

# Thematic Report: Economic System<sup>1</sup>



## I. Introduction

### *Overview*

Trafficking in persons generally has a financial motive, and thus carries a number of financial implications. Where identifying specific instances of TIP is a challenge, countries may be able to lean on other provisions of the criminal law—in this instance, those that implicate financial crimes such as money laundering, financial fraud, forgery and counterfeiting, and terrorist financing—to collaterally attack traffickers, or otherwise find other ways to conduct trafficking investigations. Indeed, investigations into forgery and counterfeiting, not only of currency but also of trademarks, may also help to identify cottage industries in which TIP often takes place. Similarly, terrorist financing investigations may help to identify areas where TIP is taking place. To that end, Part II of this report lays out the countries' laws that prohibit these financial crimes.

The monitoring of financial transactions of individuals and companies may help to identify both trafficking victims and perpetrators, but also broader patterns of TIP and migrant smuggling across borders. Regulations that allow or mandate financial institutions to cooperate with law enforcement may help to identify TIP-related transactions; Part III discusses the extent to which the countries in this Report have promulgated laws and regulations that assist financial institutions to participate in this process. However, in some countries—particularly those that rely heavily upon informal cash economies—such monitoring may be of limited utility.

Laws that provide for asset freezing or forfeiture for TIP or TIP-related offenses help to disrupt trafficking operations; where such laws channel funds from TIP operations towards victims protection funds, they may also provide a valuable source of money for much-needed victim services. Thus, Part IV of this Report discusses the extent to which countries' laws mandate asset freezing or forfeiture for TIP or TIP-related crimes.

Finally, Part V discusses the extent to which the countries support the growth and/or development of remittance economies. Remittances from abroad form a large source of foreign income in many of the countries discussed in this Report; while they may have important roles in poverty reduction and mitigating TIP risks at home, conversely they may increase the risk that individuals may seek high-risk opportunities abroad in order to support their families. This may put workers at risk of unfair employment practices, forced labor, and debt bondage, and may increase such workers' dependence upon capricious employers to maintain their families' well-being.

The statements and analysis contained herein are the work of the American Bar Association's Rule of Law Initiative (ABA ROLI). They address, by and large, the *de jure* legal framework in Eritrea,

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<sup>1</sup> The statements and analysis contained within this report are the work of the American Bar Association Rule of Law Initiative, which is solely responsible for its content. The views expressed herein should not be construed as representing the policy of the ABA. This report was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State.

Ethiopia, Ghana, Lesotho, Malawi, Namibia, Uganda, and Zambia. This Report is based primarily on desk review of freely and publicly-available laws and reports, supplemented in portions by the knowledge of ABA ROLI's local affiliates. Please note that the materials discussed in this Report capture only the legislative and policy framework of the relevant countries; *de facto* implementation of these laws may be at issue in some, if not all, of these states.

## II. Economic and Financial Crimes

### *Money Laundering*

#### Eritrea

Eritrean law prohibits money laundering under the aegis of the Anti-Money Laundering and Combating Financing of Terrorism Proclamation (Anti-Money Laundering Proclamation).<sup>2</sup> ABA ROLI has not been able to locate a free, publicly-available copy of Article 31 of this Proclamation,<sup>3</sup> which provides definitions and penalties for money laundering.

#### Ethiopia

The Proclamation on the Prevention and Suppression of Money Laundering and Financing of Terrorism generally prohibits money laundering.<sup>4</sup> Under this Proclamation, money laundering is defined as the “conver[sion] or transfer[ of] property for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions,”<sup>5</sup> conceals or disguises the nature, source, location, disposition, movement, or rights with respect to such property, or otherwise commits an inchoate offence related to these acts.<sup>6</sup> This offense carries a penalty of 10-15 years’ imprisonment and a fine not to exceed 100,000 birr.<sup>7</sup>

Money laundering may incur aggravated punishments based on the severity of the predicate offense, if it is perpetrated “in the pursuit of a trade or occupation, as part of the activities of an organized criminal group, if the amount . . . laundered [exceeds] 10 million birr, for the purposes of profit, or if the purpose is promoting the carrying on of further criminal activity.”<sup>8</sup> In these cases, the range of punishment is 15 to 25 years, and any fines imposed may not exceed 150,000 birr.<sup>9</sup>

The Proclamation additionally states that “any person who intentionally or by gross negligence” commits a number of actions, including failing to declare currency or negotiable instruments at international borders, failing to undertake risk management and monitoring measures under the Proclamation, and failing to implement internal control mechanisms for preventing money laundering and terrorist financing, commits a criminal act.<sup>10</sup>

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<sup>2</sup> Anti-Money Laundering and Combating Financing of Terrorism Proclamation, Proclamation No. 175/2014, available at [http://www.eritreambassy-japan.org/data/Proclamation\\_No175\\_2014.pdf](http://www.eritreambassy-japan.org/data/Proclamation_No175_2014.pdf) (last visited July 22, 2017) [hereinafter Proclamation No. 175/2014].

<sup>3</sup> *Id.* at art. 2(14), *citing id.* at art. 31.

<sup>4</sup> See generally A Proclamation on Prevention and Suppression of Money Laundering and Financing of Terrorism, Proclamation No. 780 of 2013, available at <http://www.ethcriminalawnetwork.com/system/files/Prevention%20and%20suppression%20of%20Money%20Laundering%20and%20Financing%20of%20Terrorism%20Proclamation-%202013.pdf> (last visited July 21, 2017) [hereinafter Proclamation No. 780/2013].

<sup>5</sup> *Id.* at § 29(1)(a).

<sup>6</sup> *Id.* at §§ 29(1)(b), (d).

<sup>7</sup> *Id.* at § 29(1).

<sup>8</sup> *Id.* at § 29(2).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at art. 30.

## Ghana

Ghana criminalizes a number of financial crimes, including money laundering, financial fraud, forgery, counterfeiting and terrorist financing. For example, the Anti-Money Laundering Act of 2008 criminalizes both money laundering and the aiding and abetting of the offense. These are punishable by a fine or imprisonment between one to ten years, or both.<sup>11</sup> The Act also establishes the Financial Intelligence Centre (FIC), which is responsible for the identification of proceeds of unlawful activity and combating money laundering.<sup>12</sup> Institutions are required to report suspicious transactions, such as those having no apparent lawful or business purpose or those relevant to tax evasion investigations, to the FIC.<sup>13</sup>

## Lesotho

Money laundering in Lesotho is criminalized by the Money Laundering and Proceeds of Crime Act (Money Laundering Act).<sup>14</sup> Money laundering is defined under the Act as the acquisition, possession, use, conversion, or transfer of property “with the aim of concealing or disguising the illicit origin of that property or of aiding any person involved in the commission of an offence to evade the legal consequences thereof.”<sup>15</sup>

The Money Laundering Act also converts the Directorate on Corruption and Economic Offences Act into the Anti-Money Laundering Authority,<sup>16</sup> and charges it with a number of duties, including conducting money laundering and terrorist financing investigations and extending foreign legal assistance with respect to tracking property, monitoring financial institutions, and instituting confiscation orders.<sup>17</sup>

Prosecutions under the Money Laundering Act may only be instituted by the Directorate for Public Prosecutions (DPP).<sup>18</sup>

## Malawi

Malawi law does prohibit money laundering as a form of financial crime. The Financial Intelligence Unit is charged with the task of addressing money laundering.<sup>19</sup>

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<sup>11</sup> Anti-Money Laundering Act 749 of 2008, §§ 1-3, *available at* <https://www.anti-moneylaundering.org/Document/Default.aspx?DocumentUid=F3CAF1BC-E01D-4261-B2AD-0773051E7153> (last visited July 17, 2017).

<sup>12</sup> *Id.* at § 5.

<sup>13</sup> *Id.* at § 30.

<sup>14</sup> Money Laundering and Proceeds of Crime Act, No. 4 of 2008, § 25, *available at* [http://www.fiu.org.ls/legislation/Money\\_laundering\\_&\\_Proceeds\\_of\\_Crime\\_Act.pdf](http://www.fiu.org.ls/legislation/Money_laundering_&_Proceeds_of_Crime_Act.pdf) (last visited Aug. 3, 2017) [hereinafter Money Laundering Act].

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at § 11(2).

<sup>17</sup> *Id.* at § 11(3).

<sup>18</sup> *Id.* at § 11(4).

<sup>19</sup> *See generally* Money Laundering, Proceeds of Serious Crime Terrorist Financing Act No. 11 of 2006, *available at* <https://www.rbm.mw/Home/GetContentFile/?ContentID=3753> (last visited July 23, 2017) [hereinafter Money Laundering Act].

## Namibia

Money laundering is prohibited by a number of laws in Namibia. These include the Financial Intelligence Act and the Prevention of Organized Crime Act (POCA).<sup>20</sup>

POCA's First Schedule lays out a list of predicate offenses for money laundering; it includes the stealing of children, fraud, and any other offenses punishable by over 12 months' imprisonment, which would include TIP and migrant smuggling.<sup>21</sup>

The Financial Intelligence Act defines money laundering as the direct or indirect engagement in transactions that involve the proceeds of unlawful activity, acquiring, possessing, using, or transporting to or from Namibia the proceeds of such activity; and concealing, disguising, or impeding the establishment of the true nature, origin, location, movement, or rights with respect to the proceeds of such activity.<sup>22</sup>

## Uganda

The Anti-Money Laundering Act criminalizes money laundering in various forms. In general, the Act criminalizes the use, transfer, or transport of property when a legal or natural person knows or has reason to know that such property is the proceeds of a crime.<sup>23</sup> Aiding and abetting money laundering, including by tampering with or destroying records or documents that may be relevant to money laundering investigations, is an offense under the Act,<sup>24</sup> as is the failure to report actions that are or may be related to money laundering offenses.<sup>25</sup> Penalties for such offenses include up to years in prison or a fine of up to 33,000 currency points, if committed by a natural person, or a fine of up to 70,000 currency points, if committed by a legal person.<sup>26</sup>

The Anti-Money Laundering Act establishes a Financial Intelligence Authority (FIA) and charges it with combating money laundering, enhancing public awareness on the subject, and coordinating with other states on anti-money laundering initiatives.<sup>27</sup>

## Zambia

Money laundering is defined under the Prohibition and Prevention of Money Laundering Act (Money Laundering Act) as:

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<sup>20</sup> See Financial Intelligence Act, No. 13 of 2012, § 39, available at <https://www.fic.na/uploads/Acts/Financial%20Intelligence%20Act/Financial%20Intelligence%20Act%2013%20of%202012.pdf> (last visited July 31, 2017) [hereinafter FIA]; Prevention of Organised Crime Act, No. 29 of 2004, §§ 4-6, available at [https://laws.parliament.na/cms\\_documents/prevention-of-organised-crime-3a3a391a4a.pdf](https://laws.parliament.na/cms_documents/prevention-of-organised-crime-3a3a391a4a.pdf) (last visited July 31, 2017) [hereinafter POCA].

<sup>21</sup> POCA, *supra* note 20, at §§ 4-6, Schedule 1.

<sup>22</sup> FIA, *supra* note 20, at § 1.

<sup>23</sup> Anti-Money Laundering Act of 2013, § 116, available at [https://www.bou.or.ug/bou/bou-downloads/acts/supervision\\_acts\\_regulations/FI\\_Act/The-Anti-money-Laundering-Act-2013.pdf](https://www.bou.or.ug/bou/bou-downloads/acts/supervision_acts_regulations/FI_Act/The-Anti-money-Laundering-Act-2013.pdf) (last visited July 19, 2017).

<sup>24</sup> *Id.* at §§ 118, 120, 122.

<sup>25</sup> *Id.* at §§ 124, 125, 126, 127.

<sup>26</sup> *Id.* at § 136(2)(a)-(b).

<sup>27</sup> *Id.* at §§ 18-19.

- (a) engaging, directly indirectly, in a business transaction that involves property acquired with the proceeds of crime;
- (b) receiving, possessing, concealing, disguising, disposing of or bringing into Zambia, any property derived or realized directly or indirectly from illegal activity; or
- (c) the retention or acquisition of property knowing that the property is derived or realized, directly or indirectly, from illegal activity.<sup>28</sup>

Money laundering committed by an individual is punishable by up to ten years' imprisonment, a fine not exceeding 170,000 penalty units, or both.<sup>29</sup> Juridical persons convicted of the crime may be subject to a fine not exceeding 400,000 penalty units; and persons acting on behalf of a juridical person (e.g., a director, manager, secretary, or other persons in a similar position) may be punished as if they were individuals.<sup>30</sup>

The Money Laundering Act provides for the establishment of an Anti-Money Laundering Authority, comprised of the Attorney General of Zambia, the Inspector-General of the Zambia Police Force, the Commissioner under the Narcotic Drugs and Psychotropic Substances Act (the Commissioner), the Director-General of the Anti-Corruption Commission, the Governor of the Bank of Zambia, the Commissioner-General of the Zambia Revenue Authority, and two other persons (who are not defined by law).<sup>31</sup> The Authority advises the Commissioner on policy directives related to money laundering, and on measures that may help to prevent and detect the crime.<sup>32</sup>

It further establishes an Anti-Money Laundering Investigation Unit, which is charged with collecting and evaluating financial information that may be related to money laundering; conducting investigations into the crime; liaising with other agencies with respect to money laundering; supervising reporting requirements upon regulated institutions under the Money Laundering Act; and prosecuting money laundering related crimes.<sup>33</sup>

The Financial Intelligence Centre (FIC), established under the terms of the Financial Intelligence Centre Act,<sup>34</sup> also has responsibilities with respect to suspicious transaction reports and the issuance of policy directives relating to the commission of proceeds of crime offenses.<sup>35</sup>

## ***Financial Fraud***

### Eritrea

The Eritrean Penal Code punishes a variety of financial frauds, including the uttering of bad checks,

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<sup>28</sup> The Prohibition and Prevention of Money Laundering Act, No. 14 of 2001, art. 2, *available at* [http://www.dec Zambia.gov.zm/downloads/Act\\_14\\_of\\_2001.pdf](http://www.dec Zambia.gov.zm/downloads/Act_14_of_2001.pdf) (last visited Aug. 5, 2017).

<sup>29</sup> *Id.* at art. 7.

<sup>30</sup> *Id.* at art. 8.

<sup>31</sup> *Id.* at art. 3.

<sup>32</sup> *Id.* at art. 4.

<sup>33</sup> *Id.* at art. 6.

<sup>34</sup> Financial Intelligence Centre Act, No. 46 of 2010, *available at* <http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Financial%20Intelligence%20Centre%20Act%202010A.PDF> (last visited Aug. 5, 2017) [hereinafter Financial Intelligence Centre Act].

<sup>35</sup> *Id.* at arts. 5, 8.

credit card fraud, accounting fraud, insurance fraud, and fraudulent borrowing and lending.<sup>36</sup> Fraud is generally defined under the Penal Code as the act of, “by deception including computer or electronic misrepresentation, obtain[ing], with the intention of unlawful enrichment, any service or property, money or thing of value belonging to another.”<sup>37</sup> Fraud under Article 347 is punishable on the basis of the amount of the property fraudulently obtained, and penalties range between 3 and thirteen years’ imprisonment.<sup>38</sup>

### Ethiopia

The Criminal Code of Ethiopia prohibits a number of acts that are seen to constitute financial fraud,<sup>39</sup> including the drawing of a check without cover,<sup>40</sup> engaging in insurance fraud,<sup>41</sup> and misuse of property held or placed in trust.<sup>42</sup> When such crimes are committed against public administrations or services, or where the offender is in a position of trust with respect to the underlying property, crimes of financial fraud will incur aggravated punishments.<sup>43</sup>

### Ghana

See the section on Forgery and Counterfeiting below for more information.

### Lesotho

The Lesotho Penal Code criminalizes forgery of documents with the intent of defrauding a person.<sup>44</sup>

### Malawi

Malawi’s penal code does not have a specific provision dealing with financial fraud as a whole. The fraud section of the Penal Code does govern a number of related crimes, including fraud on the sale or mortgage of property, the fraudulent appropriation of property by corporations, and the falsification of account books.<sup>45</sup>

### Namibia

ABA ROLI has been unable to locate publicly-available copies of Namibia’s laws criminalizing

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<sup>36</sup> Penal Code of the State of Eritrea, arts. 349, 351, 352, 355, 356, *available at* <http://www.refworld.org/pdfid/55a51ccc4.pdf> (last visited July 22, 2017) [hereinafter Penal Code].

<sup>37</sup> *Id.* at art. 347.

<sup>38</sup> *Id.*

<sup>39</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414 of 2004, §§ 692-704, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf> (last visited July 21, 2017) [hereinafter Criminal Code].

<sup>40</sup> *Id.* at § 693.

<sup>41</sup> *Id.* at § 698.

<sup>42</sup> *Id.* at § 702(1).

<sup>43</sup> *Id.* at § 696.

<sup>44</sup> Penal Code Act, No. 6 of 2012, § 70, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/ls/ls022en.pdf> (Aug. 3, 2017) [hereinafter Penal Code Act].

<sup>45</sup> Malawi Penal Code, Ch. 7:01, arts. 324, 333, 335, *available at* <https://srhr.org/abortion-policies/documents/countries/01-Malawi-Penal-Code.pdf> (last visited July 23, 2017) [hereinafter Penal Code].

financial fraud to determine how they define, and to what extent they punish, the crime.

### Uganda

Uganda criminalizes various types of financial fraud, including, for example, the obtaining of credit by false pretenses, fraudulent accounting, and the issuing of false checks.<sup>46</sup> A number of crimes require the intent to defraud, which is presumed under Ugandan law “if it appears that at the time the false document was made there was in existence a specific person, ascertained or unascertained, capable of being defrauded by it.”<sup>47</sup>

### Zambia

Zambia does not appear to have laws that specifically criminalize financial fraud; however, a number of other criminal laws may punish financial crimes, including the obtaining of pecuniary advantage or credit by false pretenses,<sup>48</sup> and frauds by individuals in a position of trust.<sup>49</sup>

Intent to defraud is presumed under Zambian law “if it appears that, at the time when [a] false document [is] made, there was in existence a specific person ascertained or unascertained capable of being defrauded thereby.”<sup>50</sup> It is not a defense to this presumption that an offender took or intended to take measures to shield that individual from in fact being defrauded; nor is it a defense that the offender has or thinks they have a right to be obtained under the terms of the false document.<sup>51</sup>

Impersonation, or identity theft, is also a crime under Zambian law.<sup>52</sup>

### ***Forgery and Counterfeiting***

#### Eritrea

Forgery is defined as the knowing making of a false instrument, writing, or document, with the intent that it be used in any way or acted upon as genuine.<sup>53</sup> As with financial fraud, forgery is punishable on the basis of the value of the underlying property, and carries similar terms of punishment.

The crime of forgery is distinct from the crime of uttering, which is punishable by 3-5 years’ imprisonment.<sup>54</sup> The possession of goods or tools that constitute the means for producing a false

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<sup>46</sup> Uganda Penal Code Act of 1950, §§ 308, 325, 385, *available at* [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=170005](http://www.wipo.int/wipolex/en/text.jsp?file_id=170005) (last visited July 19, 2017) [hereinafter Penal Code Act].

<sup>47</sup> *Id.* at § 346.

<sup>48</sup> *See, e.g.*, The Penal Code Act, No. 42 of 1930 (*as amended* 2005), arts. 308, 312, *available at* <http://www.parliament.gov.zm/sites/default/files/documents/acts/Penal%20Code%20Act.pdf> (last visited Aug. 5, 2017) [hereinafter Penal Code].

<sup>49</sup> *Id.* at arts. 323-27.

<sup>50</sup> *Id.* at art. 345.

<sup>51</sup> *Id.*

<sup>52</sup> *See id.* at art. 378.

<sup>53</sup> Penal Code, *supra* note 36, at art. 368(1).

<sup>54</sup> *Id.* at art. 369.



document is punishable by 6 to twelve months imprisonment, or a fine not to exceed 50,000 Nafkas.<sup>55</sup>

Counterfeiting Eritrean or foreign coinage or paper currency, or bank notes, bonds, promissory notes and other similar State financial papers with the intent to place them into circulation as genuine is punishable by imprisonment terms between seven and 19 years, depending upon the value of the notes counterfeited.<sup>56</sup> The uttering of counterfeited currency when an individual knows it to be counterfeited is punishable by imprisonment between five and 16 years.<sup>57</sup>

The counterfeiting of stamps, seals, and marks is also illegal in Eritrea.<sup>58</sup>

### Ethiopia

Currency forgery is defined in the Criminal Code as the forgery “by alteration, overprinting, dyeing or any other means, currencies used as legal tender, bonds or security documents with intent to utter them at a value greater than their current value.”<sup>59</sup> Currency forgery is punishable by a term of imprisonment not to exceed 15 years.<sup>60</sup>

### Ghana

The Criminal Code of Ghana defines forgery as fraud, when it is “done with the intent to defraud, which is defined as an intent to cause monetary gain, or with the possibility of such gain to a person, at the expense of loss to another person.”<sup>61</sup> Forgery of currency is a crime,<sup>62</sup> as is the forgery of judicial, official and other documents, gold or silver plate or bullion, trademarks, and stamps.<sup>63</sup> Counterfeiting is also criminalized under § 6 of the Currency Act and Chapter 2 of the Criminal Code.<sup>64</sup>

### Lesotho

Specific laws that address financial fraud, identity theft, and counterfeiting have not been identified. However, these crimes could feasibly be prosecuted by the Office of the General Prosecutor under the general fraud provisions of the Penal Code.<sup>65</sup>

### Malawi

The Penal Code provides that “[f]orgery is the making of a false document with intent to defraud or

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<sup>55</sup> *Id.* at art. 372.

<sup>56</sup> *Id.* at art. 215.

<sup>57</sup> *Id.* at art. 217.

<sup>58</sup> *Id.* at arts. 219-20, 223-24.

<sup>59</sup> Criminal Code, *supra* note 39, at § 357.

<sup>60</sup> *Id.*

<sup>61</sup> Criminal Code, Act 29 of 1960 (as amended 2003), § 16, *available at* [www.wipo.int/edocs/lexdocs/laws/en/gh/gh010en.pdf](http://www.wipo.int/edocs/lexdocs/laws/en/gh/gh010en.pdf) (last visited July 17, 2017).

<sup>62</sup> Currency Act 242 of 1964, §§ 16-20, *available at* <http://laws.ghanalegal.com/acts/id/21/currency-act> (last visited July 17, 2017).

<sup>63</sup> *See* Criminal Code, *supra* note 61, at ch. 2.

<sup>64</sup> Currency Act, *supra* note 62; Criminal Code, *supra* note 61, at ch. 2.

<sup>65</sup> Penal Code Act, *supra* note 44, at § 68.

to deceive” and that any person who forges any document will be subject to three years of imprisonment.<sup>66</sup> Counterfeiting is also a criminal offense.<sup>67</sup>

### Namibia

The Prevention of Counterfeiting of Currency Act generally prohibits currency counterfeiting.<sup>68</sup> The Act criminalizes the counterfeiting of coin, the forgery or alteration of bank notes, knowingly uttering counterfeit or forged currency, and importing or exporting such currency from Namibia.<sup>69</sup>

Although this law predates Namibian independence, it appears to still be good law in the country.

### Uganda

Forgery and counterfeiting are offenses under the Penal Code Act. Forgery is defined as “the making of a false document with intent to defraud or to deceive,” and in general may be punished by three years’ imprisonment.<sup>70</sup> However, certain types of forgeries—including the forgery of official documents—may carry higher penalties.<sup>71</sup> The forgery and knowing purchase of forced currency notes carry sentences of life imprisonment and seven years’ imprisonment, respectively.<sup>72</sup>

Uganda criminalizes the counterfeiting of coin, possessing equipment for currency forgery or counterfeiting, and coin clipping.<sup>73</sup> In addition to any prison time imposed for conviction of such offenses, the law mandates that forged or counterfeited banknotes or coins must be forfeited to the government.<sup>74</sup>

Uganda also criminalizes the counterfeiting of stamps and trademarks.<sup>75</sup>

### Zambia

The forgery of currency notes, coins, stamps, and trademarks is illegal under the Zambian penal code.<sup>76</sup>

## ***Terrorist Financing***

### Eritrea

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<sup>66</sup> Penal Code, *supra* note 45, at art. 356.

<sup>67</sup> *Id.* at art. 372.

<sup>68</sup> Prevention of Counterfeiting of Currency Act, No. 16 of 1965, *available at* <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/1a/1a6e664b-0d0a-4afd-9394-0614e38fc6f0.pdf> (last visited July 31, 2017).

<sup>69</sup> *Id.* at § 2.

<sup>70</sup> Penal Code Act, *supra* note 46, at §§ 342, 347.

<sup>71</sup> *See, e.g., id.* at § 349.

<sup>72</sup> *See, e.g., id.* at §§ 348, 357.

<sup>73</sup> *Id.* at §§ 363, 365, 366.

<sup>74</sup> *Id.* at § 374.

<sup>75</sup> *Id.* at §§ 375, 377-80.

<sup>76</sup> *Id.* at arts. 342-377.

The Anti-Money Laundering Proclamation also governs the prohibition against terrorist financing.<sup>77</sup> As with the definition of money laundering above, ABA ROLI has been unable to obtain a freely and publicly-available copy of this Proclamation in order to review the definitions and penalties associated with this crime.

The U.S. Department of State reports that while Eritrea's penal code contains a number of provisions that could additionally be used to prosecute terrorist activity, it is not a member or observer of any Financial Action Task Force (FATF)-style regional body, which limits the degree to which it can monitor and combat terrorist financing.<sup>78</sup>

### Ethiopia

The financing of terrorism is defined as “directly or indirectly, willfully, provid[ing] or collect[ing] funds . . . with the intention that they should be used or with the knowledge that they are to be used in full or in part: (1) to carry out a terrorist act; or (2) by a terrorist; or (3) by a terrorist organization.”<sup>79</sup> Directly engaging in such behavior, or engaging in it as an inchoate offense, carries penalties between 10-15 years' imprisonment and fines not exceeding 100,000 birr.<sup>80</sup> As with money laundering, perpetrating the offense in the regular course of business or as part of an organized criminal enterprise will result in aggravated penalties.<sup>81</sup>

### Ghana

Providing financial services to facilitate the commission of a terrorist act or to benefit a terrorist group is an offense punishable with at least seven years' imprisonment.<sup>82</sup>

### Lesotho

Terrorist financing is prohibited by the Money Laundering Act, and is defined under the Act as the solicitation, receipt, provision, or possession of funds for the purposes of conducting terrorism, facilitating the collection or control of property, or directly or indirectly willfully providing or attempting to provide funds with the intent of carrying out a terrorist act or acts.<sup>83</sup>

### Malawi

Terrorist financing is criminalized under the Anti-Money Laundering Act.<sup>84</sup> Offences include

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<sup>77</sup> Proclamation No. 175/2014, *supra* note 2.

<sup>78</sup> U.S. DEP'T OF STATE, BUREAU OF COUNTERTERRORISM AND COUNTERING VIOLENT EXTREMISM, COUNTRY REPORTS ON TERRORISM 2016: ERITREA, *available at* <https://www.state.gov/j/ct/rls/crt/2016/272229.htm> (last visited July 22, 2017) [hereinafter U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2016: ERITREA].

<sup>79</sup> *See generally* A Proclamation on Prevention and Suppression of Money Laundering and Financing of Terrorism, Proclamation No. 780 of 2013, § 31 *available at* <http://www.ethcriminalawnetwork.com/system/files/Prevention%20and%20supression%20of%20Money%20Laundering%20and%20Financing%20of%20Terrorism%20Proclmation-%202013.pdf> (last visited July 21, 2017) [hereinafter Proclamation No. 780/2013].

<sup>80</sup> *Id.* at § 31(2).

<sup>81</sup> *Id.*

<sup>82</sup> Anti-Terrorism Act 762 of 2008, § 7.

<sup>83</sup> Money Laundering Act, *supra* note 14, at §§ 63-65.

<sup>84</sup> Money Laundering Act, *supra* note 19, at art. 36.

organizing, directing, attempting to commit, conspiring to commit or participating as an accomplice in the commission of terrorist financing.<sup>85</sup> Natural persons who are convicted of terrorist financing are liable for imprisonment of up to 15 years and a fine of K3,000,000; legal persons are fined up to K15,000,000, and lose their business licenses.<sup>86</sup> Terrorist financing is an extraditable offense.<sup>87</sup>

### Namibia

The Prevention and Combatting of Terrorist Activities Act of 2012 makes it a crime to deal with, enter into or facilitate any transaction or perform any other act in connection with funds connected with or owned by individuals, entities and other groups associated with certain individuals and entities listed by the United Nations.<sup>88</sup> The United Nations lists include designated terrorists.<sup>89</sup>

### Uganda

Uganda has signed and ratified the International Convention for the Suppression of the Financing of Terrorism.<sup>90</sup> It effectuates this Convention in domestic law via the Anti-Terrorism (Amendment) Bill,<sup>91</sup> which specifically “harmonise[s] the definition of ‘funds’ with that contained in the [Convention].”<sup>92</sup> Thus, Ugandan law criminalizes the provision of:

assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets, including, but not limited to, bank credits, travelers Cheques, bank Cheques, money orders, shares, securities, bonds, drafts, and letters of credit . . . [and] financial services.<sup>93</sup>

Conviction of the intentional and unlawful provision or collection of funds is a death penalty-eligible offense under the terms of the original Anti-Terrorism Act.<sup>94</sup> The Anti-Terrorism (Amendment) Bill adds a further offense of ‘terrorism financing’, defined as the “willing[] collect[ion] or provi[sion of] funds, directly or indirectly, by any means, with the intention . . . or in the knowledge that such funds are to be used, in full or in part, by a person or a terrorist organization, to carry out a terrorist act.”<sup>95</sup> Terrorist financing is an offense regardless of whether

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at art. 103.

<sup>88</sup> See generally Prevention and Combating of Terrorist Activities Act, No. 12 of 2012 §§ 3, 21, <http://www.lac.org.na/laws/2012/5095.pdf> (last visited July 31, 2017).

<sup>89</sup> *Id.* at §§ 3, 21.

<sup>90</sup> International Convention for the Suppression of the Financing of Terrorism, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-11&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=_en) (last visited July 19, 2017).

<sup>91</sup> Anti-Terrorism (Amendment) Bill of 2015, available at <http://chapterfouruganda.com/sites/default/files/downloads/The-Anti-Terrorism-Amendment-Bill-20151.pdf> (last visited July 19, 2017).

<sup>92</sup> *Id.* at § 1.

<sup>93</sup> *Id.* at § 1(a).

<sup>94</sup> Anti-Terrorism Act of 2002, § 7(1), available at 1

[http://www.vertic.org/media/National%20Legislation/Uganda/UG\\_Anti-Terrorism\\_Act\\_2002.pdf](http://www.vertic.org/media/National%20Legislation/Uganda/UG_Anti-Terrorism_Act_2002.pdf) (last visited July 19, 2017); Anti-Terrorism (Amendment) Bill of 2015, *supra* note 91, § 2(b).

<sup>95</sup> *Id.* at § 9A.

the funds are in fact used, and attempting to or conspiring to engage in the offense is also criminal.<sup>96</sup> The new crime of terrorism financing carries penalties of up to 20 years' imprisonment a fine not exceeding 500,000 currency points, or both.<sup>97</sup>

### Zambia

Zambian law prohibits terrorist financing under the Anti-Terrorism Act.<sup>98</sup> The Act punishes those who “invite[] another to provide or make available money or other property; and intend[] that any money or other property should be used for the purposes of terrorism”, as well as those who in fact provide that property, with life imprisonment.<sup>99</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> The Anti-Terrorism Act, No. 21 of 2007, art. 20, *available at* [http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/ZAM\\_anti\\_terrorism.pdf](http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/ZAM_anti_terrorism.pdf) (last visited Aug. 5, 2017).

<sup>99</sup> *Id.*

### III. Regulation and Monitoring of International Financial Transactions

#### Eritrea

While financial institutions are required to conduct due diligence and report suspicious activity that could indicate false identities, money laundering, or financing of terrorism,<sup>100</sup> ABA ROLI has not identified specific laws that require investigation or reporting of potential TIP activities.<sup>101</sup> Furthermore, Eritrea lacks a basic banking infrastructure, which makes it challenging for the government to track international financial transactions in the manner and procedure laid out in the Anti-Money Laundering Proclamation.<sup>102</sup>

#### Ethiopia

Any person who intends to enter into a financial transaction in Ethiopia must obtain a business license. Foreigners must fulfill the minimum capital investment requirement, as well as certain other procedural preconditions. Furthermore, certain areas are reserved for domestic or government investment, while other areas can only be operated under government joint venture agreements.<sup>103</sup>

#### Ghana

Several laws regulate international financial transactions, including the Banking Act and the Foreign Exchange Act.<sup>104</sup> The Banking Act allows banks to open representative offices in Ghana only with prior approval of the Bank of Ghana.<sup>105</sup> Banking secrecy laws provide that bank employees may not disclose information about their employers' affairs or customers, unless required by law or certain other exceptions.<sup>106</sup> This could arguably pose obstacles to detecting corruption if the protections are very strong. The Foreign Exchange Act provides that every payment in foreign currency between a Ghanaian resident and a non-resident or between non-residents must be made through a bank.<sup>107</sup>

#### Lesotho

Lesotho law requires financial institutions to monitor transactions for suspicious activity. Specifically, financial institutions are required to review the background and purpose of unusual,

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<sup>100</sup> See generally Proclamation No. 175/2014, *supra* note 2.

<sup>101</sup> *Id.*

<sup>102</sup> See U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2016: ERITREA, *supra* note 78.

<sup>103</sup> Proclamation on Investment, Proclamation No. 769 of 2012, *available at* <http://mau.addischamber.com/sites/default/files/proclamation-no-769-2012-investment-proclamation.pdf> (last visited July 21, 2017) [hereinafter Proclamation No. 769/2012]; Commercial Registration and Business Licensing Proclamation, Proclamation No. 686 of 2010, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/et/et015en.pdf> (last visited July 21, 2017).

<sup>104</sup> Banking Act 673 of 2004, *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/09/04/banking+act+2004+act+673.pdf> (last visited July 17, 2017); Foreign Exchange Act 723 of 2006, *available at* <http://sec.gov.gh/wp-content/uploads/Securities-Industry-Laws/Foreign-Exchange-Act-2006-Act-723.pdf> (last visited July 17, 2017).

<sup>105</sup> Banking Act, *supra* note 104, at § 21.

<sup>106</sup> *Id.* at §§ 83-84.

<sup>107</sup> Foreign Exchange Act, *supra* note 104, at § 15.

large and complex transactions that lack an economic or a visibly lawful purpose.<sup>108</sup> Suspicious transactions are required to be reported to the Commissioner of Financial Institutions.<sup>109</sup>

The Anti-Money Laundering Guidelines also require financial institutions to obtain customer identification information, such as copies of identification cards and passports, and to keep such information for at least 10 years after the account is closed.<sup>110</sup>

However, the law does not require the government to give financial institutions guidance on potential indicators of TIP; nor has ABA ROLI identified any specific government directives with regards to TIP indicators in international financial transactions.

## Malawi

Foreigners require business residence permits to carry out any business activity in Malawi, and foreign investors must obtain business certificates,<sup>111</sup> and are also subject to capital registration requirements with the Reserve Bank of Malawi.<sup>112</sup> The law does not authorize undocumented foreigners to carry out business activity.<sup>113</sup>

The Investment and Export Promotion Act of 2012 governs investment in Malawi. The Act does not require compliance with any TIP or TIP-related requirements for investors to receive investment incentives.<sup>114</sup>

Importantly, Malawi lacks laws or guidance for financial institutions on identifying TIP-related financial flows or financial fraud. Although the law does not generally impose requirements for entities to monitor financial transactions, any director, manager, officer or employee of the bank who permits or makes transactions where he knows or has reason to suspect that any of the funds involved have been obtained by any party as the direct or indirect result of an activity that is illegal inside or outside Malawi shall be guilty of an offense.<sup>115</sup> Furthermore, under the Banking Act, it is a criminal offence for directors, managers, officers or employees of the bank or financial institution to make or permit transactions including the opening of an account without taking all reasonable steps to establish the true identity of the person concerned in the transaction.<sup>116</sup>

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<sup>108</sup> See Financial Institutions (Anti-Money Laundering) Guidelines, Legal Notice No. 199 of 2000, Part II, le at <http://www.lesotholii.org/ls/legislation/sl/2000/199> (last visited Aug. 3, 2017).

<sup>109</sup> See *id.*

<sup>110</sup> See *id.*

<sup>111</sup> Investment and Export Promotion Act, No. 11 of 2012, art. 6, *available at* <http://www.mtc.mw/attachments/article/296/Investment%20and%20Export%20Promotion%20Act%202012.pdf> (last visited July 23, 2017) [hereinafter Investment and Export Promotion Act].

<sup>112</sup> *Id.*

<sup>113</sup> *Investment Procedures*, MALAWI INVESTMENT AND TRADE CENTER, [http://www.mtc.mw/index.php?option=com\\_content&view=article&id=296&Itemid=573](http://www.mtc.mw/index.php?option=com_content&view=article&id=296&Itemid=573) (last visited July 23, 2017); U.S. DEP'T OF STATE, INVESTMENT CLIMATE STATEMENT 2014: MALAWI, *available at* [www.state.gov/documents/organization/227359.pdf](http://www.state.gov/documents/organization/227359.pdf) (last visited July 23, 2017).

<sup>114</sup> Investment and Export Promotion Act, *supra* note 111; MALAWI REVENUE AUTHORITY, INVESTORS' TAX INCENTIVES, *available at* <http://www.mtc.mw/attachments/article/288/Investor%27s%20tax%20incentives.pdf> (last visited July 23, 2017).

<sup>115</sup> Malawi Banking Act, No. 19 of 1989, art. 6, *available at* <https://www.malawilii.org/mw/legislation/act/1989/19> (last visited July 23, 2017).

<sup>116</sup> *Id.*

## Namibia

Namibian financial institutions are required to maintain anti-money laundering and counter-terrorist financing programs designed to detect and prevent money laundering.<sup>117</sup> Such programs must include procedures for identifying a financial institution's customers; without making such identification, financial institutions in Namibia are barred from establishing business relationships with clients.<sup>118</sup>

The Financial Intelligence Center (FIC) is the agency responsible for implementing anti-money laundering and anti-terrorist financing laws in Namibia. Financial transaction monitoring programs must include procedures for identifying and reporting suspicious transactions and suspicious activities to the FIC.<sup>119</sup> While the government does not provide specific guidance on TIP red flags, the FIC has released a guidance note that lays out specific indicators of suspicious transactions, which may indicate TIP amongst other crimes.<sup>120</sup> These red flags may include:

- A client always being accompanied by unknown person(s), and being watched during their transactions;
- A client appears nervous or in a hurry;
- A client produces seemingly false identification or identification that appears to be false, altered or inaccurate;
- All identification presented is foreign; and/or
- Individuals involved in cash transactions share addresses.<sup>121</sup>

## Uganda

Many Ugandan financial transactions take place outside the scope of the formal, regulated financial system;<sup>122</sup> the reach of the law in the informal cash-based sector is limited, and the risk of financial crime is commensurately high.<sup>123</sup> For example, many people rely heavily on mobile money transfer systems to process funds, especially where they cannot afford the higher fees associated with the formal banking sector;<sup>124</sup> a lack of regulation in this rapidly-growing area could be easily exploited by traffickers seeking to transfer funds outside the eye of the law.

In light of this, Uganda has taken steps towards more careful regulation and monitoring of international financial transactions. A number of laws, including the Financial Institutions (Foreign

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<sup>117</sup> See generally FIA, *supra* note 20.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> FINANCIAL INTELLIGENCE CENTRE, GUIDANCE NOTE ON SUSPICIOUS TRANSACTION REPORTS, SUSPICIOUS ACTIVITY REPORTS, CASH TRANSACTION REPORTS AND ELECTRONIC FUNDS TRANSFERS, No. 6 of 2015, *available at* <https://www.fic.na/uploads/Publications/Guidance%20Notes/Guidance%20note%206%20of%202015%20on%20reporting%20STRs%20SARs%20CTRs%20%20and%20EFTs.pdf> (last visited July 31, 2017).

<sup>121</sup> *Id.*

<sup>122</sup> U.S. Dep't of Justice, Bureau of Int'l Narcotics and Law Enforcement Aff., 2014 Int'l Narcotics Control Strategy Report, Countries/Jurisdictions of Primary Concern – Uganda, <https://www.state.gov/j/inl/rls/nrcrpt/2014/supplemental/227883.htm> (last visited July 19, 2017) [hereinafter DoJ, Int'l Narcotics Control Strategy Report].

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*



Exchange Business) Rules,<sup>125</sup> the Financial Institutions (Amendment) Act,<sup>126</sup> and the Anti-Money Laundering Act,<sup>127</sup> create restrictions upon “remittances or other money transfers that are linked to money laundering or terrorist financing”.<sup>128</sup> They further impose ‘know-your-customer’ restrictions upon entities involved in Ugandan money transfers; for example, the Bank of Uganda’s Mobile Money Guidelines require mobile money service providers to identify customers’ identities, set limits for transaction frequency, volume, and value, and report suspicious transactions, including large cash transactions.<sup>129</sup> The Ugandan Central Bank and the FIA are charged with imposing these restrictions and monitoring legal compliance.<sup>130</sup>

## Zambia

Zambian law requires financial institutions to have appropriate risk management systems to identify those who pose high risks of terrorism and/or money laundering.<sup>131</sup> Zambian law requires border officials to examine goods and identify whether the goods have been used in the “commission, preparation or instigation of acts of human trafficking.”<sup>132</sup>

Financial transactions are generally monitored by the Bank of Zambia.<sup>133</sup> However, ABA ROLI has not identified any laws or policies that would provide financial institutions with guidance on

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<sup>125</sup> The Financial Institutions (Foreign Exchange Business) Rules of 2010, *available at* [https://www.bou.or.ug/bou/bou-downloads/acts/supervision\\_acts\\_regulations/FI\\_Regulations/FI\\_Foreignexchange\\_2010.pdf](https://www.bou.or.ug/bou/bou-downloads/acts/supervision_acts_regulations/FI_Regulations/FI_Foreignexchange_2010.pdf) (last visited July 19, 2017).

<sup>126</sup> The Financial Institutions (Amendment) Act of 2016, *available at* [https://www.bou.or.ug/bou/bou-downloads/acts/supervision\\_acts\\_regulations/FI\\_Act/Fin-Amendment-Act-2016.pdf](https://www.bou.or.ug/bou/bou-downloads/acts/supervision_acts_regulations/FI_Act/Fin-Amendment-Act-2016.pdf) (last visited July 19, 2017).

<sup>127</sup> *See supra* note 23.

<sup>128</sup> *Uganda – Conversion and Transfer Policies*, EXPORT.GOV (June 14, 2016), <https://www.export.gov/article?id=Uganda-Conversion-and-Transfer-Policies> (last visited July 19, 2017) [hereinafter *Uganda – Conversion and Transfer Policies*].

<sup>129</sup> Mobile Money Guidelines of 2013, Guideline 11, *available at* <http://ucc.co.ug/files/downloads/Mobile-Money-Guidelines-2013.pdf> (last visited July 19, 2017).

<sup>130</sup> *Supervision Overview*, Bank of Uganda, <https://www.bou.or.ug/bou/supervision/overview.html> (last visited July 19, 2017); *About Us*, Financial Intelligence Authority, <http://fia.go.ug/nita/about-us> (last visited July 19, 2017).

<sup>131</sup> Financial Intelligence Centre Act, *supra* note 34, at arts. 20, 25.

<sup>132</sup> The Anti-Human Trafficking Act, No. 11 of 2008, art. 78, *available at* <http://ilo.org/dyn/natlex/docs/MONOGRAPH/79940/86184/F202769530/ZMB79940.pdf> (last visited Aug. 5, 2017) [hereinafter AHTA].

<sup>133</sup> The Bank of Zambia (Balance of Payments Monitoring) Regulations of 2013, Instruemnt No. 55 of 2013, *available at* [https://www.fnbzambia.co.zm/downloads/zambia/regulations/Monitoring\\_of\\_Balance\\_of\\_Payments-Export\\_Receipt\\_Monitoring\\_Form.pdf](https://www.fnbzambia.co.zm/downloads/zambia/regulations/Monitoring_of_Balance_of_Payments-Export_Receipt_Monitoring_Form.pdf) (last visited Aug. 5, 2017); Bank of Zambia, Balance of Payments Monitoring Guide (2013), *available at* <http://pic.bankofchina.com/bocappd/zambia/201312/P020131224529854803511.pdf> (last visited Aug. 5, 2017); Zambia Development Agency Act, No. 11 of 2006, *available at* <http://ilo.org/dyn/natlex/docs/ELECTRONIC/90114/103666/F-1295800516/ZMB90114.pdf> (last visited Aug. 5, 2017) [hereinafter Zambia Development Agency Act]; Zambia Development Agency (Amendment) Act, No. 15 of 2012, *available at* [http://www.parliament.gov.zm/sites/default/files/documents/amendment\\_act/ZDA%20%28Amendment%29.PDF](http://www.parliament.gov.zm/sites/default/files/documents/amendment_act/ZDA%20%28Amendment%29.PDF) (last visited Aug. 5, 2017); Zambia Development Agency (Amendment) Act, No. 17 of 2013, *available at* <http://extwprlegs1.fao.org/docs/pdf/zam133273.pdf> (last visited Aug. 5, 2017).

potential TIP indicators or red flags.

Foreign investors must submit investment requests and/or proposals to the Zambia Development Agency Board; if granted, foreign investors will be granted business licenses and permits to form a business enterprise.<sup>134</sup>

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<sup>134</sup> Zambia Development Agency Act, *supra* note 133, at art. 68.

## IV. Asset Freezing and Forfeiture

### Eritrea

The Penal Code of the State of Eritrea does not provide for asset forfeiture as a punishment for any TIP-related criminal offenses.<sup>135</sup> The only available punishments are imprisonment and fines. Specifically, the Penal Code recognizes restitution to injured persons as one form of remedy in criminal proceedings.<sup>136</sup>

### Ethiopia

Ethiopian law provides for the confiscation of property of juridical persons involved in TIP and migrant smuggling.<sup>137</sup> However, the law does not provide for the freezing of assets during criminal, civil, or administrative proceedings.<sup>138</sup>

### Ghana

The HTA mandates that courts order confiscation of property acquired from human trafficking activity.<sup>139</sup> Courts may direct that proceeds from confiscated property be paid into the HTF.<sup>140</sup>

### Lesotho

It does not appear that Lesotho's Penal Code mandates asset freezing and/or forfeiture for any financial offenses.

The Money Laundering Act states that suspicious imports or exports of currency may be seized and detained, and in general property and proceeds of that property may be confiscated under the terms of this Act.<sup>141</sup>

Under the Anti-Trafficking in Persons Act of 2011, examining officers may detain any goods or documents related to TIP for a maximum of three days.<sup>142</sup> Additionally, the Anti-Trafficking Fund, established under the Act, may be supplemented by the "proceeds from the confiscation of property connected with trafficking,"<sup>143</sup> which implies that the Act envisions asset forfeiture or confiscation as a punishment.

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<sup>135</sup> See Penal Code, *supra* note 36.

<sup>136</sup> *Id.* at arts. 78, 80.

<sup>137</sup> Criminal Code, *supra* note 39, at § 98.

<sup>138</sup> *Id.*

<sup>139</sup> Human Trafficking Act 694 of 2005 (as amended 2009) § 40, *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/human+trafficking+act.pdf> (last visited July 17, 2017).

<sup>140</sup> *Id.* at § 20.

<sup>141</sup> See Money Laundering Act, *supra* note 14, at § 28, Part IV.

<sup>142</sup> See Anti-Trafficking in Persons Act, No. 1 of 2011, § 18, *available at* [https://www.unodc.org/res/cld/document/anti-trafficking-in-persons-act-2011\\_html/Lesotho\\_TIP\\_Act\\_2011.pdf](https://www.unodc.org/res/cld/document/anti-trafficking-in-persons-act-2011_html/Lesotho_TIP_Act_2011.pdf) (last visited Aug. 3, 2017).

<sup>143</sup> *Id.* at § 46(d).

## Malawi

The Trafficking in Persons Act (TIP Act) provides that, upon conviction, assets involved in and proceeds from an offense under the Act may be subject to forfeiture; the relevant funds are directed towards the Anti-Trafficking Fund.<sup>144</sup>

## Namibia

ABA ROLI is unable to identify any laws providing for asset forfeiture as a sanction for TIP or TIP-related offenses, and were not able to identify any laws providing for asset freezing during criminal, civil, or administrative proceeds.

## Uganda

The PTIP Act requires courts to order the forfeiture of “all established proceeds and properties derived from the commission of the crime.”<sup>145</sup> It furthermore requires that where such property has been made unavailable for seizure or forfeiture by virtue of an offender’s acts or omissions, the court must order the offender to pay an amount equal to the value of that property.<sup>146</sup>

Other provisions of Ugandan law also contain asset forfeiture provisions. As noted above, forged or counterfeited banknotes and coins must be forfeited to the Ugandan government under the Penal Code,<sup>147</sup> and the Anti-Money Laundering Act “provides for the seizure, freezing, and forfeiture of assets linked to money laundering and terrorism financing”.<sup>148</sup>

## Zambia

Funds used in furtherance of an offense under the TIP act may be subject to seizure and detention;<sup>149</sup> furthermore, items used in counterfeiting and forgery may be subject to seizure under the Zambian Penal Code.<sup>150</sup>

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<sup>144</sup> Trafficking in Persons Act no. 3 of 2015, art. 51, *available at* <http://www.warnathgroup.com/wp-content/uploads/2015/03/Malawi-2015-TIP-Act.pdf> (last visited July 23, 2017).

<sup>145</sup> The Prevention of Trafficking in Persons Act of 2009, § 22(1), *available at* <https://www.ulii.org/ug/legislation/act/2015/7> (last visited July 19, 2017).

<sup>146</sup> *Id.* at 22(2).

<sup>147</sup> Uganda Penal Code Act of 1950, § 374, *available at* [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=170005](http://www.wipo.int/wipolex/en/text.jsp?file_id=170005) (last visited July 19, 2017).

<sup>148</sup> DOJ, Int’l Narcotics Control Strategy Report, *supra* note 122.

<sup>149</sup> AHTA, *supra* note 132, at art. 51.

<sup>150</sup> *See, e.g.*, Penal Code, *supra* note 48, at arts. 347, 373.

## V. Remittances

### Eritrea

Remittances of foreign currency are authorized, but are not specifically incentivized.<sup>151</sup> Although foreigners are required to declare when they bring in or leave with more than US\$10,000, it is unclear if Eritrea requires TIP-specific training for economic inspectors, including customs agencies and port authorities.

Eritrea is a member of the Common Market for East and Southern Africa (COMESA), a regional free-trade agreement. In 2012, the COMESA Council adopted requirements that member states implement national education, data collection, and prosecution systems targeting human trafficking; it is unclear there are enforcement mechanisms to ensure this requirement is fulfilled.<sup>152</sup>

Eritrean law does not prohibit the government from procuring goods or services from vendors that engage in TIP or TIP-related practices.

### Ethiopia

The Consolidated Foreign Exchange Directives regulate financial flows from remittances.<sup>153</sup> The law allows for both inward and outward remittances by foreign employees and investors, subject to certain limitations.<sup>154</sup> Ethiopia does not have in place laws that encourage inward remittance economies, but the remittance policy is considered to be a foreign investment incentive.<sup>155</sup>

### Ghana

Remittance flows into Ghana are estimated to be greater than foreign direct investment and overseas development assistance.<sup>156</sup> The Migration Policy of Ghana seeks to maximize the benefits and minimize the challenges associated with these remittance flows. It employs the following strategies to do so: (i) engaging the diaspora to assist the increase of remittance flows; (ii) broadening formal remittance markets through new technology; (iii) reducing the costs and barriers of transferring remittances; and (iv) improving research on remittance flows.<sup>157</sup>

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<sup>151</sup> Proclamation Pertaining to the Opening of Foreign Currency Deposit Accounts, Domestic Commercial Transactions and/or Contracts, Currency Remittance and Exchange and the Declaration of Currency of Travelers Arriving into and Departing from Eritrea, Proclamation No. 173/2013, *available at* [http://www.embassyeritrea.org/Proclamations/Proclamation\\_No\\_173\\_2013\\_1.pdf](http://www.embassyeritrea.org/Proclamations/Proclamation_No_173_2013_1.pdf) (last visited July 22, 2017).

<sup>152</sup> Official Gazette of the Common Market for Eastern & Southern Africa [COMESA] 17: 20 Nov. 2012, [www.comesa.int/wp-content/uploads/2016/06/Gazette-17.docx](http://www.comesa.int/wp-content/uploads/2016/06/Gazette-17.docx) (last visited July 22, 2017).

<sup>153</sup> Consolidated Foreign Exchange Directives, <http://www.nbe.gov.et/pdf/Consolidated%20Forex.pdf> (last visited July 21, 2017).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*; see also Proclamation No. 769/2012, *supra* note 103.

<sup>156</sup> GHANA MINISTRY OF THE INTERIOR, NATIONAL MIGRATION POLICY FOR GHANA (Apr. 2016), § 10.1, *available at* <http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=national-migration-policy-for-ghana.pdf&site=354> (last visited July 17, 2017).

<sup>157</sup> *Id.*

Ghana must balance these strategies to maximize the benefits of remittances against the need to protect victims of trafficking and trafficking-vulnerable populations. Ensuring that the policy objectives and strategies laid out in the Migration Policy are effectively implemented is one way to ensure this.<sup>158</sup>

### Lesotho

Lesotho has no laws promoting remittance economies. Financial flows from remittances are regulated under the Deferred Pay Act, applicable Foreign Exchange Controls, and the aforementioned Anti-Money Laundering Guidelines.<sup>159</sup> Immigrants working in Lesotho are restricted from transferring more than 80 percent of their net income.<sup>160</sup> The Lesotho government requires all foreign exchange-related transactions to be processed through the central bank.<sup>161</sup>

### Malawi

According to the information provided by the U.S. Department of State, there are no restrictions on remittances in Malawi.<sup>162</sup>

### Namibia

ABA ROLI has not identified any laws that specifically govern remittances; however, the Namibia National Payment System Vision of 2015 prioritizes improvements to Namibia's remittances market.<sup>163</sup> To this end, Namibia intends to develop a sound legal framework for remittances based upon the principles developed by the Bank for International Settlement and the World Bank, participate in Southern African Development Community (SADC) remittance initiatives, "with a view to achieve low cost[,] safe cross border remittance services."<sup>164</sup>

### Uganda

The World Bank reports that private capital remittances, especially from North America, Europe, and the Middle East to Uganda may have exceeded US\$1.07 billion in 2016, a marginal increase from the previous year.<sup>165</sup> Ugandan law generally facilitates this remittance economy; the Bank of Uganda does not appear to require investors to seek approval from the Bank of Uganda in order to repatriate business profits and dividends.<sup>166</sup> Other laws that deal with remittances include the

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<sup>158</sup> See *id.* at § 4.2.

<sup>159</sup> See LEFEELA J. NALANE, ET AL., THE REMITTANCES FRAMEWORK IN LESOTHO: ASSESSMENT OF POLICIES AND PROGRAMS PROMOTING THE MULTIPLIER EFFECT 20-21 (2012), available at [https://publications.iom.int/system/files/pdf/framework\\_in\\_lesotho.pdf](https://publications.iom.int/system/files/pdf/framework_in_lesotho.pdf) (last visited Aug. 3, 2017).

<sup>160</sup> See *id.*

<sup>161</sup> See *id.*

<sup>162</sup> U.S. DEP'T OF STATE, INVESTMENT CLIMATE STATEMENT 2014: MALAWI, *supra* note 113.

<sup>163</sup> Bank of Namibia et al, Namibia National Payment System Vision 2015 5 (2015), available at <https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/27/27a78182-70a5-42bb-ad4f-97ad2a155e59.pdf> (last visited July 31, 2017).

<sup>164</sup> *Id.* at 10.

<sup>165</sup> Andualm Sisay, *Private Capital Remittances to Uganda Reach \$1 Billion – World Bank*, ASOKOINSIGHT (8 May, 2017), <https://asokoinsight.com/news/1-billion-in-2016-world-bank-uganda> (last visited July 19, 2017).

<sup>166</sup> *Uganda – Conversion and Transfer Policies*, *supra* note 128.

Foreign Exchange Act, the Foreign Exchange (Forex Bureaus and Money Remittance) Regulations, and the Mobile Money Guidelines.<sup>167</sup>

### Zambia

The U.S. Department of State reports that there are no restrictions in Zambia on the “inflow or outflow of funds for remittances of profits or revenue.”<sup>168</sup> ABA ROLI has not been able to determine whether Zambia has any other laws or policies that would encourage or discourage the use of remittances.

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<sup>167</sup> *Id.*

<sup>168</sup> U.S. DEPARTMENT OF STATE, 2015 INVESTMENT CLIMATE STATEMENT 8 (June 2015), *available at* <https://www.state.gov/documents/organization/242010.pdf> (last visited Aug. 5, 2017).