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The Application of Financial Investigation for Financial Crimes (In The Case Of F.D.R.E Ministry of Justice, Corruption Crimes Control Directorate General)

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THE APPLICATION OF FINANCIAL INVESTIGATION FOR FINANCIAL CRIMES

**(IN THE CASE OF F.D.R.E MINISTRY OF JUSTICE,
CORRUPTION CRIMES CONTROL DIRECTORATE
GENERAL)**

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June, 2023

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FOR FINANCIAL CRIMES**

**(IN THE CASE OF F.D.R.E MINISTRY OF JUSTICE,
CORRUPTION CRIMES CONTROL DIRECTORATE
GENERAL)**

**Thesis Submitted in Partial Fulfillment of the Requirements for the
Degree of master of Laws (LLM) at the school of Law, BahirDar
University.**

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Thesis approval page

The thesis titled “THE APPLICATION OF FINANCIAL INVESTIGATION FOR FINANCIAL CRIMES (IN THE CASE OF F.D.R.E MINISTRY OF JUSTICE, CORRUPTION CRIMES CONTROL DIRECTORATE GENERAL” by Mr. Yigremachew Kefelegn Wegderes is approved for the degree of master of Laws (LLM)

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	Name	Signature
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Declaration page

Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the state and civil action from the source which have not been properly cited or acknowledged.

Signature

Name of the student

Date

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My wife, Mrs. Hiwot Aboye you gave me the time and space to do this paper while carrying all other family responsibilities by yourself, I am indebted to you.

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Yigremachew Kefelegn

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Key Acronyms;

FATF	Financial Action Task Force
ICA	The International Compliance Association
FDRE	Federal Democratic Republic of Ethiopia
KYC	Know Your Customer
EFIC	Ethiopian Financial Intelligence Center
INTERPOL	International Criminal Police Organization
CDD	Customer Due Diligence
IMF	International Monetary Fund
UNODC	United Nation Office on Drugs and Crime
ID	Identification Card
GFI	Global Financial Integrity

Abstract

*Financial crimes are one of the contemporary concerns of criminal justice administration systems at National and international level. The crimes; which are being committed with the motive to gain benefit from crime, are resulting in serious economic and security problems against states and societies. Leaving such serious and grave crimes undetected without deploying effective criminal investigation system would worsen the problems. Although different techniques of criminal investigation might work to investigate such crimes, **financial investigation** takes the lead as a technique of effectively detecting and controlling such crimes. To trace suspects of such crimes, to freeze and confiscate proceeds of financial crimes and to detect the scope the crimes, “follow the money” is the important way of criminal investigation technique.*

*Ethiopia has signed different international treaties regarding financial crimes in which those international standards have promoted the **application of financial investigation**. Proclamation No.780/2013 of Ethiopia also incorporates financial investigation as a key investigation technique to investigate Money laundering and financing terrorism crimes. In deed the draft criminal procedure and evidence code of the country incorporated bank account investigation as one special criminal investigation technique. These and other laws have shown that financial investigation has a legal recognition and coverage in Ethiopian criminal justice administration system. Despite this fact, it is not common to see proceeds of financial crimes being effectively detected and controlled. Many financial crimes are left un-detected and law enforcement organs failed to identify perpetrators. The researcher observed such gaps and conducted the research based on document examination, interview and questioner as sources of data to identify and analyze the application of financial investigation on financial crimes under the FDRE ministry of justice, corruption crimes follower directorate general.*

Although certain efforts has been started to apply financial investigation in financial crimes investigation in Ethiopia, as this research proves a lot is left for deploying financial investigation effectively. Give minor concern to financial investigation, lack of sufficient knowledge and skill by investigator and public prosecutors in applying financial investigation and interpretation of financial information, the poor application of KYC by financial and designated non-financial business and professions hinders the application of financial investigation.

CHAPTER-ONE

INTRODUCTION

1.1 Background of the study

As per GFI's estimation in 2017 US\$1.259 million to US\$ 3.125 million dollars are vulnerable to illicit financial flow in Ethiopia.¹ Particularly Financial crimes like; money laundering aspect of human trafficking, corruption, aggravated Robbery, illegal firearm trading and money laundering are getting worse in the country. These financial crimes may create unfair income inequality among citizens of a nation. Leaving such crimes aside without deploying effective criminal investigation on them and bringing the perpetrators of such crimes to court of law will create a very serious and complicated impact in relation to the macro-economy and peace & security of the country.

Proclamation No. 780/2013 of Ethiopia which was enacted to control and suppress money laundering and financing terrorism sets about the impact of such financial crimes as, "these crimes not only threaten security, but also compromise the stability, transparency, soundness and efficiency of the financial system."² This is also true for other financial crimes like tax evasion, corruption, document fraud and others. As per the International Compliance Association, it is widely recognized that the prevalence of economically motivated crime in many societies is a substantial threat to the development of economies and state stability in general.³

Unlike usual and social crimes like; insult, bodily injury, theft and homicide on these days' new complicated financial crimes are coming to tables of legal actors for investigation and prosecution. Working as a legal actor in the country the researcher has been looking that readiness and competency of law enforcement agencies to effectively investigate and prosecute

¹ Roberto Martinez B. Kokoschka, "Illicit financial flows in Ethiopia", at <www.u4.no/publications/illicit-financial-flows-in-ethiopia.pdf> [last accessed January 18, 2023]

² Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, 2013, *Negarit Gazeta*, Pro. No. 780, 19th year, No.25, the preamble [here in after, Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation 780/2013]

³ "Effect of Financial crimes" at <<https://www.int-com.org/careers/your-career-in-financial-crime--prevention/what-is-financial-crime/>> by ICA, [last accessed September 12, 2021]

such crimes is with problems. The cause of such incompetency has to be studied well and problems need to be solved with research based suggestions.

Different criminal investigation techniques might be deployed to investigate financial crimes. But cases, legal experiences and international recommendations on the investigation of financial crimes, mainly FATF recommendation on the area suggests and provides proofs to show deploying financial investigation to investigate financial crimes is important. Under in an international writing regarding the importance of financial investigation it is provided as “...And with any crime, there is one overriding imperative that detectives must follow to identify the perpetrators; follow the money.⁴. So, it is vital to assess the application of financial investigation technique on those financial crimes investigations in Ethiopian Criminal Justice Administration System.

The FDRE Ministry of Justice is the leading responsible institution for effective application of the criminal laws of the country. Among offices of the Ministry, Corruption Crimes Follower Directorate General which is established under the attorney general branch of the Ministry is mainly involved in investigation and prosecution of such serious financial crimes. That is why the directorate’s application of financial investigation is chosen for this research to be assessed. Financial crimes committed on government and public institutions of the country and being investigated by the directorate needs to be detected, not only suspects but with proceeds of the crimes. Extra-territorial illicit financial flow also needs to be controlled. Application of financial investigation may have a lot of importance regarding following and controlling proceeds of such crimes too.

Application of financial investigation is related with financial and designated non- financial business and professions. Important financial rules which have been designed by the National Bank and FIC of the country taken from International recommendations like; rules of know your customer (KYC), mandatory and suspicious transaction reports and due diligence rules determine financial investigation in one way or another. The establishment of Financial Intelligence Center (FIC) , receiving and interpreting financial reports and applying recommendations from the institutions in the criminal justice administration system, more importantly follow-up of new and

⁴“The September 11 financial heist; “Follow the 9/11 money trail”, <https://www.globalresearch.org>, [last accessed September 22,2021]

adapted mode of payments are important things in which financial investigation depends on. These applications have to be assessed in our case. Analyzing and interpretation of data collected by financial investigation have also their own method. These too have to be assessed through the research.

In general, the expansion of financial crimes with worsen wide spread effect within a community needs attention with in a given criminal justice administration system. Investigating the crime with financial investigation system and prosecuting effectively is important to control and suppress such crimes. That is why it is necessary to access the application of financial investigation on financial crimes investigation in Ethiopia.

1.2 Statement of the problem

As the term by itself shows financial crimes are crimes committed to get Money or finance from the crime. The “mensrea” is a direct intention to get money or profit from the crime. That is why if these purposive crimes left uncontrolled, that will be a serious threat for the whole community. These crimes are against the development and stability of a nation. Indeed financial crimes widen the income difference of citizens and make citizens to be hopeless in hard work and progressive development⁵

So, these crimes have to be protected, investigated and prosecuted well in the criminal justice administration system of any country and in Ethiopia too. This paper is focused on the investigation part of the financial crimes.

Criminal investigation is not a developed science in Ethiopia⁶. Rather it is still more of tactical. It is true that most Police investigators are not well trained. Indeed, the investigation lacks technology support. For most police investigators, criminal investigation is like recording the words of witnesses and relying on the words of defendants⁷

If we are going with the trend at hand, it is hard to investigate those modern crimes like financial crimes in which conscious criminals may participate in it and non-physical but illegal financial flow became the center of the crime. Such financial circulation can be done in many ways;

⁵ yigremachew kefelegn, ‘the importance of financial investigation’, pp. 43-44 (mentioned before)

⁶ ሃርቃ ሃሮዬ, “የወንጀል ክስ ስራችን ያለፈውና የወደፊቱ”, ሕጋዊነት የፍትህ ሚኒስቴር የሙያ መፅሔት, 1997, ቅፅ3. ቁ.1 ገፅ.3-21 , ገፅ3-4

⁷ Ibid

formal or informal, cultural or modern. That is why focusing on the circulation of the money is the recommendable way of criminal investigation regarding financial crimes.

While working in the Ethiopian criminal justice administration system for more than 10 years, the researcher observed that the system is with certain problems to effectively investigate complicated financial crimes. Indeed, it is poor in controlling and confiscating proceeds of crimes. That is why it is assumed that criminals even after criminal punishment may live in luxury with proceeds of the crimes they held accountable. These may encourage further criminal to commit financial crimes.

Financial investigation although named as ‘**follow the money**’ criminal investigation system is the priory advised techniques of financial crimes investigation. Recently there is a certain attempt for applying financial investigation in few notorious cases. But the actual status of application of financial investigation has to be studied. For effective application of financial investigation the cooperation of financial institutions and law enforcement agencies is important, and this also has to be examined.

The level of knowledge of legal actors on financial investigation has to be assessed. If we can’t effectively apply financial investigation on financial crimes, we are not merely losing perpetrators of the crime but also proceed of the crime which needs to be freezed and confiscated.

When we leave proceeds of the crime undetected, indirectly we are allowing the perpetrators to gain profit from the crime, to finance other crimes and sabotage legal actors with bribe. This research paper is conducted with the aim of assessing the level of application of financial crimes investigation, identifying impediments and recommending suggestions for effective financial investigation application.

1.3. Objective of the research

The research aims at identifying and evaluating the financial investigation technique which is applied to investigate financial crimes by federal government of Ethiopia. It has main and specific objectives.

1.3.1 Main objective

The main objective of this research paper is to identify and evaluate the application of financial investigation as a criminal investigation technique on financial crimes, in the FDRE Ministry of Justice Corruption Crimes Directorate General.

1.3.2 Specific objective

1. To assess the extent of application of financial investigation on financial crimes
2. To find out legal and practical gaps regarding application of financial investigation
3. To assess the level of understanding of public prosecutors regarding financial investigation
4. To provide proper suggestions for gaps will be identified by the research

1.4 The Central Question of the research

How FDRE Ministry of Justice is implementing financial investigation under Corruption Crimes Follower Directorate General? Are public prosecutors familiar to financial investigation? Do financial crimes are being investigated with financial investigation techniques? Do financial and designated financial institutions have adjusted themselves for financial investigations? These are important questions of this research paper which needs to be addressed for this paper.

1.5 Methodology

Research is different from advocacy or other related document mainly because of former is more of systematic and formal. Way of data collection, sampling and data analysis has to be clearly designed and notified. Below is the detail which shows the methodology the researcher has followed to do this research paper. Interview, Questioner and case study were used as methods of data collection for this research.

1.5.1 Research framework design

This research is a kind of evaluating the application of one of internationally accepted way of financial crimes investigation technique in Ethiopia. Financial investigation, which is appearing as significant way of investigating financial crimes with the advancement of modern financial administration and digital economy is the core focus of this research paper.

This research is more of a non-doctrinal qualitative legal research type. The structure of the research comprises of both general and specific issue. Since financial crimes are the concern of international community and financial investigation is internationally promoted way of investigation for financial crimes; general concepts, understandings and practices would be raised.

Having international perspectives, rules and experiences regarding financial investigation in one hand, the application of the investigation technique in Ethiopia under the selected Directorate of the Ministry of Justice will be analyzed specifically.

1.5.2 Study area

As provided in the delimitation part of the research in chapter one, this study is focused on financial crimes entertained under FDRE Ministry of Justice; Attorney General Branch, Corruption Crimes Directorate General. So, the study area of the research is Addis Ababa, FDRE Ministry of Justice. In terms of legal context we can express the study area of this research paper is the investigation aspect of financial crimes in the Ethiopian criminal justice administration system.

1.5.3 Data sources

Data is the cornerstone of any research. The source of data determines the quality and accuracy of a research. The researcher has tried his best to collect data from sources which can really determine the accuracy of the findings. Criminal investigation and prosecution files on financial crimes which show the investigation history and the roles of both police investigators and public prosecutors are taken as the main source of data for this research.

Team leaders who are actively involving in the investigation and prosecution of financial crimes, which are the subject of this research, participated in the interview and public prosecutors of the corruption crimes follower directorate general have been also served as source of data for the research. A well-known Ethiopian legal expert on the area of Money laundering and financial investigation who worked with the Ministry of Justice has also participated in the interview.

1.5.4 Data collection instruments

Interview, questioner and files examination (document examination) are taken as the data collection instruments of this research paper. Two team leaders and a well-known expert on the area have been interviewed. Public prosecutors from the directorate General participated in the questioner. Investigation and prosecution files on financial crime have examined with checklist regarding on the effective application of financial investigation.

1.5.5 Sampling method

Regarding the interview, purposive sampling technique has been applied. Two team leaders who are known by staffs of the directorate in active participation in the investigation and prosecution of financial crimes and a well-known expert on the area are chosen purposely for the interview. Regarding document examination and the questioner, random sampling technique has been employed.

Among the total public prosecutor staffs of the directorate General, half of them that are 25 in number public prosecutors are participated in the questioner. Regarding document examination the researcher has tried his best to examine as much criminal investigation and prosecution files of the directorate. Among around 224 criminal files of the directorate in the year when the data collection was taken, 80 criminal files have been examined. Among such 80 criminal files passed through the document examination, certain cases which are visible in being financial crimes are selected for analysis.

1.5.6 Data analysis and interpretations

Mainly, Qualitative data analysis has been employed except providing the questioner result in Number. Data from different source are analyzed together to show the findings well. Some explanatory cases are also discussed to show the actual realities on application of financial investigation in clear way.

1.6 Policy implication and significance of the study

Ethiopia has got a criminal justice policy in 2011. In that policy controlling, seizing, administering and confiscating proceeds of crimes is set as one of the strategic pillars of the

policy.⁸ In deed the criminal justice policy gives much emphasis to speedy and effective measure on proceeds of crimes⁹. How this objective of the policy can be achieved without effective application of financial investigation? Particularly regarding financial crimes, without effective application of financial investigation such strategy can take us nowhere.

Having such strict goal regarding control of proceeds of crimes, the policy fails to give clear recognition to financial investigation while it gives recognition to special investigation techniques like interception and surveillance. As per its importance and with the policy held to transform to digital economy, it would have been good to mention the issue of financial investigation in the lists of such special investigation techniques. This and other researches on the area might invoke this policy issue for revision.

Ethiopia is getting a new criminal procedure and evidence law. On this draft law data collected from financial institution is set on separate article. Although this draft law failed to have detailed discussion on the financial investigation as other investigation techniques, it is like giving recognition to financial investigation¹⁰.

Although limited to money laundering and financing terrorism, It is proclamation no 780/02013 which clearly set financial investigation in clear terms. This paper may contribute in showing ways of how we can apply the law effectively.

For police investigators and public prosecutors the research will result in much significance in revealing the importance of financial investigation in one hand and showing the impediments for effective application of financial investigation in financial crimes at federal level on the other hand. It will show the way how we can apply financial investigation to trace perpetrators and proceeds of crimes too.

1.7 Scope of the study

It would have been important to do a county level study on financial crimes and financial investigations, if sufficient time, resources and research assistants had been availed. But for now

⁸ Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, Council of Ministers, February 4,2004 P.3

⁹ Ibid

¹⁰ Draft criminal procedure and evidence law of the Federal Democratic Republic of Ethiopia. Arti.93

with time and resource the researcher has, it would be important to delimit the scope of the research.

In Ethiopian criminal justice system it is the FDRE Attorney General, the central institution of the criminal justice system of the country, is empowered to lead criminal investigation and has power of prosecution as per article 6 of proclamation NO. 943/2008. So, with a belief that a research on this institution may show the scenario as a whole, the research focuses on this institution. But still we need to narrow the scope.

Within the attorney general branch of the ministry, there are also many departments which work on prosecution. But most serious financial crimes are entertained under corruption crimes control directorate general. That is why this study focuses only on this directorate general financial criminal files in which their criminal investigation is completed and being found decision given by the public prosecutor.

1.8 Limitation of the study

Primarily, this LLM program was started by the free university of Amsterdam in cooperation with Mekelle University. But because of the armed conflict happened between the Federal government and the TPLF, the program was ceased for long period of time until the cooperation was established with BahirDar University. That was a serious impediment on the research because it creates gaps while we were working on the paper. This unforeseen problem seriously affects the focus of the researcher although the problem was managed with the unreserved support of the advisor from BahirDar University.

CHAPTER-TWO

LITERATURE REVIEW

2.1 Financial crimes and their effects

There are different motives and intensions to commit different crimes. For example, misdemeanor crimes like Crime of insult or willful injury are crimes committed as an emotional response in social conflict. There are also such serious crimes like crime of rape which is committed to satisfy once biological need in illegal and immoral way. One of the felonious crimes, crime of terrorism is also a crime committed to impose political, religious or other ideological interest force fully. There are also other different types of crimes being committed with different motives. Different from these all, the subject of this research paper, the so called financial crimes, are crimes committed purposively with a motive to gain financial profit or benefit from crimes. As per a writer on the motives of financial crimes, it is provided as, “while criminals may commit crimes for different reasons, profit making is one of the principal motives”¹¹ This expression is exactly conformed to financial crimes.

Of course as many other legal terms, No single and simple definition has been availed for the term financial crimes. But while looking at different definition for financial crimes the common issue is the intension of the perpetrators, the need for financial gain from the crime.

Comply advantage, which is a team united by a mission to solve financial crimes, defined financial crimes as “financial crime is generally defined as any activity that involves fraudulent or dishonest behavior for the purpose of personal financial gain, although it include the illegal conversion of property ownership”¹²

The team has refined this definition in two ways. The first one is an illustration way. It lists down what financial crime comprises of as, “financial crimes includes; Money laundering, Terrorism Financing, Fraud, Tax evasion, Embezzlement, Forgery counterfeiting, Identity theft. Again the

¹¹Biniam Shiferaw Ayalew, “crimes should not pay; Confiscation under AML/CFT laws of Ethiopia”, FDRE Attorney General Higawinet journal, 2016, special edition v.1.No.-pp.1-20, p.2

¹² “Comply advantage, what is financial crime?”,

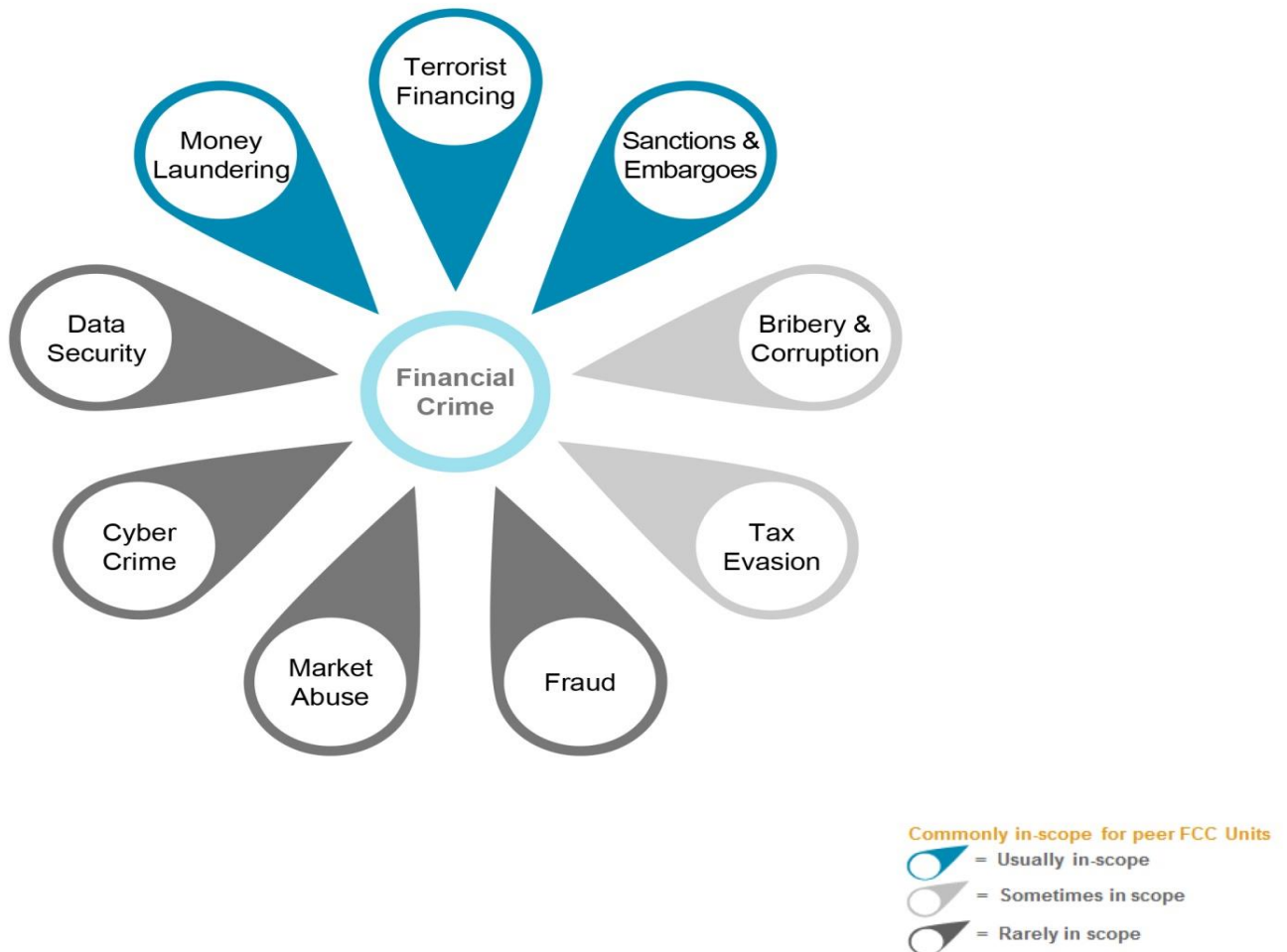
<https://complyadvantage.com/plyadvantage.com/knowledgebase/financial-crime/>

[last accessed September 22,2021

team also refines financial crimes as Money laundering and financing terrorism are the two most significant types of financial crime¹³

On the Economy web site by comply advantage, list and detectability level of financial crimes are provided on the image below. On the image different color shade shows the difference in possibility of detecting such financial crime by financial institution. As will be discussed latter financial institutions have different obligation in protecting and investigating financial crimes. As the image shows, corruption, money laundering financing terrorism, tax evasion...etc. is taken as financial crimes.

Figure-1



Interpol in its official website also provided the effect of financial crime and issues of financial

¹³ Ibid

crime in a deeply concerned way. To express the wide spread effect of financial crime, Interpol used the expression as, “**Financial crime threatens people in every aspect of their lives: at home, at work, Online and offline.**”¹⁴ This is a very important expression. Financial crimes are being committed everywhere. Victims of such crimes are losing their right to property and micro and macro-economic instability are resulted from financial crimes. Both online and offline situations are vulnerable situations for financial crime. This Inter-Pole expression about financial crimes witnesses how much financial crimes are becoming the threat of the globe. A writer expressed about the expansion of money laundering aspect of such crimes as, “Money laundering is estimated to be one of the world’s largest industries after international oil trade and foreign exchange transactions”¹⁵

As per Interpol illustrative expression about financial crimes, Theft, fraud, deception, blackmail, corruption, money-laundering...etc. is grouped under financial crimes. The institution used the expression, “the possibilities for making money illicitly are seemingly endless. The so-called white-collar crimes, the risks appear low and the returns high.” to indicate the different aspect and effect of financial crimes.¹⁶

Financial crimes ranges from basic theft or fraud committed by ill-intentioned individuals to large-scale operations masterminded by organized criminals with a foot on every continent. These are serious criminal activities whose importance should not be minimized as, over and beyond their social and economic impact, they are often closely linked to violent crime and even terrorism.

We are all impacted by financial crimes which are prevailing with new dimensions with rapid advancement of digital technology. “Criminal gangs operate transnationally to avoid detection, and stolen funds cross many physical and virtual borders before they reach final destination. This is where our global policy networks play an essential role.”¹⁷

¹⁴ “The effect of financial crimes “at <<https://www.interpol.in/en/crimes/financial-crime>> [last accessed September 18,2021]

¹⁵Angela Veng MeiLeong, ”Chasing Dirty Money: Domestic and International Measures against Money laundering’,2007, Journal of Money Laundering Control, Vol.10, No.2, p.141

¹⁶ supra note 14

¹⁷ Ibid

As per Interpol expression and concern regarding financial crime one among the main issues is the spread of financial crime on whole new dimensions because of the advancement of digital technology. Particularly regarding financial transaction the digital technology is getting the track everywhere. This is the main point why the importance of financial investigation became solid to investigate financial crimes.

ICA provides the effect of financial crime as,

Financial crimes over the 30 years has increasingly become of concern to governments throughout the world. This concern arises from a variety of issues because the impact of financial crimes varies in different contexts. It is today widely recognized that the prevalence of economically motivated crime in many societies is a substantial threat to the development of economies and their stability. This group set those essentially seven groups of people who commit the various types of financial crime. These are; organized criminals, corrupt heads of states, business leaders or senior executives, employees from the most senior to the most junior, from company outsiders, external fraudster who collude with employee, individual criminal.¹⁸

From the expression of ICA, what is the first important thing that we have to give emphasis is that the effect of financial crime is not limited to individuals or institutions alone rather financial crimes are substantial threat to the development of national macro-economy and stability. This is very fundamental reason why legal actors need to give unreserved concern to control and suppress financial crime. The right to development is one of the third generations of human rights and for Government's it is one of their basic duties to create well established macro economy. But financial crimes can affect these all. Particularly to our developing continent Africa and to our country Ethiopia, it is clear that the effect of financial crime would worsen too. It is provided regarding the effect of financial crime in general and in Africa in particular as follows,

Illicit and illegal activity needs the financial system. For crimes to pay, criminals need to launder the proceeds of their crimes. Terrorists need money to finance their activities and those exploiting vulnerable people for financial gain need to disguise the source of their wealth. Across the world, criminals and terrorists are constantly are constantly looking for weak points in the financial system-and there are many reasons why Africa is seen as

¹⁸ "Comply advantage, What is financial crime"
[.at<https://complyadvantage.com/complyadvantage.com/knowledgebase/financial-crime/>](https://complyadvantage.com/complyadvantage.com/knowledgebase/financial-crime/)
[last accessed September 22,2021]

particularly vulnerable.¹⁹ As per this writing Corruption, Wildlife Trafficking and Human Trafficking are the major financial crime risk typologies in Africa. Dr. Lan Messenger, who is the founder of the TWELE financial crime program, also provided financial crime as, “Financial crime is a growing threat to business and societies as a whole. Criminal organizations use sophisticated techniques to launder money, finance terrorism, commit fraud, and engage in bribery and corruption”²⁰

On the training manual by the then FDRE Attorney General the current Ministry of Justice, it is provided that the two most significant financial crimes, Money laundering and financing terrorism have reputational, operational and legal risks on financial institutions.²¹

These crimes effects are not limited to financial institution rather goes to effect private sectors, macro economy of the country, their impact on privatization efforts and impact on rule of law and good governance²²

In general what can be summarized regarding definition of financial crimes is that, although no simple and single definition is given to financial crimes, these are crimes committed by perpetrators to profit or to get financial gain. Although many crimes can be fall under the group of financial crime, corruption, tax evasion, financing of terrorism and money laundering are the most significant financial crimes at international and regional level.

2.2 Financial Investigation

Although not yet given a single and simple definition to the term financial investigation, it is expressed and defined in different ways, in different national and international documents with certain common contents. As per the researcher understanding while learning from through these documents, financial investigation although named as “*follow the money*” or “*follow trail*” investigation system is all about an investigation system of the flow of money which is circulated to commit a financial crime or as proceeds of a crime. The investigation is undertaken to detect participants of the financial crime, to identify proceeds of the crime and then the principal

¹⁹ “Money Laundering and Financial Crime Risk in Africa “at <<https://risk.lexisnexis.com/global/en/insights-resource/white-papr/financial-crime-typologies-africa>>,[last accessed May 5,2023]

²⁰ Dr. Lan Messenger, Financial Crime Compliance, A handbook for the detection, prevention and investigation of financial crime, 2023, Independently published, The Introduction part.

²¹ FDRE Attorney General, “training material on investigation of Money laundering and financing of terrorism” 2018, p.13

²² Ibid

criminals too. It is important to mention some definitions and expression of financial investigation for better clarity.

On an unpublished training material on the area of financial investigation, the term financial investigation is defined as “A financial investigation means an enquiry in to the financial affair related to a criminal activity with a view that; identifying the extent of criminal networks, terrorist funds and any other asset that are or may become subject to confiscation, developing intelligence and evidence which can be used in disruption or criminal proceedings.”²³. Financial investigation can also be taken as a financial audit from the perspective of detecting or protecting financial crimes.

FATF also defined the term financial investigation for the purpose of the guidance note on the issue. It is defined as “financial investigation is an enquiry into the financial affair related to criminal conduct and the major goal of financial investigation is to identify and document the movement of money during the course of criminal activity.”²⁴

The FDRE Attorney General prepared a training manual on money laundering and financing terrorism which are the two significant financial crimes too. Under this manual financial investigation is expressed as what it involves. It sets as “Financial investigations involve an enquiry in to the financial affairs related to criminal conduct. Such enquiries can vary from simply obtaining bank statements in relation to accounts held by a suspect, to a major review of the financial accounts of large corporations. In deed financial investigation expressed on the same material as it involves collecting, collating, and analyzing all available financial information with a view towards identifying the source, methods of transfer, and use of funds related to criminal activity.”²⁵

In this contemporary time in which digital economy is controlling the market system, criminals cannot totally exclude themselves from governed payment system which might makes them to be under detection. That is why financial investigation is coming as a fundamental investigation

²³ Shan Mcleary, “*Effective financial investigation training document*,” (unpublished), (The mentioned unpublished training material is developed by an English senior investigator, Mcleary, the training manual can be found on global center on cooperative security page, at <[[²⁴ FATF Report, “Operational Issues, Financial Investigation Guidance”, June,2012 p.3](http://expertnetwork.globalcenre.org_with_the_title_“effective_financial_investigation”>http://expertnetwork.globalcenre.org_with_the_title_“effective_financial_investigation”>]” with password “investigation”</p></div><div data-bbox=)

²⁵ FDRE Attorney General, “training material on investigation of Money laundering and financing of terrorism” p.95

system. This is not alone. Financial investigation is the most significant system of detecting financial crimes because the central subject of financial crime is finance or Money. A lot have been said about the importance of financial crimes.

Regarding the relevance of financial investigation European council released as “given the increasing risk of penetration of the illicit economy by serious and organized crime, financial investigation is an essential tool of a modern and effective response to criminal threats including terrorism financing”²⁶ FATF, financial action task force which is working on financial investigation massively set the aim of financial investigation as “The major goal of a financial investigation is to identify and document the movement of money during the course of criminal activity”²⁷. Achieving this goal of financial investigation helps us to trace a crime.

But financial investigation might be not always the end by itself; sometimes it may help us to get other reliable evidence as a means to an end. This means that, for instance, knowing the place of transfer money through financial investigation may help us to seize cash accumulation of proceeds of crime in a vivid theme.

ICC, international criminal court while giving a clear remark that the court doesn't have jurisdiction over financial crimes like corruption and money laundering, but underlines the importance of financial investigation in its publication on the issue. It confirms that financial investigation may provide significant and valuable information pertaining to cases before the court. This information can serve as evidence and potentially contribute to demonstrating the elements of a crime determining an individual criminal responsibility.²⁸

Since financial circulation either in legal ways or illegal ways is the center of financial crimes, financial investigation is important to identify; the place where money is transferred from and reached to, the debited and credited account, the amount of money involved, repetition of transfer and other important points.

²⁶ European council, “*financial investigation*” at < [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/financial-investigation_en] >, [last accessed June 28,2021]

²⁷FATF Report, “operational Issues, Financial gations, guidance”, June,2012

²⁸ International Criminal Court, “Financial investigations and recovery of assets”, Nov. 2017,p.3

2.3 The Importance and Objective of Financial Investigation

The main purpose or objective of a criminal investigation is to collect, seize, document/record, and keep evidence in order to identify the person who committed the crime, uncover the mode of its commission, and bring the suspect for justice. Effective investigation can help identify innocent persons or absolve individuals of guilt. Financial investigation can contribute to this objective by “following the money”. This approach involves collecting, collating, and analyzing all available financial information with a view towards identifying the source, methods of transfer, and use of funds related to criminal activity.²⁹

This is what is provided under the training material prepared by the FDRE Ministry of Justice regarding objective of financial investigation. Financial investigation can also help uncover criminal networks and improve understanding of their operations, as well as identify other assets the launderer has either his/her name or in the name of another entity that could be related to further criminal activity.

As per FATF, The major goal of financial investigation is to identify and document the movement of money during the course of criminal activity. The link between the origins of the money is received and where it is stored or deposited can provide information about and proof of criminal activity.³⁰

The FATF operational guideline provides the importance of financial investigation as,

Countries should ensure that financial investigation becomes the cornerstone of all major proceeds-generating cases and terrorist financing cases and that their key objectives includes;

- Identifying proceeds of crime, tracing assets and initiating asset confiscation measures, using temporary measures such as freezing /seizing when appropriate
- Initiating money laundering investigations when appropriate,
- Uncovering financial and economic structures, disrupting transnational networks and gathering knowledge on crime patterns.³¹

Such recognition of the importance of financial investigation with national and international documents shows the un-substituted importance of the investigation technique to investigate financial crimes. Finance is the focus of criminals who commit financial crimes. While the criminal focus on the finance, the legal actors also have to

²⁹ FDRE Attorney General, “training material on investigation of Money laundering and financing of terrorism” 2021, p.95

³⁰ FATF, “operational Issues- Financial Investigation Guidance”2012 p.6

³¹ Ibid

focus on it to control and suppress the crime. That is why financial investigation technique which can help legal actors to focus on the finance became the primary alternative technique to investigate financial crime.

The importance to focus on the finance is not only to detect criminals but also to seize and confiscate the proceeds of the crime. Punishing criminals without taking the money they take from crime may not have a good deterrence effect. Sometimes we may look cases in which criminals are punished of committing financial crime of multi-million dollar values but legal actors confiscate nothing. How such investigations and prosecutions can be categorized among the effective investigations and prosecutions. To control and suppress financial crimes the rule ‘Crimes should not pay’ has to be the motto of law enforcement agencies. Criminal should not enrich themselves with crimes. To do so, legal actors need to follow the money through financial investigation techniques. Criminal cannot hold and live the proceeds of the crime for eternity. They will add the dirty money to the financial circulation in many ways. They may invest the money as their real asset, they may make transfers for their co-offenders, they may save the money in different financial institution in scattered manner, they may donate the money for persons and institution as real or as cover, they may make repeated payments, they may try to change the money in other currencies, they may give loan for others with loan contracts, they may try to smuggle the money in cash.....etc. In all such processes we need to focus on the flow of the money then we will control not only the criminals but also the money, the subject of the crime. That is why financial investigation is really important. That is why FATF expressed as,

A financial investigation can be used as an instrument to reveal undiscovered predicate offences and to identify other peoples or companies. Thus it is imperative for countries to use financial intelligence upstream and downstream with in their value chain. This means that the flow of financial intelligence between regulators, supervisors, FIUs, law enforcement and other competent authorities should be free-flowing to and from all entities in accordance with existing domestic laws, policies and procedures and should be results-driven, not process driven....³²

To wrap up, we can say that the importance of financial investigation to investigate financial crime is a primary one.

³² FATF, “operational Issues- Financial Investigation Guidance”, 2012, p.7

2.4. The scope of financial investigation

The main subject of financial investigation is financial movement of Money as a fruit of financial crime or as a means to commit financial crimes or as money laundering aspect of financial crimes. Criminals may use from traditional to modern system of financial circulation, payments and transfers. Bank accounts based transactions and transfers might be the usual and easily recognizable financial circulation. But limiting the financial investigation with this usual system of financial flow may hinder performance of legal actors. Criminals may smuggle money and done cash payment or cash transfers. Bartering, like changing drug with other valuable objects can also a simple mode of payment for criminals. Modern and new mode of payments which are under the regulation of Banks like mobile banking, using visa cards, pose machine, E-payment and others can be also used. But also other new modes of payments like bit coin which is without the supervision of government authorities may be used by criminals. Financial investigation includes all these mode of payments and transfer. Traditional saving systems like equb in Ethiopia, community contributions in case of financing of terrorism can also be subject of financial investigation. The following elements are major components of financial investigation.

2.4.1 Financial intelligence

Financial intelligence is one of the components of financial investigation. As the term is self-explanatory it is relatively hidden/uncovered financial surveillance on certain financial crime.

Financial intelligence is the gathering of pieces of financial information (“data”) on entities of interest to understand their nature and capabilities, and predict their intentions. It can be seen from two perspectives, depending on the needs of the investigation. On the one hand, it is seen as intelligence relating to transactions and movements of money associated with Money laundering, Terrorism financing, fraud, and corporate crime matters. On the other hand, it can be viewed as an intelligence that has been extracted from a different source-the finance sector. With this view, an investigator can open any investigation to a wider source of information, which can help track the movements and relationships involved in a criminal enterprise.³³

This is what is provided under the training material of FDRE Attorney General. Financial crimes by their nature are hidden and mostly intangible crimes. That is why financial intelligence is one of the important aspects of financial investigation to control and detect such financial crimes. Financial intelligence can be pro-active or reactive. The role of

³³ FDRE Attorney General, “training material on investigation of Money laundering and financing of terrorism,p.101

financial intelligence unit (EFIC in Ethiopian case) is vital regarding financial intelligence. With the request of legal actors the center need to make financial intelligence and provide detailed report on the issue. Establishing the financial intelligence unit which focuses on financial security intelligence could be one important measure.

As seen under the first part of the chapter, the effect of financial crimes may extend to create macro-economy instability. It means that serious focus needs to give for the issue. One of such focus is expressed through establishing financial intelligence unit which focuses on financial security intelligence.

Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism introduced the importance of such institutions as follows,

The global efforts to establish an effective framework for the fight against money laundering and terrorism financing required a new approach, enabling a connection between the private sector (in particular the financial market) with the structures enforcing criminal legislation. As a result of these considerations, countries adopted initiatives to establish a new type of a state authority; the financial intelligence unit...³⁴

Based on such expert's opinion financial action task force under recommendation No .29, Obligates countries to establish a financial intelligence unit (FIU). This unit is empowered to receipt financial information, to analyze and disseminate such information.³⁵ Ethiopia has established EFIC as per the recommendation by regulation No.171/2009. This institution is a key in financial investigation in general and in financial intelligence in particular.

2.4.2 Financial information

Financial information includes all types of information that is connected to money, assets, expenditure, and finances of any kind. This information is present in almost every aspect of a person's life. Non-case based methods of dealing with the money and assets (such as credit and stored value cards) also generate financial information. Investigators can analyze this information to obtain materials to assist the investigation. It can help establish a person's whereabouts, their possible

³⁴ "committee of experts on the evaluation of Anti-Money laundering measures and the financing of terrorism, at <<https://www.coe.int/en/web/moneyval/implementation/fiu>>, [lase accessed april29,2023]

³⁵ FATF, recommendation 2012 updated June 2021, recommendation No.29

intentions, evidence of a crime, motive, and indicative information such as whether they are living beyond their means.³⁶

Financial information may be obtained from different sources and they can be catalyst for financial investigation. Bank account inquiry, new and old mode of payments follow up, financial institutions workers interview/ interrogation, database....etc. can be sources of financial information.

New and old Mode of payments should be focused when we deal with financial information. Bur regarding Ethiopia strong focus should also be given to cash payments since the digital economy is not yet well developed. That is why an international report on Ethiopia confirms,

Ethiopia is a highly cash-based economy. The formal financial sector is small, simple in structure, and only serves approximately 28% of the total population of the country (the total number of bank, microfinance, and insurance accounts is 15.5 million in a country with a population estimated at 96.51 million, the adult population being 53.9 million). The financial institutions operating include banks, microfinance institutions, and insurance companies. All other defined financial activities either do not exist or occur exclusively through the banks (including MVTs).³⁷

Such relevant data regarding the where-about of money in financial crime can be taken as financial information. In the view of this writer, financial information can be taken the bricks that help to build full financial investigation.

2.4.3 Financial Analysis

Financial analysis lies at the core of financial investigation. As provided in a training material, “Financial analysis (also known as forensic accounting) is the analysis of where money comes from, how it moves, and how it is used. This technique is obviously a critical component of financial investigation and skill that can be take time to perfect.”³⁸

This is what follows the money investigation mean. Financial analysis is what makes financial investigation very effective in detecting financial crimes and perpetrators of it. Investigators need to draw on large volumes of data from a variety of sources, review the information, and try to determine the money movements.

³⁶ Ibid,p.108

³⁷Anti-Money laundering and combating the Financing of Terrorism by FATF eastern and southern Africa Anti-money laundering group, Mutual evaluation report, 2015, p.49

³⁸FDRE Attorney General, “training material on investigation of Money laundering and financing of terrorism,p.101

Financial analysis may be done by financial intelligence units and legal enforcement organs. Financial analysis by legal actors may focus on the effectiveness of investigation and prosecution. The investigator can query things such as all transactions on a given date, or all transactions into a specified account number. The investigator may then be able to find a convergence of deposits or withdrawals from a single account that cannot be reasonably explained. Those transactions then become a line of investigation and questioning.

Such analysis can also be done by FIU. Financial Action Task Force provided the analysis by FIC through recommendation Number 29 as follows,

FIU analysis should add value to the information received and held by the FIU. While all the information should be considered, the analysis may focus either on each single disclosure received or on appropriate selected information, depending on the type and volume of the disclosures received, and on the expected use after dissemination. FIUs should be encouraged to use analytical software to process information more efficiently and assist in establishing relevant links. However, such tools cannot fully replace the human judgment element of analysis. FIUs should conduct the following types of analysis:

Operational analysis uses available and obtainable information to identify specific targets (e.g. persons, assets, criminal networks and associations), to follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of crime, money laundering, predicate offences or terrorist financing.

Strategic analysis uses available and obtainable information, including data that may be provided by other competent authorities, to identify money laundering and terrorist financing related trends and patterns. This information is then also used by the FIU or other state entities in order to determine money laundering and terrorist financing related threats and vulnerabilities. Strategic analysis may also help establish policies and goals for the FIU, or more broadly for other entities within the AML/CFT regime.³⁹

As to the training material of The FDRE Attorney General on financial investigation, it is provided that network and social network analysis is an important component of financial investigation. Network analysis is an important component of any investigation in to a crime syndicate. A given focused examination on a certain financial information or intelligence may reveal links to other individuals, business, vehicle, phone number, bank account, location, time...etc. so, it is important to document these links in detail. The other analysis method is Social network Analysis. This analysis used to understand networks and their participants. It is important to evaluate the location and grouping of the actors in the

³⁹ Financial Action Task Force, 2012, updated 2021, Recommendation NO.29

network. As observed below social network analysis may be constructed in different way.⁴⁰

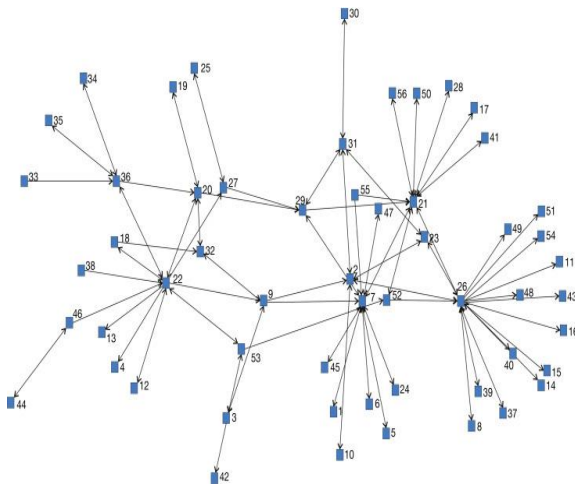
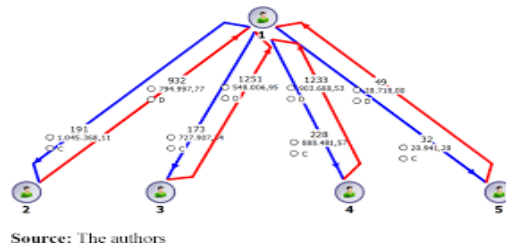


Figure-2 social network analysis examples



2.4.4 Interpretation of financial information and changing them as evidence for court of law

Interpretation of financial investigation is not far from financial analysis in term of concept but it is to mean than how you can present your analysis as evidence before the court of law. Sometimes Judges might be busy to look every detail of hundreds and thousands pages of financial analysis. So, it might be important to change such detail analysis in form of charts or diagrams for easy understandability.

Sometimes it might be also important to attach financial investigation based evidence with other kinds of evidence for better clarity. For example a given financial information about withdraw of money through ATM may be related with CC camera resulted demonstrative evidences. A financial social net-work analysis might be supported with physical meeting of such participants through surveillance. In such and other ways financial information needs to be interpreted.

⁴⁰ <[<https://ars.els-cdn.com/content/image/3-s2.0-B9780124095489096858-f09685-01-9780128046609.jpg>], [last accessed April 30,2023] and <[<https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.emerald.com%2Finsight%2Fcontent%2Fdoi%2F10.1108%2FJMLC-12-2020-0139%2Ffull%2Fhtml&psig=AOvVaw3UUBinAuQWHXBptKijHP0l&ust=1683039614985000&source=images&cd=vfe&ved=0CBEQjRxqFwoTCMDc56Wx1P4CFQAAAAAdAAAAABA7>], [last accessed April 30,2023] (link addresses)

2.4.5 Financial information based communication between and among Financial and designated non-financial business & professions, legal actors and financial intelligence center

Although financial circulation between and among participants of criminals is the core subject of financial investigation, its scope is extend to financial information based communication between and among legal actors, financial and designated non-financial business and professions and financial intelligence authorities. These financial information based communication are governed by laws and principles. Rules for financial and designated financial institution to take customer due diligence and know their customer (CDD and KYC), Rules on Mandatory and suspicious transactions to Financial intelligence centers, financial intelligence disseminated reports are internationally recognized rules of financial investigation.

1. KNOW YOUR CUSTOMER (KYC)

As per FATF recommendation No 10, financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names. Indeed, Financial institutions should be required to undertake customer due diligence (CDD) measures when; establishing business relations, carrying out occasional transactions...etc. The recommendation obligates states to set out in law regarding CDD responsibilities of financial institution. IT is provided as “the principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means.”⁴¹

Under the recommendation, the CDD measures to be taken are provided as follows;

- (a) Identifying the customer and verifying that customer’s identity using reliable, independent source documents, data or information.
- (b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.
- (c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.

⁴¹ Financial Action Task Force, 2012, Recommendation N0.10

(d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Financial institutions should be required to apply each of the CDD measures under (a) to (d) above, but should determine the extent of such measures using a risk-based approach (RBA) in accordance with the Interpretive Notes to this Recommendation and to Recommendation 1.

Financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business.

Where the financial institution is unable to comply with the applicable requirements under paragraphs (a) to (d) above (subject to appropriate modification of the extent of the measures on a risk-based approach), it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.⁴²

These requirements should apply to all new customers, although financial institutions should also apply this Recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times.

KYC is not a rule which can be simply achieved because there are two conflicting interest exists on these financial institutions. In one hand these institutions are established to make profit and their Customers, particularly those who involved in financial crimes do not want these financial institutions to disclose their financial history. On the other hand these financial institutions have the duty to protect the financial system and the public from financial crime. So, they have legal obligation.

It means that to effectively apply the rule of KYC in one hand it is expected for those financial institution to be courageous to give priority to the public at large than their profit from launderers. In other hand government authorities need to follow KYC performance of financial institutions closely.

“Financial institutions should be also required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit

⁴² Financial Action Task Force, 2012, Recommendation N0.10

reconstruction of individual transactions (include the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal activity.”⁴³.

The Due Diligence of Banks directive in Ethiopia also govern such issues in detail way. Article 3 of the directive provides customer Acceptance of policy, procedure and compliance arrangement. Under this article banks are obliged to establish and maintain internal procedures, policies and controls to prevent money laundering and terrorist financing, and communicate these to their employees and the National Bank of Ethiopia. Banks are also obliged to identify their customer and to take Due Diligence to avoid anonymous accounts or accounts in fictions names. In deed the directive orders Banks to conduct ongoing due diligence measure on existing customers and business relationships, including scrutiny of transactions undertaken throughout the courses of that relationships.⁴⁴

1. Duty to report suspicious and mandatory transaction

The other area of financial investigation is report of financial institution to financial intelligence center. This duty of financial institution is done based on suspicious transaction report and mandatory transaction report. Specifically suspicious transaction report is highly related with the KYC, know your customer roles. Mandatory transaction report is done based on primarily set minimum threshold. In Ethiopia such transaction reporting issue to FIC is mainly governed by a directive issued by the National Bank of the country. As the provision reads,

A bank shall report to Financial Intelligence Centre of Federal Democratic Republic of Ethiopia

- 1) When it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity
- 2) Where there are reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations for those who finance terrorism,
- 3) all cash deposits or withdrawals exceeding birr 200,000 and/or USD 10,000 or its equivalent in other foreign currency; and
- 4) all suspicious transactions, including attempted transactions regardless of the amount of the transactions⁴⁵

As per FATF recommendation No.20, it is set as if financial institutions suspects or has reasonable ground to suspect that funds are the proceeds of a criminal activity, or has related to

⁴³ The FATF Recommendations, “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, , updated June 2021,p.15

⁴⁴ National Bank of Ethiopia, Customer Due Diligence of Banks Directives No.SBB/46/2010, Art.3,4 and 5

⁴⁵ National Bank of Ethiopia, Customer Due Diligence of Banks Directives No.SBB/46/2010, Art.10

terrorists financing, it should be required, by law, to report promptly its suspicions to the financial intelligence units (FIC) Then, FIC is expected to verify, analysis and interpret data collected from suspicious and mandatory transaction reports and notify legal enforcement organs if any financial crime is committed or being about to committed.

2. FIC report to legal enforcement agencies

As provided earlier under the different parts of this research, the role of FICs in controlling financial crimes is un-substituted. Up on the request of legal enforcement organs, FIC (EFIC in Ethiopia's case) need to give financial information, intelligence or analysis depending on the context of the case. But there are also other ways of communication between these two organs., The FIC may prepare report and send to law enforcement agencies for investigation and prosecution based on self-initiated intelligence or based on suspicious and mandatory transaction report the unit may receive from financial banks. These all are also included under the scope of financial investigation.

2.5 Application of financial investigation on financial crimes; International Experience

International organization working on the financial crimes like FATF, Teams which are organized to work on the financial crimes like Comply Advantage and IC, Regional organization like European council, International tribunals' statute like the Rome Statute promotes the application of financial investigation in protection and investigation of financial crimes. International treaties on most significant financial crimes like treaties on protection of money laundering and financing of terrorism also promotes the application of financial investigation. FATF Recommendation also obligates the establishment of financial intelligence center by countries. At international level there are practices of applying financial investigation and testimonies regarding its effectiveness.

There is a research based report done in UK government regarding application of financial investigation in tackling organized crime.⁴⁶ The research is done based on semi-structured

⁴⁶ Rick Brown, Emily Evans, Sarah Webb, Simon Holdaway, Geoff Berry, Sylvia Chenery, Brian Gresty and Mike Jones, "The Contribution of Financial Investigation to Tackling Organized Crime: A Qualitative Study" <https://assets.publishing.service.gov.uk/government/uploads/systems/uploads/attachment_data/file/116518/horr65.pdf >, [Last accessed September 28, 2021]

interviews with individuals involved in the investigation and prosecution of 60 organized crime cases. The research has a number of findings that have implications for operational staff involved in the pursuit of organized criminals. In particular, the research suggests that: financial investigation techniques have the potential to add value to all stages of investigations into organized crime; and investigating officers should routinely assess whether to employ financial investigation techniques in all organized crime cases. Findings include the following. Financial investigations were rarely used to identify organized criminality in the first instance. Financial investigation techniques were applied in more than one-half of the cases studied during the pre- and post-arrest investigation and the case-building phase. Where used, financial investigation contributed to investigation and case building through: – identifying organized criminality; – identifying the extent of an organized crime group; – locating assets; – identifying ownership and use of properties; – evidencing offenders’ lifestyles; – tracking movements; – placing people at particular places at particular times, linking them to criminality; and – identifying additional offences and offenders⁴⁷

This is a very explanatory research regarding the value of application of financial investigation technique. Here provided below is one well-known financial crime (financing of terrorism) case in which financial investigation paves the way for completed investigation and prosecution process. The case and the investigation was happened and done in USA and here is what is provided on a material,

The simple fact the need for funds for terrorists-is key in fighting terrorism. Follow the money. Follow the financial trail. This is the core objective of all measures that aim to identify, trace, and curb terrorist financing. Take a look at the role of finance in determining the capacity and gravity of terrorist attacks. The case of the 1993 attack on the World trade center provides evidence of both the importance of financing for terrorist groups and the importance following the financial trail in investigating incidents of terrorism. According to the testimony of the then FBI director Louis Freeh before congress in 1999, the terrorists were unable to achieve the destruction they originally intended because of shortage of funds. This limited their capacity to purchase explosive material sufficient to build a bomb of the size they intended.

It also forced them to implement the operation ahead of the original schedule. These facts were revealed by Ramze yousef, who was captured and convinced as the master mind behind the 1993 bombing. The investigation value of following the money trail is evident in the fact that the main evidential lead in case stemmed from the attempt of the perpetrators to reclaim the deposit they paid to rent the truck that they used to transport to bomb to the site of the attack. This transaction set the

⁴⁷ Ibid

police on the right track that used to transport the bomb to the site of the attack. This transaction set the police on the right track that eventually led to the identification of the perpetrator.⁴⁸

As the case shows this investigation was done to tackle the 1993 terrorist attack in USA. Follow the money investigation technique was the main agent which changes the course of the investigation and makes the investigation successful at last.

2.6 Application of financial investigation on financial crimes; Ethiopia's Experience

The researcher can't get a research paper prepared directly on the application of financial investigation in Ethiopia. Neither is found a clear report regarding the application of financial investigation. But as will be discussed in detail under the analysis part there are laws in the legal system which gives recognition for the application of financial investigation. Proclamation No.780/2013 which came in to effect by repealing proclamation No. 657/2009 consists of many issues regarding financial investigation and its application. First and for most it is this proclamation which defines what are financial institution and designated non-financial business and professions.⁴⁹ This definition plays important role in applying financial investigation rules for financial institutions. Article 6 of this proclamation imposes the duty on financial and designated non-financial institution to verify and know the identity of their customers. Financial institutions are also obliged to report suspicious transaction to FIC based on the evidence they hold regarding the identity of their customer. Indeed mandatory reporting is also governed by the law⁵⁰ these financial institutions are also obliged to document transactions because that are necessary financial sources for financial crimes.⁵¹ As provided earlier The FDRE criminal justice policy and the draft criminal procedure and evidence law are also recognized the application of financial investigation.

The then FDRE Attorney General the current Ministry of Justice has prepared a well-documented training material on financial investigation regarding the two most significant financial crimes of the day, financing terrorism and money laundering. Among different issues

⁴⁸ World bank and International Monetary Fund "Combating Money Laundering and The Financing Terrorists, A comprehensive Training Guide",2018, p.9

⁴⁹ Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, 2013,*Negarit Gazeta*, Pro. No. 780, 19th year, No.25

⁵⁰ Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, 2013, *Negarit Gazeta*, Pro. No. 780, 19th year, No.25, Art.6

⁵¹ Ibid

emphasized in the training material, how to apply financial investigation is the very important one. Under such section, a common phrase is provided to keep in mind about the importance of application of financial investigation. That term is, “If you follow the drugs, you will find drug users and drug dealers. However, if you follow the money, you don’t know what you’ll find!”⁵²

As the training material shows, criminals of financial crimes usually like to maintain some degree of control over their assets, and as a result there is usually a “paper trail” that will lead back to the offender. The paper trail can also be followed to identify additional offenders and potentially the location of evidence and instrumentalities used to commit the crimes.

The training manual tries to incorporate some important practical skills regarding financial investigation. Investigative questions include; who paid you? Who collected from you? What was the mode of payment? Who counted the money? Who took the money to bank? Who is the banker? Is there a lawyer and accountant? Is so, who? Where the money did comes from? Where does the money go? Etc.⁵³

The manual also sets some techniques and approaches that should be considered for asset tracing. Those mentioned techniques are; back ground checks on natural persons; companies record/registry checks on legal persons; Interviews with witnesses/sources; banking/financial records; telephone billing/communication records and data; Ancillary records/Evidence of “lifestyle” spending, travelling, etc.; Government agency records (including border entry, licensing applications etc.); Real property records/registers; Government monitoring of accounts/ transactions; and special investigative means and general covert methodology, including covert searches, electronic surveillance/wiretap, and undercover agent deployment.⁵⁴

This training material shows the interest of the ministry for the application of financial investigation in practice.

There is also a mutual Evaluation report done in May 2015 on Anti-Money laundering and combating the Financing of Terrorism by FATF eastern and southern Africa Anti-money laundering group regarding Ethiopia. As per the report it is recognized that, despite minor

⁵² FDRE Attorney General, “training material on investigation of Money laundering and financing of terrorism 97

⁵³ Ibid p.98

⁵⁴FDRE Attorney General, “training material on investigation of Money laundering and financing of terrorism, p.99

technical compliance requirements remain, the legal framework underpinning Ethiopia's AML/CFT system is generally solid. But regarding its effectiveness the report reveals that it is too early to be able to draw any firm conclusion since the law is recently in force.

Regarding terrorist financing the mutual report comes with key findings. It states

“As Ethiopia strictly controls the inflows and outflows of funds through the formal financial sector and strongly enforces its capital controls, there is likely a greater risk of inflows of funds to support terrorist activity in Ethiopia than outflows of funds to support terrorist activity outside Ethiopia. Given the high degree of cash transactions, and the widespread presence of illegal (or unlicensed) MVTs, terrorism financing activities are less likely to be conducted through the formal financial sector.”⁵⁵

One peculiar fact mentioned on the report is that when the report is being prepared, Ethiopia has only investigated and prosecuted one case involving terrorism financing.⁵⁶

Of course this report didn't show the exact picture of the application of financial investigation for financial crimes in general rather it was limited to money laundering and financing of terrorism cases. But the finding on the financing of terrorism case may show some important points regarding the application of financial investigation in Ethiopia.

As the report shows as a country we investigate and prosecute only a case on financing of terrorism crimes. If this happened because of no crime was committed on the area, that may not be something wrong but if this happened because of our poor investigation technique it is an alarming finding. This research will assess the actual application of the financial investigation for those financial crimes entertained under corruption crime control directorate General.

⁵⁵ FATF eastern and southern Africa Anti-money laundering group, “mutual Evaluation report”, 2015 P.39

⁵⁶ Ibid

CHAPTER- THREE

ANALYSIS AND INTERPRETATION

Introduction;

As provided under the methodology part of this research paper, document review that is criminal files desk review is taken as the primary source of data for this research. Data collected from this source is analyzed and interpreted in detail since it can reveal the actual situation regarding the application of financial investigation on financial crimes. Data collected through interview and questioner are also analyzed and interpreted well. On some important issues of the research data is collected with all types of data collecting instruments and the results are cross checked. On some other subordinate issues data is collected with one or two instruments of data collection methods and they are analyzed accordingly.

It is found important to analyze data collected on the application of financial investigation with different sub section for clarity and understandability. The first section is regarding legal recognition of financial investigation and the second section is about skills of public prosecutors in applying financial investigation. The third and the central section of the analyses are regarding Analysis of Data on Application of financial investigation.

3.1 Legal Recognition of Financial Investigation and Skills of Public Prosecutors in Applying Financial Investigation

In a given criminal justice administration system, application of a certain criminal investigation technique primarily requires two things. The first one is legal recognition. There are different criminal investigation techniques in which their application is either prohibited by law or their application is limited with certain specifications. For example, use of force for criminal investigation is prohibited by national and international laws⁵⁷. Regarding limitation on criminal investigation technique, surveillance and interception can be taken as an instance. These criminal investigation techniques are allowed only for felonies crimes with strict rules and procedures. So, legal coverage is the primary guide for the application of a criminal investigation technique in a

⁵⁷ The Constitution of The Federal Democratic Republic of Ethiopia, 1995, *Negarit Gazeta*, pro.No.1,1st year No.1 Art.19 (5)

given criminal justice administration system. The second important point is the knowledge and skill of those who can apply the investigation technique. Since having a legal coverage doesn't guarantee the application of a specific criminal investigation technique, legal actors, particularly police investigators and public prosecutors have to equip themselves with the necessary knowledge and skill of applying the method for an effective application of a certain criminal investigation techniques.

3.1.1. Legal recognition of financial investigation under Ethiopian Law

In Ethiopia criminal justice administration system, there is no law which directly uses the word financial investigation as it is, except under international treaties signed by the country.⁵⁸ The United nation Global counter –Terrorism strategy (A/RES/60/288) was adopted by consensus in 2006. Through its adoption all UN member states was agreed to a common strategic and operational approach. Indeed Financial Action Task Force /FATF/ which was originated primarily by G7 but has collaborated closely with the united nation since 2001 now included almost all member states of the UN. Since Ethiopia is part of such strategies, application of financial investigation for financial crimes is not only a will but it needs be practiced as a responsibility also. These international strategies used the word financial investigation for all aspect of financial intelligence, information and analysis and interpretation.

In Ethiopian legal system, financial investigation is expressed in its characteristics other than using the term itself. Proclamation No.780/2013 of the country which is the working proclamation on control and suppression of money laundering and financing of terrorism has recognized financial account investigation as the first investigation technique. The proclamation provides as monitoring bank accounts and other accounts with the permission of the judiciary is applicable to investigate financial crimes.⁵⁹

This is the proclamation which establishes the base of financial investigation in Ethiopian Criminal justice administration system. Financial and designated non-financial business and professions are identified through this proclamation. System of reporting suspicious and mandatory financial transaction to FIC is also established with this proclamation. It is this

⁵⁸ United Nation Convention against Corruption, United Nation Office on Drug and Crime, New York, 2004, Art.55-58 and also Financial Action Task Force recommendations and Guidelines.

⁵⁹ Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, 2013, *Negarit Gazzeta*, Pro. No. 780, 19th year, No.25, Art 25 (1(A))

proclamation which created the rule of KYC (know your customer) rule for financial and designated non- financial business and professions.⁶⁰ Basing this proclamation National Bank of Ethiopia, Customer Due Diligence of Banks Directives No.SBB/46/2010 has introduced to the system with detail issues regarding KYC and CDD.

Proclamation No. 434/2005 which is the revised Anti-corruption special procedure and Rules of Evidence proclamation has included the financial investigation technique indirectly. Under rule of evidence part of the proclamation it is provided that an investigator or a prosecutor may apply to the court to obtain or gain access to relevant material, from any person other than the suspect, in order to establish whether the suspect has benefited from criminal conduct or to get evidence regarding the amount of benefits or its whereabouts.⁶¹ This content of the proclamation includes financial and designated non-financial business and professions because the law is framed as inclusive of all institutions. Of course, if a given corruption crime has money laundering aspect, it is possible to apply both the procedural law and proclamation no 780/2013 together.

The draft criminal procedure and evidence code of the country also included financial investigation from the perspective of financial institutions. Article 93 of the draft criminal procedure and evidence law is framed as evidence can be collected from financial institutions as follows.

አንቀጽ ፱፻

በፋይናንስ ተቋም የሚገኝ ማስረጃ ፩. በማስረጃነት የሚፈለግ የባንክ ሂሳብ ወይም የገንዘብ እንቅስቃሴን የሚመለከት መግለጫ ለመርማሪ ፖሊስ እንዲሰጥ በፍርድ ቤት ሊታዘዝ ይችላል። ፪. በዚህ አንቀጽ ንዑስ አንቀጽ ፩ መሠረት የሚሰጥ ትእዛዝ፡- (ሀ) የተጠርጣሪን ሙሉ ስምና አድራሻ፣ (ለ) ተጠርጣሪው ፈጸመ የተባለው የወንጀል ድርጊት፣ (ሐ) ከፋይናንስ ተቋም የሚፈለግ ማስረጃ ፣ (መ) ትእዛዙን የሚፈጽመው ወይም የሚያስፈጽመው መርማሪ ስም፣ መያዝ ይኖርበታል።⁶²

This article is about the possibility of investigating bank account or financial flow by police investigator with court permission.

So, regarding legal coverage we can conclude that we have a legal coverage for financial investigation although such laws failed to use the term financial investigation as such.

⁶⁰ Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation, 2013, *Neg. Gaz.*, Pro. No. 780, 19th year, No.25, (full content of the proclamation)

⁶¹ The revised Anti-corruption special procedure and Rules of Evidence proclamation, 2005, *Neg. Gaz* ,Pro. .No. 434, 11th year No.19 Art.42 (1)

⁶² The draft criminal procedure and evidence law, art.93

3.1.2. The Competence of Public Prosecutors in applying financial investigation

The next point we need to assess is the knowledge and skill of public prosecutors regarding financial investigation. As per proclamation No. 943/2016 and proclamation No. 1263/2021 it is the prosecutions which are entitled to lead criminal investigation while police investigators are the actual actor to do the investigation⁶³. Particularly in such complicated and recently recognized criminal investigation techniques like financial investigation public prosecutors are expected to have a big role. That is why it is important to assess the knowledge and skill of public prosecutors regarding financial investigation.

One of the important finding of this research paper is, the knowledge and skill of public prosecutor who are empowered to lead criminal investigation is not sufficient.

Mr. Biniam Shiferaw Ayalew is a pioneer legal expert on Money laundering and financial investigation. He did his LLM thesis on Money Laundering and published his research and bundle of articles. He worked with Global Center on Cooperative Security on the illicit financial flows and financial crimes. He worked with the ministry of Justice in establishing a directorate working on confiscation of proceeds of financial crimes. Indeed he participated in the investigation of some notorious criminal files, General Kinfu Dagnev (and others) vs. public prosecutor.

He gave detail interview for this research. Regarding the skill and knowledge of public prosecutor regarding financial investigation, he replied as “Many public prosecutors consider financial investigation as merely ordering Bank financial statement. But the subject is more detailed and procedural one. Indeed while investigating predicate offence, both public prosecutors and police investigators don’t use financial investigation technique as a primary investigation technique. These shows that the awareness and skill of public prosecutors is not developed one”. But Mr. Biniam believes that after the establishment of a department which works on confiscation of proceeds of crimes under the Ministry, the awareness of public prosecutors on financial investigation is increasing.

⁶³ A proclamation to provide for the establishment of the attorney general of The FDRE,2016, Negarit Gazeta, Pro.No.943,22nd year No.62 art.6

Abdulshekur haji is a team leader at Corruption Crimes Follower Directorate General office Under Ministry of Justice. In an interview with him, he replied for the question “how do you evaluate the knowledge and skill of public prosecutors in his department?” as, “When public prosecutors joined this department from other departments of the ministry, No specialization criteria was set regarding skill of investigating corruption and money laundering crimes in general and on the areas of financial investigation in particular, neither consecutive training has been given on the area.” The team leader indeed said that most criminal files in the directorate general requires extensive financial investigation but public prosecutors who are empowered to lead investigation of such crimes don’t have adequate knowledge, skill and experience on the area. The team leader confess that he himself didn’t take such critical training on the issue of financial investigation despite him being appointed to be a team leader to investigate such cases.

Mss. Mignot who is also a team leader and active participant on financial investigation of complicated cases shared Abdulshekur’s thought on the issue. She provided that the importance of financial investigation in financial crimes investigation is high. But neither professional from the financial intelligence center nor from the legal enforcement center are well experienced in financial investigation.

These data from the interview is supported by the data collected from questionnaires. Among public prosecutors who filled out the questionnaires, 100% of them replying that they have not any specialization regarding financial investigation. And only 60% the respondents replied “yes” to the question, as to whether they have attended trainings regarding financial investigation.

Only 23% of the total respondent replied, “I have adequate understanding on what financial investigation is and its contents” to the question how do you asses your knowledge and understanding regarding the concept and contents of financial investigation. The remaining 77% of the respondents replied “I have certain understanding regarding the concept and contents of financial investigation”

For the question, how do you evaluate your practical skill in deploying financial investigation crimes investigation and prosecution?, 23% of them replied high, 54% respond medium and the remaining 23 % respond as it is at lowest. These data from the questioner is what is going to reflect on the document examination as we will see.

Of course 90% of the respondent believes that financial crimes are increasing in Ethiopia and the entire respondent replied that the importance of financial investigation is very important to investigate such financial crimes. But as these data shows there are knowledge, skill and experience gap regarding financial investigation.

3.2 Analysis of Data on Application of financial investigation

Results of the interview taken based on purposive sampling from team leaders, provided that much is left on application of financial investigation. Abushekur haji, who is team leader of crimes on financial institutions which is entertained under corruption crimes follower directorate general, has explained the level of application of financial investigation. As to his experience and understanding, financial investigation is not the common investigation technique under the directorate also it would have been. Under his team since the crime is directly related with financial institution there is no way other than to rely on financial information as part of financial investigation. But he agreed that much is left in analysis and interpretation of financial information. In general, he concluded that consecutive training has to be given for public prosecutor and police investigator for effective application of financial investigation.

Adushekur added that one of the main obstacles which is limiting the effectiveness of financial investigation other than knowledge and skill related impediments is financial and designated non-financial business and professions failure to apply the rule of KYC well. “Criminals are using false ID to open bank account and using such false bank accounts to commit financial crimes” as he said. He agreed that banks are not strictly applying the Due diligence measure indeed. To him one of the main reasons for such failure is banks unfair competition to have number of customers. Bank workers are go on road to open account with loose procedures. They are not concerned well with due diligence measure to verify the identity of their customers.

Mss.’ Mignot Bekele also agrees with the idea financial investigation is not strictly applicable. She stated on the issue “of course there are certain cases where we exhaust all alternatives of financial investigation but as an institution a lot is left in applying financial investigation” as per the interview with her, she also believed that one of the main reasons for such false account is the banks failure to take due diligence and non-existence of National ID system in the country.

First and foremost, one important thing that has to be done regarding knowing the exact level of due diligence and KYC performance in Ethiopia is to done national level assessment through National Bank of Ethiopia and FIC. Having this fact in mind, what this research in its scope shows is that financial institution particularly banks is not strictly applying due diligence measure. Because of their failure many complicated financial crimes have been committing. And then their failure to take due diligence measure makes the investigation complicated.

As we have seen on the review of literature part, regarding application of financial investigation one of the core issues associated with financial institution is the duty of financial and designated non-financial institution to take due diligence care to know their customer. International treaties on crime of money laundering, corruption and financing terrorism confirms such thing.

Mr. Biniam Shiferaw believes that much is left for effective application of financial investigation on financial crimes. He explained the situation as follows,

Although it is public prosecutor who leads the criminal investigation and it is police investigator who does the actual investigation, financial investigation requires additional professionals like finance personnel, accountants, asset valuator and computer engineers. But such professionals aren't found in the directorates where financial crimes investigated. This fact by itself shows that financial investigation is not effectively applying in such cases.

He also further explained the situation as “currently criminal Investigation is more of a manual task. But financial investigation requires digital investigation techniques. It also requires data analysis software. These facilities and other infrastructures for financial investigation are not constructed well in the criminal justice administration system.” Indeed financial and designated non-financial institutions are not really cooperative for financial investigation. “In the absence of such requirements financial investigation can't be effectively applicable and that is what I have observed”, Mr. Biniam said.⁶⁴

The result of data collected from the questionnaire regarding the central issue of the research paper, application of financial investigation, is not different from the interview. Only 38.5% of the respondents replied yes to the question, do you believe that we (Attorney General Branch public prosecutors) are applying financial investigation in financial crimes investigation in well

⁶⁴ Interview with Mr. Biniam Shiferaw ayalew, on Application of financial investigation under The FDRE Ministry of Justice, corruption crimes follower directorate General, June 6, 2023.

manner? The remaining 61.5% of the respondents replied, No to this question. Those who responded negatively have set different reasons why such low application is; It is important to list and discuss such reasons;

40 % the respondents argue that there is no coordination among different offices and in most times, investigation is made based on some accusation events;

This response is a very important point if we critically examine with international particularly FATF recommendation regarding financial investigation. As it is provided earlier financial investigation is an investigation technique of cooperation between legal actors and institutions. That is why states are obliged to establish an authority which can work on this area, FIC. Ethiopia has its own FIC. This institution is expected to play a central role in relating private and governmental financial and designated non-financial business and professions in one hand and legal enforcement agencies in other hand.so, the cooperation of these actors doesn't need to be case oriented rather usual, memorandum based and consecutive relation may create the opportunity for optimal application of the financial investigation. the respondent reply is about this.

60% of the respondents reply that most of those financial crimes are more of technical that can't be easily detected and investigated. So, critical skill and experience on financial investigation is required. But now legal enforcement organs didn't acquire themselves with such skills and experiences to effectively apply financial investigation.

The data from the document review also shows similar findings with the data from interview and data from questioner. It is impossible to conclude that there is no financial investigation application in the directorate general because there are certain cases where financial investigation is applied. But the investigation level is limited to financial information.

In all Criminal files examined the researcher doesn't look a case where strict financial analysis by legal actors is made rather there are cases where financial information and financial intelligence is there.

Regarding interpretation of financial information and analysis there is no practice at all. There is no a criminal case found which has charts of social/financial network prepared by public

prosecutors to interpret financial analyses. As discussed earlier under the literature review part, financial interpretation is one subject of financial investigation. It is constructed based of the movement of money. Repetition of financial relation through transfer or payment, area coverage of the financial circulation, participants in a given financial circulation can be well identified through interpretation of financial analysis interpretation. For example if we look a certain human smuggling crime by a gang of criminals, we can identify all participant of the chain through financial investigation. Imagine that the master mind of the crime is here in Ethiopia and we can detect his accounts. when we get financial information from all financial institution then we can analyses his financial history with questions like; with whom he has repeated financial transaction?, where is the place the receiver take his money from the transfer? Does the receiver also dismantle the money for other person? , who are them? How much money is under the circulation....etc. once such financial information analyzed then we can interpret the analysis by chart to make them easily understandable and detectable? But while criminal files are investigated for this research there is no such experience of financial interpretation.

To clarify the findings of the research on criminal files let us look at certain criminal files in the form of case discussion,

CASE-DISCUSSION;

1. Among criminal files studied for this research paper, one of the case is prosecutor file No.048/12 and investigation file No.00342/13 investigated on Mr. Alemzewd and other suspects. This case is about use of falsified document to proof payment of Road fund payments. It seems that the case is not a complicated one to investigate. It is merely use of falsified document which value is not much in terms of money. But what can be observed from this case is that, there are certain facts which imply to have suspicion of this company is serving as undercover company for money launderers. Because for such a big company, paying a road fund annual payment is very minimal.

In such case it could have been important to make financial intelligence on such companies to prove whether they are real companies or under cover company. But the file shows that is no any further application of financial investigation on the file and the case is closed as per article 42/1/a of the criminal procedure code. This case strengthens the finding of the interview and the

questioner because the file doesn't show application of financial investigation with its broad scope.

2. On the case investigated under criminal file number 348/10 prosecution file No.345/2012 the crime investigated is complicated financial crimes. The crime is using intimidated check to take 1.8million birr from the victim bank account. As the case shows public prosecutors have tried to use financial investigation technique by creating communication with the bank. But the investigation can't go detail and successful. Why?

The suspect of the crime used a bank account at 'Wegagen' bank using false ID. Neither the police and public prosecutor nor the bank can identify who really the suspect is. This case shows one important impediment of financial investigation. Financial investigation requires KYC, know your customer. Financial and designated non-financial business and profession is required to take due diligence to know their customer. But here the case proves that the bank didn't take due diligence measure to check the ID of the suspect. The public prosecutor attempt to apply financial investigation failed because of failure on KYC. The case is closed under article 42/1/A of the criminal procedure code.

Here, there is one important critical point. The investigation process on the file stopped when the bank give respond regarding to the false ID document of the suspect. But further financial investigation techniques like who opened the bank account for such suspect, making interview with a banker who give service for such suspect as a customer while taking the payment...etc. didn't done on the investigation. Financial investigation although named as follow the money investigation technique is not like a simple investigation technique like search and seizure which can be tried and stopped. It need wise thinking to find a new entry when the other entry is closed. But this case shows that strict financial investigation technique application is not established.

Here there is another very important finding regarding the rule of KYC. As the case shows that the suspect opened an account purposely to commit a crime. If the bank had been taking due diligence measure to check the real identity of the suspect, the account which serves as a crime gate couldn't have been opened. So, regarding this case we can strongly conclude as the failure to observe the rule of KYC by the bank is the cause of the crime.

Here it is important to mention an important data from the interview regarding this case. Abdushekur haji explained on this issue as “if you can see how banks open account it is vulnerable for falsified documents. Banks are competing to open account roughly on the street....”

National bank and FIC of the country are expected to set strict rules on KYC and due diligence. Financial institution and designated non- financial business and professions institution can report suspicious transaction if they know their customers well but failed to do so. On this case there is one another fact. That is there was a bank worker who has been repeatedly observing the account which serves a base to commit the crime. This bank worker is accused of violating server rule, computer crime because his financial transaction with the criminal can't be proved well.

3. The investigation with file no 167/12 and 612/14 is about crime of administrative bribe. The crime is about failures of Akaki kaliti administrative organ on such illegal construction on front places without any legal document back up by the builder. Under this case the suspicion of the law enforcement organ is illegal relation of the builder and the administration personnel. But what failed is that there is no financial investigation at whether there is financial transaction between these peoples. There is no attempt to get either financial information or financial intelligence from the financial institutions and from FIC. Because of absence of financial information there is no financial analysis and financial interpretation.
4. There is a case investigated in relation to purchasing process at Wellega University. The crime is investigated on the then president of the University and others few staffs. But what the document examination shows is that there is no any financial investigation conducted between the suspects and those who participated in the purchasing as provider. So, how the financial crimes can be detected. Here was the case which requires financial intelligence. On this case legal enforcement organs should have request the FIC to prepare financial intelligence report between and among the suspect to get financial information. Even financial transactions between and among those suspected universe staffs should have been investigated. For example if we get that the University president may credited the account of the purchase, it may give as another clue about the crime. But the case shows no critical financial investigation was conducted.
5. Two cases which are investigated in relation to crime on city land, Police file No.00302 Prosecution file No. 690 and police file N0.0013/11 and prosecution file No.543/11 are among

cases which are closed under Article 42/1/A of the criminal procedure code based on insufficient evidence. But as documents review show there is no as such detailed financial investigation in the process. As understandable land is the expensive property in the economy. Any crime regarding on this property has a high tendency of becoming a complex financial crime. If it is a financial crime, financial circulation in the process is inevitable. Such complex financial crime can be detected if detailed financial investigation had been employed. but on the case at hand no financial investigation conducted on the file.

6. The crime investigated on Mr. Muse Abraham and 2 others by police file No.0020/14 is a financial crime committed by the accused's act of debating the account of a certain wealthy man without his consent to some other fictions name account. The criminal files show that both police investigator and public prosecutor have tried their best to deploy financial investigation on the case. Bank account investigation, Interview with bank personnel, INSA computer investigation has been employed to investigate the crime. Later, the prosecutor prosecutes the bank personnel for committing cybercrime on bank computer system. But the main beneficiary of the financial crime, the one who owns the credited account by the crime left undetected. Why? Because when the investigation done on the identity of the owner of the account if found opened with false ID. The criminal withdraw the money and left the crime without scene. This is also another case which shows Banks failure to comply with CDD and KYC rules makes financial investigation failed to detect the criminal.

These sample cases are chosen for discussion among reviewed cases and other cases show that although there are certain attempts to apply financial investigation but much are left to apply it effectively. The investigation processes on those 80% of the files reviewed are dependable only on FIC intelligence reports and financial information of Banks. Public prosecutors who are empowered to lead the investigation didn't done financial analysis. Neither police investigators done this basic part of the financial investigation. There is no recorded or written group discussion of police investigators and public prosecutors on financial information on those criminal files. No analysis report prepared. No charts or tables prepared to analyses financial information.

Indeed the research shows that financial information is limited with bank transfers and account details. There are no strict follow up on new mode of payments and cash flow of money. As it is

provided under the literature review part Ethiopia has more of cash flow based economy. So, law enforcement organs are expected to closely follow the circulation of money in cash. As cases and facts in the criminal justice administration system shows there are certain particular places where we need to focus to follow circulation of money in cash. Places where they serve as place of black market to exchange currencies, borders where cash smuggling is happening, Real estates and other businesses where cash payment methods are applicable, Car sellers where cash payment might be and others have to be the focus of investigation. But as data of the research proved follow-up of the money on those financial crimes by the directorate General is limited with banks transaction alone.

In all cases where the directorate investigates financial transaction of suspects it is observed that the directorate or the police write a letter of inquiry for all Banks of the country. What missed here is designated non-financial business and professions like real estate where most people make deposit and investment on them. Proclamation No.780/2013 of the country designated such institutions as financial institutions because it is most probable criminalists deposit or makes the dirty money gotten from corruption or other crimes as they deposit to bank. Financial investigation as an investigation science is not limited to formal financial institutions but it goes to designated non-financial business and professions. Even it goes to hand to hand transactions. So leaving designated financial institutions aside means non-effective or incomplete application of financial investigation.

MR. Abdushekur haji who is a team leader at the directorate confirmed that the application of financial investigation is highly limited to formal financial institutions like banks and insurances alone but set aside designated non-financial businesses and professions

In General, Data collected from all source shows that there is gap in giving Attention to financial investigation in general. As it is understandable from the literature review, when investigating financial crimes, financial investigation has to be the first technique which should come to the mind of law enforcement agencies.

CHAPTER-FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusions

- Financial crimes like corruption, Money laundering, financing of terrorism...etc. which are committed to gain profit from a crime, are continuing as the treat of peoples everywhere, at home at work place and in all situations, online and offline. Ethiopia's situation is not different on the matter. As data of the research proved Financial crimes are increasing in Ethiopia, too.
- Although there are different techniques of criminal investigation that can apply to investigate financial crimes, financial investigation is taken as the primary effective investigation technique. Different international cases which had been investigated through financial investigation techniques and FATF recommendation show that financial investigation is the effective investigation techniques and findings of this research also prove this fact.
- Financial investigation has wide scope and contents. But basically financial intelligence, financial information, financial analysis, financial data interpretation are under the scope of financial investigation.
- In Ethiopian legal system financial investigation has gotten a legal coverage. Proclamation No.780/2013, proclamation No.434/1997 and the draft criminal procedure and evidence law have clear contents regarding financial investigation techniques. The criminal justice policy of the country also has included the issue of financial investigation as one of the special investigation technique.
- This research confirms that Knowledge and skill of public prosecutors on financial investigation is not satisfactory. There are no public prosecutors who have specialized on financial investigation. Most public prosecutors haven't taken adequate training on details of financial investigation and its application. As we have seen under the literature review part of the research financial intelligence requires critical thinking, knowledge, skill and experience. Collecting financial information, communicating with FIC for financial intelligence, make network and social network analysis and interpreting such information requires competent law enforcement professionals, investigators and public prosecutors. But as findings show public prosecutors who

are empower to lead financial crimes investigation under the Ethiopian criminal justice administration system have not sufficient knowledge and skill regarding financial investigation.

- Application of financial investigation technique in financial crimes investigation in Ethiopia is not satisfactory. As findings of the research prove, a lot is left for effective application of financial investigation. Particularly regarding financial analysis and interpretation of financial analysis, no practical experience is observed from criminal files. Of course there are attempts on collecting financial intelligence reports and financial information. But the critical part of financial investigation that is financial analysis is not performed well. Network and social network analysis isn't done.
- This research clearly proves that one of the causes of financial crime is the poor performance of financial institution on CDD and KYC. As cases revealed in vivid theme bank accounts opened with false ID are being used as an entry point of financial crimes. This problem also contributes for the ineffectiveness of the attempted financial investigation by law enforcement agencies.
- In communicating with financial institutions to look for proceeds of crimes, public prosecutor has limited itself with Banks and left designated non-financial business and professions like real estate's aside. As understandable, Criminals may choose designated businesses to invest their money as Banks. That is why the law on the area designated such businesses as financial institutions. But as this research proves the communication of public prosecutors with such designated non-financial institutions is weak.

4.2 Recommendations

As financial investigation is one of the effective investigation techniques to investigate financial crimes, we need to improve the application of such criminal investigation technique in our criminal justice administration system. As the conclusion of the research shows there are different gaps in application of financial investigation technique. So, the researcher recommends the following changes/improvements.

Policy Recommendation;

Ethiopia is working to have digital finance system. This by itself has opportunities and impediments. Having digital finance system may make people vulnerable for financial crimes through cybercrimes. In other hand digital finance system is accessible for financial investigation than cash based economy. So, the government justice policy needs to have concrete contents on financial investigation. So, the researchers suggest revising the FDRE justice policy for financial investigation emphasis as other special investigation techniques.

The need for national level Assessment;

This research proves that application of financial investigation in the directorate of FDRE ministry of justice criminal files is in adequate. The application of the rule of KYC by financial institution has serious gaps. So, to draw conclusions at national level and to take the appropriate measure the researcher suggest national level assessment of the application of financial investigation in one hand the due diligence level of financial and designated financial institutions.

Skill and knowledge aspect recommendation;

Financial investigation in its nature requires specific knowledge and skill. This research proves that public prosecutors skill and knowledge on financial investigations at its lowest stage while they are empowered to lead criminal investigation by the law. So, to apply it effectively fundamental and critical trainings has to be given to federal public prosecutors and police investigators on all aspects of financial investigation.

Focus and attention aspect recommendation;

Application of financial investigation in the corruption Crimes Follower Directorate General, MOJ is as its lowest stage, despite the fact that most crimes entertained in the directorate is financial crimes. So, the directorate needs to give concern and attention for the application of financial investigation technique.

Recommendation for control measure

This research clearly proves that many criminals use falsified document to open account in Banks. This suggests that financial institutions are not strictly observing the rule of due diligence and KYC. This finding of the research implies National Bank and FIC need to take strong controlling measure on Banks and non-financial but designated financial institution for KYC and due-diligence rule.

EFIC needs to work effectively

The reason to have financial intelligence center is to have healthy financial system and to control financial crimes. This institution need to be active through financial communication with legal enforcement agencies.

The need to have National ID system

One of the main reasons for falsified bank account is the failure to have national ID system. Currently peoples open bank accounts using different ID and ID related documents like driving license, passports...etc. For bankers it is not easy to usually prove whether such documents are original or not. If national ID system has been introduced, such documents need to be proved well.

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Appendix

Free university of Amsterdam with BahirDar University

Questioner for a study

Introduction;

This research is being conducted as a dissertation for LLM program in Criminal law specialization, coordinated by the free university of Amsterdam and Bahirdar University. It is going done with a title “The application of financial investigation on financial crimes investigation in Ethiopia, in the case corruption crimes follower directorates general”. As known the value and importance of a given research highly depends on the accuracy of data collected and analyzed. So, I kindly request you to give here accurate information as the best of your understanding and care. Thank you in advance for your welcoming and for your time.

Objective;

The objective of data collected through this questioner paper is only to analyze the central question of this research paper.

Procedures;

Please give your answer as per the specific nature of each question. To fill out the questioner it will take approximately 30 minutes. The information that you share will be used to analyses the issue of the research.

Confidentiality;

Your response to this questioner will remain confidential. No names or identifying information would be included in the research.

Contact; If you have any questions that you want to ask please don't hesitate to contact the researcher on yigremachewk@gmail.com or on cell- phone +251-9-10-03-75-54

Thank you for your will to be part of the research again

1. Personal data;

1.1 Your current office/Directorate.....

1.2 Your Work experience as a federal public prosecutor;

1-5 years

5-10 years

Above 10 years

2. Research related questions;

1. Do you believe that financial crimes like; corruption, Money laundering, FT, tax evasion...etc. is increasing among cases entertained through the directorate you are working with? (Put any mark on the answer you choose)

Yes

No

I can't determine

2. Do you have specialization in financial investigation?

Yes

No

3. Do you have attend trainings regarding financial investigation

Yes

Never

4. How do you asses the importance and contribution of **financial investigation** to investigate financial crimes?

Low

Medium

High

5. How do you assess your knowledge and understanding regarding the concept and contents of **financial investigation**?

I am not familiar with the concept and contents of financial investigation at all.

I have certain understanding regarding the concept and contents of financial investigation.

I have adequate understanding on what financial investigation is and its contents.

6. How do you evaluate your practical skill in deploying financial investigation in financial crimes investigation and prosecution?

At low level

At medium level

High

7. Do you believe that we (As public prosecutor) are applying financial investigation in financial crimes investigation in well manner?

(You can use the directorate you are working with as a reference point for your answer)

Yes

No

If your answer is No, what do you think those major reasons are for such poor application of financial investigation in financial crimes investigation?

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8. Do you believe that you have sufficient understanding regarding KYC, (know your customer)

Yes

No

9. Do you believe that financial institution like Banks are performing their obligation of DDC (due diligence) to verify their customer and their KYC obligations

Yes

No

If your answer is no, what do you think the cause for such failure and what should have to be done to increase financial institutions efficiency regarding KYC and DDC

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10. Do you aware well about what FIC (financial intelligence center) is and what it works in Ethiopia?

Yes

No

11. Have you ever received FIC analysis on suspicious and mandatory transaction report?

Yes

Never

12. Do you believe that financial institutions are cooperative to financial investigation?

Yes

No

If your answer is no, what do you think the reasons are and what should be done to increase cooperation of financial institutions to investigators and prosecutors?

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13. If you have any other point regarding application of financial investigation to investigate financial crimes, please make a note here,

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