board of Sri Lanka
- Ministry of Foreign Affairs
- Ministry of Finance and Planning Sri Lanka Customs
- Ministry of Justice
- Non-Government Organizations Secretariat
- Office of the Chief of National Intelligence
- Registrar of Companies/Registrar General Department
- Secretary to the Ministry for Defence
- Sri Lanka Police -Criminal Investigation Division, Terrorist Investigation Division, Police Narcotic Bureau, Interpol Bureau. Human Trafficking/ People Smuggling Division.

3.3 Lacunas

Even though Sri Lanka has an array of laws to combat ML and TF, drawbacks in the laws hinder the justice process. Therefore, it is crucial to cure the loopholes. It is evident in the present context that there are few rates of prosecutions. Inability to prosecute criminals and give a verdict creates distrust in the public on the justice system. Another loophole is on confiscation rates. Even though large-scale ML activities are happening, seizing goods and holding trials are seldom

seen. The confiscation procedure does not extend to third parties. Due to this, criminals generate income arbitrarily.

Another lacuna that can be seen is in the procedure of investigation. Even though the PMLA is advantageous to police, they are not bestowed with the power to use “special techniques” during the confiscation of property derived out of ML and terrorist financing. Additionally, “there is a void as foreign currency does not cover the full range of bearer negotiable instrument”¹³. According to Refworld (2021) country report Sri Lanka ‘Although anti-money laundering/countering the financing of terrorism laws cover non-financial entities such as real estate agents, jewellers, and dealers in precious metal, no regulator has issued “Know Your Customer” policies covering these institutions. Sri Lanka has not yet issued regulations to cover non-profit organizations’¹⁴. Due to that reason, it is crystalline that front organisations, as well as Non-governmental organisations are a major hurdle to combat ML and suppress terrorist financing which needs to be taken into a note.

Another main hurdle is the Informal Value Transfer System. As per (“Fincen Issues Report On Informal Value Transfer Systems | Fincen.Gov” 2021), ‘Hawala, an IVTS, is a method of monetary value transmission that is used in some parts of the world to conduct remittances, most often by individuals who seek to legitimately send money to family members in their country of origin.’ Therefore, to preserve security, it is imperative to monitor as well as regulate the money trail.

4. Conclusion

As discussed it is crystalline that ML, as well as TF, are threats to national security that should not be tolerated. It is detrimental to all types of security sectors including military, health, political, as well as economy. Sri Lanka has ratified respective laws, as well as tried to comply with the recommendations provided by FATF. Irrespective of the availability of legislation, the lack of smooth implementation between laws gives rise to failure in implementing an Anti-ML regime, as well as suppressing terrorism. It is the same with litigation. However, there is constant confiscation of drugs and transnational crimes taking place: it seldom reaches the stage of reaching a judgement or decree. Challenges such as the extraterritorial nature of the crime, increase the use of virtual currencies,

¹³ Financial Action Task Force Group FATF IX Special Recommendations

¹⁴ Refugees, United. 2021. “Refworld | Country Reports On Terrorism 2016 - Sri Lanka”. Refworld. <https://www.refworld.org/docid/5981e415a.html>.

the complexity of banking structure are hurdles. In addition, bogus imports and exports, front companies, Diasporas, as well as front loans obstruct the effective implementation of the AML regime. Thus, to reap the full benefit of the existing legal regime below recommendations can be taken into account.

5. Recommendations

• Interagency platform

There are a plethora of institutions to prevent ML. All these institutions/ ministries serve a common purpose. However, the method utilized is different. As a result, knowledge sharing among institutions becomes pivotal. Moreover, research and training to individuals by the inter-agency platforms will create a strong workforce to combat ML and TF.

• Non-governmental organizations and front organizations

In cases such as non-governmental organizations, as well as front organizations, money comes from anonymous donors rather than a particular person. Therefore, the state must identify who is the beneficial owner; merely approving transactions of the trust will not be a prudent choice. (Know your customer- KYC)

• Police information and confiscation

As per the Act, when confiscating money or property derived from black money police only use limited police information. This is detrimental and affects the quality of intelligence to go beyond the frame and combat the crimes. Therefore, it is paramount to recognize the use of special investigation techniques. Furthermore, it is pivotal to extend confiscation measures to third parties.

• Mutual legal assistance

Both TF and ML are extraterritorial crimes. The perpetrators are widespread and therefore holding them culpable is a complex task. From country to country, laws differ in theory and practice. Adding to the complex application of law in one country will not apply to another country. A person guilty in one country can be immune in another jurisdiction. Therefore, reaching a common ground

to mitigate and prevent ML, as well as TF can be achieved by mutual legal assistance between the countries. It is only if the expertise and experience of countries are shared the crimes can be mitigated. Additionally, it is imperative to monitor threat patterns due to upgrading cyber features. Hence, it is important to monitor threat patterns and ascertain the crime before its commission.

- **Public-private data sharing**

Public-private data sharing will be an asset to prevent ML and suppress TF. The reason is 'customer due diligence, as well as 'know your customer' being important concepts. Therefore, banks and other financial institutions must report 'suspicious transactions' by way of a 'suspicious transaction report' ¹⁵.

- **Regulations relating to front organizations/ NGO**

Terrorists tend to fund their illegitimate business using the cover of charities and trust. Therefore, the state must assess and monitor the transactions in the financial institutions closely.

- **Designated Non-Financial Businesses and Professions**

- (DNFBP sector)

Lawyers, accountants and similar classes who enable illicit wealth (FACTI 2021) must be brought within the ambit of the AML/CFT regulatory framework.

- **Creating public awareness among social media campaigns, school-level programmes on how to prevent ML and TF by highlighting the consequences of the crimes.**
- **Regulating Hawala Banking system.**

¹⁵A Suspicious Transaction Report (STR) is a report filed when there are reasonable grounds to suspect that the transaction is related to a money laundering, terrorist financing or any other criminal offence. A suspicious transaction can include both completed and attempted transactions

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