

## **Policing Money Laundering: A Case Study of Afghanistan**

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### **Abstract**

Money laundering and its prevention is a significant issue in many countries. Various attempts for policing money laundering have been taken at different levels; however, the problem of money laundering is steadily increasing. Based on secondary data, this research paper examines the trends and issues in the anti-money laundering efforts in Afghanistan. It recognizes that money laundering has acquired the status of a global problem and Afghanistan is not an exception. It looks for the Afghan government initiatives designed to control money laundering and terrorist financing. Whilst the focus of study is Afghanistan, this study also takes into account the impact of international regulations (such as UN and FATF) on the way money laundering is tackled in Afghanistan. It is argued that the lack of political will of the government is a major obstacle in the policing of money laundering in Afghanistan. The Afghan parliament has yet to pass the proposed legislations on money laundering and financing terrorism. In addition, there is serious shortage of human resources in all government departments. The information sharing mechanism among different government departments is extremely poor. There is lack of trust between Da Afghanistan Bank and the Afghan National Police with respect to sharing information related to money laundering cases. The Afghan National Police are often accused of being corrupt and have links with criminal gangs. The proper mechanism for training police officers with respect to money laundering investigations is missing. There was no system for keeping official statistics on money laundering cases in Afghanistan. This study argues that the policing of money laundering in Afghanistan requires an effective and a well integrated multi-agency approach where information pertaining to money laundering cases must flow with proper accountability system.

### **Keywords**

Money Laundering, Financing Terrorism, Globalization, International Standards, Hawala Remittance System.

### **Defining and Meaning of Money Laundering**

Money laundering is a financial crime and is an old phenomenon (Buchanan, 2004). However, as a specific crime, it did not enter into legal context until 1986 (Daley, 2000). The term 'money laundering' was first coined by the American law enforcement officials. The background of the concept of money laundering can be traced back to the scam by Al Capone in Chicago during 1920s where he setup a Chinese laundry to disguise the true identity of the profits earned through criminal activities (Lea, 2005). The term 'money laundering' was used to refer to the financial

activities by mafia groups and blending criminal proceeds with legal business profits. Money laundering entered into popular usage during the Watergate scandal during mid- 1970s in the United States of America (Bauer and Ullmann, 2000).

Money laundering has been defined in a variety of ways by academicians and various organizations, both at national and international levels. According to Buchanan (2004:115), money laundering is 'a financial crime that often involves a series of transactions and numerous financial institutions across many [international] financial jurisdictions'. For Sherman (1993:13), money laundering is 'the process of converting or cleansing property knowing that such property is derived from serious crime, for the purpose of disguising its origin'. According to Savona (1997:3), money laundering is 'an activity aimed at concealing the unlawful source of sums of money'. Finally, Daley (2000:175) defined money laundering as 'the process by which one conceals the existence, illegal source, or illegal application of income, and disguises that income to make it appear legitimate'.

The globalization of world economy has had great impacts on organized crime in general and on money laundering in particular. Different factors have played and are playing important role in the expansion of money laundering at national and international levels. The developments in information technology coupled with the globalization of financial markets, privatization, and expansions in foreign banks establishments have altered the nature, extent and techniques of money laundering. For example, the International Monetary Fund in its report in 1998 stated that the unlawful money generated from organized crime was between 2 to 5 percent of the world's GDP – between \$ 800 billion to \$ 2 trillion (Fabre, 2009). The nature and character of money laundering have changed considerably since the 9/11 terrorist attack on twin towers in the US. Money laundering is no more perceived as the laundering of criminal proceeds by organized criminals gangs, but a mean by which terrorist organizations generate, hide, transfer, and finance their terrorist activities around the world (Johnson, 2002).

The problem of money laundering has also been addressed by various international organizations. They have defined the phenomenon of money laundering in their own way. At international level, the problem of money laundering was first taken up by the United Nations on 19<sup>th</sup> December 1988 in a Convention against Illicit Traffic in Narcotic Drugs and Psycho tropic Substances – commonly known as the Vienna Convention – and defined money laundering as has been stated below;

- The conversion or transfer of property, knowing that such property [is derived from a drug offence] for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

- The concealment or disguise of the true nature, source, location, disposition, movements, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences (United Nations, 1988, Article 3.b).

Critics argue that this definition was too narrow in its scope because it associated the process of money laundering and its related activities to merely illegal funds generated from drug trafficking. It completely ignored numerous organized crimes which generate criminal proceeds and the money generated as a result. However, it is important to mention that this definition of money laundering came up at a time when there was considerable global attention towards funds generated through unlawful drug business and the international community was concerned about the need to combat the drug cartels (Rider, 2003).

Two years later, in March 1990, the *Strasbourg Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime* adopted its definition of money laundering which was wider in its scope and included any illegal funds generated from all criminal activities including drug trafficking. The Convention adopted the following definition of money laundering;

- The conversion or transfer of property, knowing that such property is proceeds [derived from a serious crime], for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions; and,
- The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is proceeds [derived from organized crime] (Council of Europe, 1990, Article 6)

Furthermore, the Financial Action Task Force (FATF) has also produced its own definition of money laundering in 1990. It is an international body created in 1989 by the G7 countries with the main purpose of fighting the problem of money laundering at international level. It defined the concept of money laundering in the following way;

Conversion or transfer of property, known to be of criminal origin, for the purpose of concealing or disguising that origin, or of helping criminals to escape the legal consequences of their actions; the concealment or disguise of the true nature, location, movement, or ownership of property known to have been gained through crime; and the acquisition, possession, or use of property, in full knowledge of its derivation from criminal activity (cited in Alexander, 2001:233).

Owing to the changing nature of organized crime and illegal funds generated as a result, the United Nations also expanded the scope of its definition of money laundering. In 2000, the *United Nations Convention against Transnational Organized Crime* adopted much wider definition of money laundering which included funds generated from all serious crimes such as corruption and involvement in organized criminal gangs etc (see UN, 2004).

To reiterate, the international community has taken considerable steps in its fight against the criminal proceeds generated from organized crime during last few decades. The various UN conventions, the forty recommendations by the FATF and the creation of the Interpol – the international police force – are some of the significant initiatives undertaken by the international community to tackle transnational organized crime, including money laundering. These initiatives at global level further facilitated the development of domestic legislations pertaining to the control of money laundering in many countries. The tragic incident of 9/11 further accelerated the need for effective enforcement of anti-money laundering measures especially on the non-complying states (for further details, see Juma 2010).

Afghanistan is signatory to all major initiatives for money laundering control at global level. For example, Afghanistan has signed the Vienna Convention treaty on December 20, 1988 and ratified it on February 14, 1992. It has signed the 2000 UN Convention on December 14, 2000 and ratified it on September 24, 2003. Afghanistan is also a member of the Asia/Pacific Group on Money Laundering (APG). It is one of the FATF styled regional anti-money laundering bodies mandated with the purpose of fighting money laundering in their respective regions.

The definitions of money laundering and efforts for its control as has been stated and discussed so far clearly shows the contentious and ever changing nature of money laundering problem at global level. Money laundering has been accepted as a serious problem both at national and international levels. The precise meaning of money laundering may vary from country to country and from region to region, however, the purpose of money laundering remains the same, to process and clean the funds generated from criminal activities.

### **Money Laundering and the *Hawala* Cash Remittance System**

The Hawala cash remittance system is one of the most common and frequently used methods of money transfer in many parts of the world including Afghanistan. It is commonly known as the 'informal financial networks' (De Goede, 2003:513) and is recognized as the 'underground banking systems' (Gilligan, 2004:24). Some of the other known alternative remittance systems includes the 'chit or chop system' of China, the 'Hundi system' of Pakistan and the 'Hawala system' of India (Rider, 2004:81).

The term Hawala means 'to change' or 'to transfer' (De Goede, 2003: 513). The exact origin of the Hawala system is not known. However, it was practiced many hundred years ago, even before the origin of the conventional banking system. The known history about Hawala system traces it back to the South Asian region especially to Pakistan and India where traders used it as safe money transfer method while travelling across the Silk Route several centuries prior to the division of Indian Sub-continent (De Goede, 2003).

Despite the introduction of multi-national banking systems for money exchange, the Hawala system is widely in practice for money transfer at national and international levels. The Hawala system has a number of advantages over the conventional banking system due to which it is preferred by the low paid workers from the South Asian region. It is cost effective, quick, efficient, reliable, lack bureaucratic procedure and paper trail (see Lilley, 2006). The Hawala system is often criticized for being used by criminal gangs in order to launder the black money. An estimated figure shows that around \$ 20 billion of criminal proceeds is transferred across the world using Hawala cash remittance system (Vassiliev, 2003).

After the tragic incident of 9/11, the usage and legality of Hawala system came to forefront in the world news and political debate especially in the West and in America. The Hawala system was strongly criticized for allegedly used by the terrorist organizations such as the Al-Qaeda and Taliban to launder their criminal proceeds earned through drug trafficking and arms smuggling (Ganguly, 2001). It was strongly believed that the Taliban financed their regime through drugs money. It was reported by the US and Pakistan officials that the Taliban and Al-Qaeda have laundered equivalent of \$10 million from Afghanistan. The money was first transferred to Pakistan from Afghanistan and then to Dubai using Hawala system (see Lilley, 2006).

The extent to which Hawala remittance system is being used by terrorist organizations is not known. However, it was criminalized during war on terror and was considered a mean through which terrorist organizations transfer their money. De Goede (2003:515) stated that '...in the press and political discourse, Hawala became stereotyped as taking place in shabby, smoky, dark, and illegal places'. The criminalization of Hawala system and enormous pressure from the US and the West led many countries to formulate regulations for its monitoring and control. Strict conditions were imposed on Hawala remittance networks to keep proper records of all outgoing and incoming financial transactions of their customers.

### **Money Laundering and Financing of Terrorism**

Money laundering and terrorisms are very complex concepts which involve multifarious activities. In previous section, money laundering has already been discussed as the process by which illegal funds earned through criminal activities

are disguised in order to hide its illicit origin. On the other hand, the concept of terrorism is difficult to define because of its national, religious and political implications for different countries (Whittaker, 2007). The word terrorism lacks a unified acceptable definition and is the subject of continuing debate in the international arena. For instance, the Federal Bureau of Investigation (FBI), defines terrorism as '...unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives' (see Poole, 2007:131).

Terrorism has become a globalized phenomenon. There is certainly closed link between money laundering and financing of terrorism. Terrorist organizations are increasingly using the same techniques of generating money which the organized criminals and money laundering are using (Lilley, 2006; Schott, 2006). Terrorist organizations are increasingly looking for safe havens which are suitable for their survival and expansion. Berry (2003) argued that terrorist organizations are searching for countries with weak law enforcement, official corruption, open national borders, weak legislations, lack of transparency in financial institutions etc. The globalization of world economy has benefited not only organized criminals but terrorists as well. It is important to mention that terrorist financing may occur through different means including generating funds from organized crimes. Other means of generating funds include donations and contributions from different segment of society (Rider, 2004). Lilley (2006) argued that terrorist organizations raise their funds through different means. He further stated that;

*Donations, the use of charities and non-profit organizations, front companies, state sponsorship, fraud, smuggling, the narcotics trade, blackmail and protection rackets, corruption, counterfeiting, and other criminal activities (Lilley, 2006:137-8)*

The terrorist attack in America on Twin Towers on September 11, 2001 can provide best insight into the way terrorist organizations generate and transfer their criminal proceeds. The 9/11 Commission in its report outlined the ways and means used by terrorists to finance the terrorist plot in America. It stated that

*The 9/11 plot cost Al-Qaeda approximately \$400,000–500,000, of which approximately \$300,000 was deposited into U.S. bank accounts of the 19 hijackers (Roth et al., 2004: 13)*

The 9/11 Commission report has presented a detailed and fascinating descriptions on techniques used by terrorist in order to enter money into the US to finance the terrorist plot and at the same time the hijackers managed to escape the money laundering radar of the authorities in the US. The 9/11 Commission in its report outlined different ways used by Al-Qaeda to finance their terrorist plot in the US. It includes;

- Wire transfers from overseas to the United States;
- The physical transport of cash or traveler's cheques into the United States, and;
- The accessing of funds held in foreign financial institutions by debit or credit cards (Roth et al., 2004:13)

After entering the money into the US, Al-Qaeda used the US banking system to keep their money and facilitate their further transactions. Because terrorist funds include money from both legitimate and illegitimate means, therefore, it is extremely difficult to identify terrorist funds compared to the general money laundering process.

### **The Nature and Extent of Money Laundering in Afghanistan**

Afghanistan lies at the crossroad of Central Asia, the Middle East and the Indian sub-continent. It has its own geo-strategic and economic importance in the area. Afghanistan is among the poorest countries of the world with per-capita income of less than US\$ 300 and among the lowest human development indicators (Rubin, 2005).

The invasion of Afghanistan by the Soviet Union in 1979 had grave repercussions for not only the Afghanistan but for its neighbors as well (Asad and Harris, 2003). The afghan war has led to the increase major organized crimes such as the drugs trade, sale of arms, smuggling, corruption, human trafficking etc. (Hilali, 2002). It is a known fact that the United States supplied huge amount of weapons to equip the resistance groups in Afghanistan – the Mujahideen – to fight against Soviet invasion. The war provided massive opportunities for the sale of illicit arms business and the organized criminals took full advantage of the situation. A 'Kalashnikov culture' was developed whereby having a Kalashnikov – AK – 47 – became a part of acceptable cultural practices. The continued unsettled situation in Afghanistan had opened ways for other kind of more sophisticated military weapons such as the 'anti-aircraft weapons, hand grenades, rocket launchers and anti-tank ammunition' which were readily available across Afghanistan and its neighboring countries (Hilali, 2002:303).

With respect to the drugs trade, Iran was one of the main producers of heroin in the region prior to the Iranian Islamic Revolution in 1979. As a result, the drugs traders moved to the neighbouring countries of Afghanistan and Pakistan (Asad and Harris, 2003). The United States played an important role in fighting against Soviet Union inside Afghanistan by providing economic and military aid to the afghan resistance fighter - the *Mujahideen* - through Pakistan. In order to support the cost of the war, the CIA encouraged the *Mujahideen* groups to cultivate more poppy crop (opium production) to obtain money in order to fight the war with Soviet Union. The

drug money significantly increased the financial and military capability of the *Mujahideen* groups in Afghanistan. This drug trade created powerful arms and drugs mafias inside Afghanistan and in neighbouring Pakistan (Hilali, 2002).

In countries like Afghanistan where the law enforcement agencies are weak and people are poor due to which poppy cultivation is more which further increases the chances of international drugs business (Asad and Harris, 2003). Afghanistan is one of the world's main producers of opium and has the most complicated drug trafficking networks. Numerous efforts to combat drug trafficking has been taken; however, the problem is increasing steadily. The Afghanistan Border Security Force has been established with the responsibilities to control drug trafficking across its borders especially with Iran which is considered as the main route being used for drug trafficking (Thompson, 2006).

It is a known fact that Afghanistan is still statistically unknown with respect to the true cost of illegal proceeds generated from organized crimes such as the drugs business and sale of arms. The available information are very inadequate, and often vague which are hindering for policy formulation (Thompson, 2006).

An estimated \$ 4.5 billion was taken out of Afghanistan to different places such as Dubai where most of the Afghan elite have their bank accounts and due to significant bank secrecy laws, it is difficult to trace the true identity of such money (Schewllenbach, 2012). The knowledge about the true sense of the volume of funds produced by the production and export of drug trafficking is important for any sensible analysis with respect to Afghanistan, which is lacking. The UNODC (2005) in its report presented some analysis on estimations and stated;

“First, domestic profits should not be confused with those amassed internationally, while the aggregate estimated value of the international trade in Afghan opiates is in the neighbourhood of US\$ 40 million, the total export value of opium to neighbouring countries is estimated to be US\$ 2.7 billion in 2005. Gross revenues occurring to Afghan farmers are calculated to be on the order of US\$ 560 million, while Afghan traffickers are estimated to receive roughly US\$ 2.14 billion” (UNODC, 2005 cited in Thompson, 2006:159)

One of the reasons for the continued existence of organized crime and money laundering in Afghanistan is the fact that there is no proper checks on the amount of money being taken out by the 'very important persons' via Kabul International Airport (Schewllenbach, 2012). The Special Inspector General for Afghanistan Reconstruction (SIGAR) in its report stated that much of the money which is taken out of Afghanistan has been provided by the US and its allies. Consequently, it has raised the US concern because such money is supposed to be used for post-war

reconstruction of Afghanistan such as improving the security system, judicial system and other infrastructure but instead it is being used to 'finance terrorist, narcotics, and other illicit operations' (Schewllenbach, 2012). Though, it is not a surprise because Afghanistan is one of the most corrupt countries according to Transparency International report of 2012 (Schewllenbach, 2012).

Hawala remains one of the important mean of transferring money in Afghanistan. In a cash-based economy where only 5% people use bank and more than 90% rely on traditional method such as the Hawala (Schewllenbach, 2012). Since 9/11, the western media and law enforcement agencies strongly criticized the Hawala system and regarded it as one of the strong tools being used by the organized criminals and terrorist organizations for the illicit and terrorist activities. It would be wrong to conclude that the Hawala system deals with the illegal proceeds only in a country where 80 – 90% economic activities are in the informal sector (World Bank, 2005).

Afghanistan has signed numerous trade agreements with its regional countries such as Iran, India, China, Pakistan, Turkmenistan, Uzbekistan, and Tajikistan. However, the Afghan Transit Trade Agreement (ATT) which was signed between Afghanistan and Pakistan in 1965 governs most of the trade in the country. The trade agreement grant freedom of transit free from all kind of custom and tax duties via two land routes in Pakistan i.e., Peshawar – Torkham and Chaman – Spin Boldak (Thompson, 2006). The smugglers are taking full advantages of the facilities provided by the ATT in order to avoid tax duties in Pakistan. The items are transited via ATT agreement to Afghanistan and take a U – turn and are smuggled back to Pakistan to avoid taxes and are sold in the local markets such as the famous Karkhano market (Thompson, 2006).

The fall of Kabul to Taliban in 1996 and especially the tragic incident of 9/11 in 2001 in the US brought Afghanistan to the frontline global politics. Afghanistan was considered and is still regarded as the safe haven for organized criminals and terrorist organizations that operate globally. This war torn country is the hub of numerous organized crimes such as the drugs trafficking, arms smuggling, human trafficking, corruption, etc. In addition, Afghanistan is also regarded as the safe place for terrorist organizations that operate worldwide.

### **Anti-Money Laundering Mechanism in Afghanistan**

The legal and institutional framework of anti-money laundering and financing terrorism mechanism in Afghanistan is still in its infancy. In 2004, the President of Afghanistan issued two legislative decrees, namely the 'Anti-Money Laundering and Proceeds of Crime Law' (Law No. 840) and the 'Law on Combating the Financing of Terrorism' (Law No. 839). It is important to mention that both decrees have not been endorsed by the legislative parliament of Afghanistan.

The Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA) was established as a Financial Intelligence Unit (FIU) under the Anti Money Laundering and Proceeds of Crime Law passed by decree late in 2004. The main purpose of this law is to protect the integrity of the Afghan financial system and to gain compliance with international treaties and conventions. The FinTRACA is a semi-independent body that is administratively housed within the Central Bank of Afghanistan (Da Afghanistan Bank). The main objective of FinTRACA is to deny the use of the Afghan financial system to those who obtained funds as the result of illegal activity, and to those who would use it to support terrorist activities.

There is no independent police organization that deals with money laundering related cases in Afghanistan. The Counter Narcotics Police (CNP) – a section of Afghan National Police – have been given the responsibility of dealing with money laundering cases. In addition, the National Department of Security (NDS) is also involved in dealing with money laundering cases. The customs authority based on the country's international borders also have a significant role in the policing of money laundering in Afghanistan.

One of the big problems that the afghan government is facing is widespread corruption, capacity constraints, huge illicit narcotics sector, weak business environment etc. The International Monetary Fund (2011) in its report stated that;

Illicit narcotic trade and corruption alone generate considerable amounts of illegal funds. Afghanistan is the world's largest opium producer and exporter and ranks amongst the most corrupt countries in the world. Smuggling and fraud are other major sources of illegal funds. In addition, terrorism and its financing remain a major concern both in terms of the security of Afghanistan and of the funding of terrorist individuals or organizations, and terrorist acts in the country and abroad. Despite the authorities' efforts, investigations into money laundering and terrorist financing have been few and none of them resulted in charges being brought before the courts (IMF, 2011:7).

To summarize, some of the major problems with Anti-money laundering Measures in Afghanistan are listed below;

- Lack of political will for combating organized crime in general and money laundering in particular in the country
- Weak implementations of existing laws
- Loopholes in the anti-money laundering law
- Widespread corruption of the government officials

- Lack of human and technical resources in FinTRACA and in CNP
- No independent police department specialized in dealing with anti-money laundering and countering financing terrorism cases
- No proper reporting of suspicious transactions by STRs (Suspicious Transaction Reports)
- No dissemination of financial information; FinTRACA has not yet published their periodic reports on its activities.
- Organized crime is a matter of everyday life routine; therefore, no strong action has so far been taken against narcotics and arms mafia
- The current anti-money laundering and countering financing terrorism regime is still in its infancy
- Lack of adequate resources, expertise and coordination among the law enforcement agencies
- Weak enforcement of basic customer due diligence (CDD) and recording keeping measures by the financial institutions especially the banks
- Suspicious Transaction Reports are not properly enforced
- Non availability of accurate statistics with respect to the illicit funds generated in Afghanistan and also the number of cases of money laundering to be investigated by the police.

## Conclusion

Afghanistan has been greatly affected by the war for the last more than three decades. Political instability and insecurity are the main problems confronting the country. Afghanistan is the host of many organized crimes such as the drugs trafficking, human trafficking, sale of weapons, smuggling etc. The corruption is widespread especially among government officials holding higher positions. The internal fragile situation of the country provides a favorable environment for breeding organized crime. Thus in the presence of many organized crimes, money laundering is thriving and is increasing rapidly.

The government of Afghanistan has so far taken few steps to control and prevent money laundering; however, these initiatives are very minimal if compared with the intensity of the problem that the country is confronting with. On the other hand, there is lack of political will in the Afghan government for taking concrete actions to combat money laundering. One of the reasons for this situation is that the warlords have more influence on the government affairs who themselves are directly involved in organized crime especially drugs trafficking and arms smuggling in the country. One of the manifestations of this situation is the fact that

the country still lacks a comprehensive and an effective anti-money laundering law. The proposed anti-money laundering law is in the parliament awaiting thorough discussion and approval. Due to the fact that most of the powerful Afghan warlords possess parliament chairs, therefore; they are least bothered to discuss and amend the proposed anti-money laundering law due to their personal involvement in criminal activities.

To conclude, the enactment of law on its own would not be an efficient step, unless properly supported by law enforcement agencies. The proper institutional cooperation and partnerships between government departments such as the Afghan National Police force, Da Afghanistan Bank, the Custom Authority, and the Border Police Force etc. are missing due to the absence of any effective anti-money laundering laws which could spell out their role and responsibilities. In addition, the existing anti-money laundering mechanisms in Afghanistan are not transparent which mostly raises the question of accountability.

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