

# The Obama Administration's 2012 agreement with HSBC Bank: the GAME of the War on Drugs

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On December 11, 2012 the US Department of Justice (DOJ) along with a slew of State and Federal regulatory agencies announced that they had settled their investigations and enforcement actions against HSBC for violating US anti-money laundering laws (AML) and sanctions laws and related offences arising out of these violations. Under the terms of the said settlement agreement, a deferred prosecution agreement (DPA), HSBC agreed to pay USD 1.92 billion to the Federal government and to implement specified efforts to their compliance regime. The fact that HSBC got away with a slap on the wrist for its violations of AML and sanctions laws can only be appreciated when the gravity of its money laundering operations are studied raising immediately the question of: Why did HSBC get a slap on the wrist from the Obama administration?

In March 2013 the Committee on Financial Services of the US House of Representatives (Committee) commenced a review of the DOJ's decision to grant a get out of jail free card to HSBC Bank in 2012. On July 11, 2016 the Republican staff of the Committee released the report titled: "Too big to jail inside the Obama Justice Department's decision not to hold Wall Street accountable" (Report). The Report states: "Senior DOJ leadership including Attorney General Holder, overruled an internal recommendation by DOJ's Asset Forfeiture and Money Laundering Section to prosecute HSBC because of DOJ's leadership concern that prosecuting the bank would have serious adverse consequences on the financial system." Globalised financial operators are not only too big to fail since 2009 they are now in 2012 too big to jail for fear of the damage their prosecution will unleash on the chances for re-election by the political elites. The Report states that then US Attorney General Eric Holder in his testimony to the Senate Judiciary Committee on March 6, 2013 stated: "I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indicators that if you prosecute, if you bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy." The US prisons are filled with inmates imprisoned on drug charges with lengthy sentences which means that

they are eminently prosecutable as they amount to nothing in the scheme of things. A significant number of inmates imprisoned on drug charges are from minority races which means that they are not only eminently prosecutable but disposable humans in the policing of minorities in the US. The evidence is now clear that being eminently untouchable in the US and the North Atlantic has a class and race definition to it as is the polar opposite. The message is clear Black lives don't matter powerfully illustrated by the arrogance of HSBC Bank's illicit organised crime enterprise with impunity. In your face!

George Osborne then UK Chancellor of the Exchequer wrote to then Chairman of the US Federal Reserve System by way of letter dated September 10, 2012 as stated in the Report. In this letter Osborne posited that prosecution of Standard Chartered Bank (SCB) and HSBC both headquartered in the UK will result in financial instability in the UK and possibly contagion in world financial markets. Osborne in his letter calls for a settlement based on a DPA to be made by US regulatory agencies with both banks to avoid financial instability and possible contagion. The flow between Osborne's discourse and that of the Obama administration is striking especially in the choice of solution made by the Obama administration. The overriding imperative in the US and the UK is political control of the state hence electoral sustainability and the pursuit of the war on drugs is an instrument subservient to the imperative of political survival. One can stretch it out further and posit that the rule of law is subservient to the imperative of political survival pointing to the ongoing tension between law and power. Globalised neo-liberal financial giants that can unleash havoc on economies captured by global financial markets and their players pose grave threats to political survival and are therefore above the law as impunity is granted liberally by captive states. These realities long known the evidence of which is now bolstered by the get out of jail free card handed to HSBC Bank. The get out of jail free card also signals the integration of the proceeds of illicit trafficking into licit financial markets and their players which signals the futility of the war on drugs. The most potent challenge facing all illicit enterprises is not evading interdiction but creating and utilising sustainable channels into licit financial structures to wash their illicit funds. The fact that the illicit trades are flourishing the world over indicates the potency of the laundries that the licit financial systems run for them the world over. The war is but a cruel game.

The December 11, 2012 DOJ press release states: "A four-count felony criminal information was filed today in federal court in the Eastern District of New York charging HSBC with wilfully failing to maintain an effective anti-money laundering (AML) program, wilfully failing to conduct due diligence on its foreign correspondent affiliates, violating IEEPA and violating TWEA. HSBC has waived filing of the federal indictment, agreed to the filing of the information and has accepted responsibility for its criminal conduct and that of its employees." HSBC was never charged as no indictment was laid in federal court hence no grand jury was empanelled to review the evidence against HSBC Bank. In the four-count felony, criminal information HSBC Bank was never cited for wilfully running an illicit enterprise that involved money laundering especially the proceeds of drug trafficking. The four count felony information does not match the gravity of the crime unearthed especially the fact that HSBC Bank's actions constituted an organised crime illicit enterprise. The press release of the District Attorney's Office of New York (see Report) on HSBC states: "This conduct occurred within HSBC locations around the world, with the knowledge, approval, and encouragement of senior corporate managers and legal and compliance departments." This is the basis of an organised crime illicit enterprise which got a get out of jail free card. The fact that no indictment was filed meant there were no charges to be laid in the public domain and no record of evidence placed in the public domain. The DPA was crafted to then consign the evidence collected against HSBC to the shady world of state secrets for the protection of parties involved and the common good. The Report states: "Attorney General Lynch and Secretary Lew remain in default of their legal obligations to produce the subpoenaed documents to the Committee" which flows with the measures taken to mask this transaction from the gaze of the public domain. The pressing question that arises then is: after this deal of complicity can the regulatory agencies of the US ensure that similar criminal enterprises are presently not operating within the financial structures of the US?

Appendix 15 of the Report contains the DOJ's settlement documentation transmitted to HSBC on November 9, 2012. Attachment A, Statement of Facts states: "There were at least four significant failures in HSBC Bank USA's AML program that facilitated the laundering of drug trafficking proceeds through HSBC Bank USA a. Failure to obtain or maintain due diligence or KYC information on

HSBC Group Affiliates, including HSBC Mexico b. Failure to monitor in countries that HSBC Bank USA classified as 'standard' or 'medium' risk, including over \$670 billion in wire transfers from HSBC Mexico c. Failure to monitor billions of dollars in purchases of physical U.S. dollars (banknotes) between June 2006 and July 2009 from HSBC Group Affiliates, including over \$105 billion from HSBC Mexico d. Failure to provide adequate staffing and other resources to maintain an effective AML program." HSBC USA failed to execute due diligence on the clientele and their business that the affiliates of the group were sending their way. HSBC USA failed to monitor \$670 billion in wire transfers and \$105 billion in the sale of US banknotes from HSBC Mexico. The very crucial importance of this operation to persons seeking to have dirty money washed and moved cannot simply be a case of failure to act but a case of failing to act to enable an illicit enterprise for profit and I daresay huge profits as 0.30 cents US on each dirty dollar washed at minimum. It walks like a duck quacks like a duck it is a duck. What financial institution with an operational presence in the US and Mexico is not conscious of the huge demand for competent money laundering services and the value of this service to drug traffickers and their obligation to build firewalls to insulate their institutions from corruption? HSBC built inadequate firewalls and engaged in a multi-billion \$ laundering operation with the knowledge of the group executives amounting to organised crime but walked away from prosecution with impunity. This impunity increases the pressure placed on the institution to continue its illicit laundry for the drug traffickers and intense pressure will be applied to the employees of the bank to comply. Impunity intensifies the engagement that then breeds an intractable problem so much for narrow personal political interests.

The document states: "from 2002 to 2010 HSBC Mexico reported the AML problem it was having up through the formal reporting lines to HSBC Group. During this time HSBC Mexico did not communicate-formally or informally- with HSBC Bank USA about its AML problems. After receiving these reports from HSBC Mexico, however, HSBC Group failed to inform HSBC Bank USA. Senior HSBC Group executives including the CEO, Head of Compliance, Head of Audit, and Head of Legal, were all aware that the problems at HSBC Mexico involved US dollars and US dollar accounts, but never reached out to their counterparts at HSBC Bank USA to explain the significance of the problems or the potential effects on HSBC Bank USA's business." The senior executives of HSBC Group failed to

address the grave weaknesses of HSBC Mexico's AML structure, failed to warn HSBC USA of the grave danger posed to the US bank by the weaknesses and to warn the US bank to bolster its AML structure which was deficient without the internal threat posed by HSBC Mexico, and failed to audit the daily operations of HSBC Mexico to determine what was actually going on at the bank despite the warnings received as a result the laundry at HSBC Mexico was never addressed. This is not a series of failures to act but criminal complicity at best at worst an organised criminal enterprise seeking plausible denial. The document states: "Despite warnings from Mexican officials in late 2007 and early 2008, HSBC Mexico exported more physical US dollars in 2008 than in any previous year, over \$4.1 billion. Finally, after the CNBV raised concerns directly with the HSBC Group CEO in November 2008, HSBC Mexico stopped accepting physical US dollar deposits at its branches." By addressing the Group CEO directly plausible denial was now dead forcing the need to act minimally but ceasing to accept formally US dollar deposits does not end the laundry. Clearly the Mexican authorities refused to act before being forced to raising the question of quality ongoing surveillance to ensure that the laundry has in fact been shut down as the need for competent laundries continue. Did the Mexican regulatory authorities bring charges against HSBC Mexico? Did they act because of the illicit laundry involving HSBC USA?

How then was HSBC Mexico accepting and storing the US dollars that it was selling to HSBC bank USA as banknotes some \$3 billion per year from 2004 to 2007? Under Mexican law there were restrictions on holding US dollar deposit accounts in banks unless they lived close to the US-Mexico border or were corporations operating in designated tourist zones. Mexican traffickers utilise these windows of opportunity one example being their dominance of the tourist plant of Cancun but these windows don't explain HSBC Mexico's sale of US banknotes to HSBC USA from Culiacan, Sinaloa as it is not a border town or a designated tourist zone what it is the mythical homeland of the Sinaloa Federation. Where then were the Mexican regulators? The most potent legal mechanism of the HSBC laundry was the HSBC Cayman Islands offshore US dollar accounts. Under Mexican law it is legal for stipulated citizens to hold offshore US dollar accounts which enabled HSBC Mexico to offer such service in the Cayman Islands but HSBC Mexico had no operational presence in the Cayman Islands as a result all services for these offshore accounts were provided in Mexico via HSBC

Mexico's network of branches. Account holders made deposits of US cash to their accounts in Mexico at HSBC branches and these funds were managed by HSBC Mexico in the Cayman Islands from Mexico holding the deposits in Mexico and moving the cash from Mexico a laundryman's ultimate wet dream. The document states: "By 2008, there were 35,000 Cayman Islands US dollar accounts. At least 2,200 of these accounts were designated high risk due to suspicious activity with the accounts and/or negative information regarding the account owners. The average monthly deposit for these high risk accounts alone was \$205 million." US dollars in these offshore Cayman Islands accounts entered the world financial system via this portal created by HSBC Mexico and HSBC Group not only the US. The export of US banknotes to the US is the weakest arm of laundering the proceeds of the illicit drug trade in Mexico and the US. This need for washed US dollars is a weakness created by the operational methodology of Colombian traffickers which Mexican transnational trafficking organisations (MTTOs) have relentlessly moved to eliminate from their operations by controlling their own production facilities for the illicit products they market at various locations outside of the traditional Latin American drug production structure. What the MTTOs specialise in is the movement of cash generated by drug sales by specialist cash trafficking units to multiple laundering points in the world financial system.

The export of US banknotes from HSBC Mexico to HSBC Bank USA was the grave operational weak point that enabled the El Dorado Task Force of US ICE to penetrate the money laundering operations of drug traffickers that led to the laundry and the criminality of HSBC Mexico, HSBC Bank USA and HSBC Group. The MTTOs dominate drug trafficking into the US therefore the so-called Colombian drug cartels operating in the US in this period are affiliates of the MTTOs and the use of the black market peso exchange (BMPE) to move the proceeds of drug trafficking to Colombia did not involve the MTTOs. This was a specifically Colombian trafficker's tradition that the MTTOs had no need to utilise. The document states: "The drug trafficking proceeds (in physical US dollars) deposited at HSBC Mexico as part of the BMPE were sold to HSBC Bank USA through banknotes. In addition, many of the BMPE wire transfers to exporters in the United States passed through HSBC Mexico's correspondent account with HSBC Bank USA. As discussed above from 2006 to 2009, HSBC Bank USA did not monitor banknotes transactions or wire transfers from HSBC Mexico. As a result, the drug

trafficking proceeds flowed into the United States undetected as they were laundered in massive quantities through HSBC Bank USA.” The document states: “at least \$881 million being laundered through the US financial system” which is simply an estimate as it was most likely much more. Dirty US dollars dropped off at HSBC Mexico is sold to HSBC Bank USA with the returns from the sale of dirty dollars received as clean, licit US dollars credited to mirror accounts both offshore and onshore which were fed into the trafficking enterprise moving illicit drugs to US drug markets clearly illustrating that the war on drugs is at best a GAME.

It is then evident that the war on drugs is a multifaceted instrument utilised by the state and political elites to attain a variety of ends at times in conflict with each other. The agreement with HSBC Bank USA by the Obama administration is proof of the reality that the pursuit of the war on drugs has limits to action and the gravest limit is the preservation of the globalised financial order. When actors within this order integrate the proceeds of the illegal drug trade into the globalised, neo-liberal financial order then this illicit enterprise becomes immune from attempts to dismantle its operations at the senior executive level. The fact that illicit drug trafficking continues to expand and evolve in spite of the war on drugs affirms this position. What is left is an instrument that uses the drug trade as justification to surveil, police and discipline the “recalcitrant” groupings of the social order. Where these “recalcitrant” groupings have within their ranks race minorities then it becomes a racist instrument to surveil, police and “discipline” race minorities that pose a threat to the hegemonic order of white privilege. The prisons are then filled with members of these “recalcitrant” groups doing lengthy prison time for possession and trafficking whilst those of the globalised, neo-liberal financial order pursue the agenda with impunity. Such is the nature of power and power relations. When you fail to exercise power it abandons you as it is only made manifest when exercised. Anabel Hernandez in “Narcotland the Mexican drug lords and their godfathers” with great relevance states: “Semi-illiterate peasants like El Principe, Don Neto, El Azul, El Mayo, and El Chapo would not have got far without the collusion of businessmen, politicians, and policemen, and all those who exercise everyday power from behind a false halo of legality. We see their faces all the time, not in the mug shots of most wanted felons put out by the Attorney General’s Office, but in the front page stories, business sections, and society columns of the main papers. *All of these are the true*



*godfathers of Narcoland, the true lords of the drug world.”* I say no more case closed.

#### REFERENCES

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