ADVISORY

Looted Funds Used to Buy African Real Estate

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Executive Summary

Research by The Sentry, investigative journalists, and anti-corruption civil society groups demonstrates that African kleptocrats, especially those in war-torn countries, have increasingly favored real estate in African cities as a means for laundering the proceeds of corruption, despite the greater headlines that result from "kleptocracy tours" in the United Kingdom and Europe. Banks, governments, and regional and international organizations have not prioritized these activities in cities like Nairobi, Kampala, Windhoek, Cape Town, and Johannesburg, creating an opportunity for corrupt actors to exploit the sector. Kleptocrats may choose these destinations because of their comparative political, economic, or monetary stability.

As Uganda's own National Risk Assessment on money laundering found, "the real estate sector poses the highest [money laundering] threat" in the country.[1] However, authorities have done little to address this significant risk in the country. Kenya, Namibia, and South Africa have seen similarly uneven responses. Persistent loopholes and gaps in anti-money laundering standards involving real estate provide illicit actors with various options for laundering money through real estate.

Governments, law enforcement, regulators, financial institutions, and civil society should address the systemic issues that contribute to illicit financial flows through real estate. Regional governments should identify properties purchased with corrupt funds, investigate the sources of funds in those transactions, and coordinate investigations with signatories to the United Nations Convention Against Corruption (UNCAC). Financial institutions operating in the region should monitor accounts for red flags related to real estate transactions. The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) should develop and recommend jurisdiction- or geography-specific enhanced due diligence standards or reporting requirements in order to improve the quality and consistency of information available to banks, regulators, and law enforcement.[2] Civil society groups, too, should play an important role in combating illicit activity within the real estate sector by uncovering corruption and pressing law enforcement and other bodies to take appropriate action.

By working to curtail money laundering through real estate in eastern and southern Africa, banks, governments, international organizations, and civil society groups can put pressure on kleptocrats and their international facilitators and combat profiteering from corruption, violence, and human rights abuses elsewhere on the continent.

Background

Although money laundering through real estate is not a new phenomenon, a series of high-profile cases over the past decade have garnered attention from policymakers, law enforcement agencies, and civil society organizations, sparking conversation about the role of real estate in facilitating corruption in repressive regimes.[3]

Loopholes in the real estate sector amount to an "unregulated backdoor" to the global financial system, intergovernmental organizations have warned.[4] In a July 2018 report, the Financial Action Task Force (FATF) and the Egmont Group of Financial Intelligence Units analyzed more than 106 criminal case studies from around the world and found that the lack of standardized oversight in designated non-financial businesses and professions, including real estate agents and title deed providers, provided access to the global financial system with very limited constraints.[5, 6, 7] Financial transactions involving real estate exhibit specific vulnerabilities, as real estate purchases can face comparatively less scrutiny than traditional financial sector transactions. As a result, money launderers can often use real estate to conceal funds, particularly by making cash payments (to avoid scrutiny by banks) or using shell companies (to obscure the identity of the property's ultimate purchaser).[8]

The FATF discusses money laundering risk in the real estate sector in four main categories: geographic risk, customer risk, transaction risk, and financing risk. Geographic risk includes factors such as whether the purchaser resides or operates in the same jurisdiction as the property and whether the property is located, or the purchaser resides or is based, in a location with weak anti-money laundering controls. Customer risk involves the customers themselves, including whether businesses are cash-intensive or run by politically exposed persons (PEPs). Transaction risk relates to the manner in which financial transactions are made, such as whether they are expedited or use third-party vehicles. Financing risk covers the use of unusual sources of funding or the purchase of real estate with large amounts of cash.[9] Where red flags in one or more of these categories are present, real estate agents should perform enhanced customer due diligence and the public sector should impose appropriate legislative and regulatory frameworks to address the heightened risk.

In eastern and southern Africa, barriers to acquiring data about the real estate sector may undermine anti-money laundering controls. Sub-Saharan Africa has the lowest level of available real estate market data globally.[10] The lack of data may hinder the identification of fraud indicators and trends by regulators, law enforcement agencies, and financial intelligence units (FIUs), which may in turn undermine their ability to enforce existing laws and ensure that regulatory controls are appropriately targeted.

Examples of Real Estate Red Flags in Eastern and Southern Africa

The Sentry has reported on the suspicious real estate acquisitions of high-profile politicians in eastern and southern Africa. The examples below illustrate various methods used to purchase real estate in these jurisdictions, including the purchase of real estate by PEPs acting in the names of family members, the use of shell companies and trusts to purchase property, the purchase of properties in foreign countries by individuals subject to international sanctions, and the use of unexplained wealth to purchase properties. All of these practices are red flags based on the FATF's risk categories.

- **Buyer is a PEP:** A high-ranking PEP from an oil-rich African nation acquired two homes, valued at more than $3 million, in another country in Africa. Authorities in the country where the real estate was located seized and auctioned at least one of the properties in order to settle court fees related to a wrongful imprisonment lawsuit, but unrelated to any possible corruption.

- **Buyer resides outside the jurisdiction of the real estate:** The wife of a former high-ranking PEP in an African country rented an apartment in another country on the continent for approximately $15,000 a month and purchased a second property there for more than $3 million. The wife facilitated these payments using shell companies. According to publicly available information, the origin of the funds used to rent and purchase the identified properties has not been investigated.

- **Buyer is a trust or shell company:** A family member of a high-ranking PEP purchased real estate in an African country valued in excess of $1 million. These properties were held in the name of either a trust or apparent shell companies for which the family members of the PEP were listed as the sole directors. Most other properties connected to these individuals were purchased in the name of a different limited company incorporated in another country, for which they were also listed as sole directors.

- **Buyer is under UN, EU, or US sanctions:** A high-ranking PEP under sanctions by the United Nations, the European Union, and the United States for corruption and human rights abuses owns a multimillion-dollar villa in a neighboring country. According to publicly available information, the PEP purchased the property using funds embezzled from a petroleum contract.

- **Price of real estate is inconsistent with buyer's apparent income:** A high-ranking PEP acquired two properties in an African country in 2003. At the time of purchase, the PEP's salary was a modest $120 per month, raising questions about the source of the funds he used to purchase the properties. The PEP's real estate holdings made press headlines in 2014 due to an ongoing legal dispute between the PEP and his former estate agent. The dispute involved a 2010 business transaction in which the PEP agreed to deposit nearly $1 million into a trust bank account for the estate agency to develop the two properties or purchase additional properties.

Regulatory Challenges

ESAAMLG, the regional body charged with monitoring anti-money laundering efforts in eastern and southern Africa, has identified significant vulnerabilities with respect to the real estate sectors of Uganda, Kenya, Namibia, and South Africa. The range of responses from law enforcement authorities and regulators to suspicious real estate acquisitions by PEPs—from a lack of active investigations of suspicious transactions to asset seizures in response to non-financial legal violations and stark failures to act upon available evidence—suggests that there may be both technical and political barriers to effective implementation of anti-money laundering controls in the real estate sectors in eastern and southern Africa.

ESAAMLG, of which Uganda, Kenya, Namibia, and South Africa are all members, publishes reports charting its member countries' progress in bringing their financial regulatory frameworks into compliance with the international anti-money laundering standards set by the FATF.[11] Although there are significant differences in these four countries' institutional capacities and regulatory frameworks, ESAAMLG has identified significant money laundering vulnerabilities in each country's respective real estate sector. These include insufficient legal oversight by regulators for the real estate sector, insufficient customer due diligence requirements for financial institutions involved in these purchases, and lack of domestic understanding of due diligence requirements by real estate professionals. For example, Uganda lacks a designated real estate oversight body, complicating the Ugandan government's efforts to combat abuse of the sector.[12] FATF recently placed Uganda on its "grey list" of jurisdictions with deficiencies in their anti-money laundering systems that must work with the FATF and ESAAMLG to address the identified deficiencies. The intergovernmental body identified the need to develop and implement risk-based supervision of at-risk business sectors in the country, such as real estate.[13] ESAAMLG's evaluations of Kenya, Namibia, and South Africa are older, but highlight the persistent nature of these issues. In Kenya, ESAAMLG noted the lack of enforcement of 2011 anti-money laundering legislation requiring real estate agents to report suspicious transactions.[14] A 2009 ESAAMLG report expressed concerns about limited guidance on customer due diligence reporting requirements for nonface-to-face real estate transactions in South Africa.[15] Namibia's most recent evaluation took place in 2007 and highlighted real estate as a money laundering concern.[16] Namibia's next evaluation is scheduled for late 2020, but may be delayed because of the pandemic.

Like the FATF, ESAAMLG publishes reports on typologies of money laundering in an effort to provide member countries with information regarding emerging threats and to share best practices to combat illicit finance. In 2013, ESAAMLG published a real estate report, based on information provided by member countries, outlining specific threats to the region in the real estate sector. The report noted that most member countries lack designated units to investigate illicit finance cases related to real estate. The report cited several examples of real estate sector abuse, including one involving a PEP using lawyers, wire transfers, and newly created shell companies in other countries to procure real estate in South Africa.[17] South Africa's financial intelligence unit opened an investigation into this particular case.[18]

Several national anti-money laundering authorities in the region have echoed ESAAMLG's findings, as FIUs and independent experts have conducted more recent assessments of money laundering vulnerabilities in the Ugandan, Kenyan, Namibian, and South African real estate sectors. A 2017 National Risk Assessment by Uganda's Financial Intelligence Authority (FIA) concluded that the country's real estate sector is at high risk for money laundering.[19, 20] The report attributed its conclusions to "poor knowledge of AML… the low quality of AML supervision and oversight and the low effectiveness of compliance functions."[21, 22]

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In 2017, the Namibian Financial Intelligence Center issued a directive expressing concern about real estate agents and companies' lack of awareness regarding their reporting requirements for cash-based real estate transactions.[23] Accountable and reporting institutions, including real estate agents and real estate companies, must report cash-based transactions above N$999,999 (approximately $70,000 US) under Namibian law.[24] The directive pointed to a "general misunderstanding that 'cash received' means only cash received outside of the financial system – i.e. physical cash received in hand, and not cash deposits into the bank accounts held by estate agents or agencies at commercial banks."[25] The directive expressed concern that this confusion has led to non-reporting and a lack of adequate internal record-keeping by reporting institutions, which in turn reduces the Namibian government's ability to effectively track trends and fraud indicators and to initiate investigations as appropriate.[26]

Independent analysis of vulnerabilities in South Africa's anti-money laundering system have also found persistent challenges in its real estate sector. A 2017 analysis found that South Africa has a low money-laundering prosecution rate, potentially indicating a failure to implement existing laws.[27] The report cited poor suspicious reporting compliance by real estate agents and money-launderers' ability to sidestep Financial Intelligence Center (FIC) detection by engaging in all-cash transactions between two private persons, without the assistance of a real estate agent, or by purchasing property through a shell company.[28] In one investigation, the FIC found that the owner of real estate assets connected to a high-profile PEP had evaded suspicious transaction reporting by using shell companies to make his purchases.[29]

Opportunity for Action

Despite specific regulatory challenges for individual real estate markets, common money laundering vulnerabilities in the real estate sector—whether in Kampala or Cape Town—could be reduced through increased information sharing and cooperation among regulators in southern and eastern Africa and in the United States and Europe.

In the United States, the US Department of the Treasury's Financial Crime Enforcement Network's (FinCEN) has focused for several years on illicit financial flows into US real estate.[30] Beginning in 2016, FinCEN issued a series of Geographic Targeting Orders (GTOs) to obtain information to help US regulators better understand the real estate sector's money laundering vulnerabilities and to determine whether further regulation or implementation of existing authorities might be merited.[31] A GTO imposes temporary additional recordkeeping and reporting requirements on domestic financial institutions or non-financial businesses in a specific US geographic area.

The first real estate GTOs required that US title insurance companies in Miami Dade County and Manhattan record and report information on the beneficial owners of high-value real estate purchased in cash transactions.[32, 33] In response to industry feedback and patterns FinCEN identified in subsequent reports filed by title insurers and others, the organization revised GTO terms to "capture a broader range of transactions and include transactions involving wire transfers,"[34] thus enabling a wider and more valuable data set. A 2017 FinCEN analysis—before GTOs included wire transfers—concluded that more than 30% of reported transactions involved a "beneficial owner or purchaser representative that had been the subject of unrelated Suspicious Activity Reports (SARs) filed by U.S. financial institutions."[35] FinCEN has since extended the GTOs several times and has added additional metropolitan areas to its list of targets, including cities in California, Florida, Hawaii, New York, and Texas.[36]

Treasury's actions are having impact, studies have shown. A study published by the University of Miami found that all-cash real estate purchases by corporations fell by almost 70% nationwide after the GTOs went into effect.[37] Luxury home prices also dropped in counties targeted by the GTOs, according to the study. However, the study found no significant evidence that would-be buyers attempted to circumvent the GTOs by conducting purchases using trusts, electing not to purchase title insurance, buying multiple lower-priced properties, or purchasing property in neighboring counties.[38] The nationwide reduction in all-cash real estate purchases by corporations following the issuance of the GTOs highlights the importance of anonymity for buyers conducting their business via shell companies.[39] It also suggests that requiring beneficial ownership disclosures in high-risk transactions may have a deterrent effect on would-be money launderers.[40] The fact that the GTOs are still in effect—and have been renewed several times—suggests that they are providing valuable data for regulatory authorities.

Considering the promising indicators of the effectiveness of GTOs in the United States, and given the dearth of readily available information regarding real estate market trends in sub-Saharan Africa,[41] the FinCEN model of GTOs should be adapted to ensure better data collection on real estate transactions in eastern and southern Africa to generate a more cohesive picture of regional fraud patterns. Local regulators should craft GTOs or analogous mechanisms based on existing fraud indicators. These steps would provide a vehicle for African governments to collect data for analysis, adapt reporting requirements, institute targeted reforms to close loopholes and improve AML practices in the real estate sector, and encourage information and best practices sharing across jurisdictions. Publicizing the GTOs, and the analysis of the data that they generate, could also raise awareness of money laundering risks in the real estate sector and generate public support for increased regulatory oversight.

Conclusion and Recommendations

The underexamined practice of money laundering through real estate across Africa enables corruption in some of the continent's most entrenched kleptocracies. But this problem presents an opportunity: increased collaboration between regulators and civil society groups in eastern and southern Africa and the United States could help close long-exploited loopholes.

At a minimum, governments and regulators should ensure that they implement and enforce existing laws and regulations effectively. Additionally, they should review and update those laws where necessary to meet international standards, including those set out in relevant FATF recommendations for property purchases and related transactions.

African governments should also consider replicating in their countries the successful targeted interventions used elsewhere, such as the use of GTOs in the United States. US authorities can support this effort by sharing their experience with GTOs in the US real estate market.

In addition, the following specific steps could help to address the illicit finance challenges outlined in this report:

Participants in Ugandan, Kenyan, Namibian, and South African real estate sectors should take steps to protect their industries from illicit actors. Real estate agents should incorporate the red flags identified here and in other publications into their anti-money laundering programs. They should perform enhanced due diligence under these programs for higher-risk customers, business relationships, and transactions.

Financial institutions operating in the region should monitor for the red flags described here and train their staff to better identify them.

The Kenyan and Ugandan governments should open thorough investigations into properties allegedly purchased with the proceeds of corruption,[42] coordinate as needed with UNCAC signatories, plug loopholes in domestic legislation related to real estate, and, if appropriate, pursue legal mechanisms to seize and forfeit properties purchased with the proceeds of corruption or other crimes.

The Namibian government should open thorough investigations into the origin of funds linked to suspicious property purchases by foreign PEPs, work with UNCAC signatories to coordinate joint investigations and, as appropriate, prosecute foreign PEPs for money laundering.

The South African government should work within ESAAMLG and the FATF to undertake a typology exercise focused on the use of the real estate industry in sub-Saharan Africa as a mechanism for PEPs across the continent to launder the proceeds of corruption.

ESAAMLG and the Egmont Group should consider how GTOs currently in effect in the United States could be adapted for jurisdictions in eastern and southern Africa. For example, ESAAMLG should recommend subjecting real estate companies to AML obligations in these jurisdictions and enhancing customer due diligence for all-cash purchases via shell companies of properties above the median property value in a given area. If ESAAMLG member countries adopt an increased reporting requirement model similar to the US GTOs, FinCEN authorities should work with regional regulators to share relevant insights and best practices. Similarly, the Egmont Group should work with individuals FIUs on these efforts.

The Ugandan, Kenyan, Namibian, and South African governments should ensure compliance with FATF customer due diligence standards in the real estate sector and conduct risk assessments of their respective real estate sectors in an effort to identify specific areas of risk on which to focus improvements to existing anti-money laundering and countering the financing of terrorism regimes.

The United States should support African governments by providing technical assistance on best practices for implementing guidance from regulators that expect additional CDD from banks. The United States should also cooperate with investigations involving US-based companies or US nationals. FinCEN should provide lessons learned to FIUs in the region on real estate-related investigations. FinCEN should also share suspicious activity report information through the Egmont Group's FIU channel. US law enforcement should collaborate with regional law enforcement to identify illicit financial flows that may involve the US financial system.

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Endnotes

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