

**THE MONEY LAUNDERING PHENOMENON: PREVENTIVE LEGAL MEASURES
AND PRACTICAL PROBLEMS OF IMPLEMENTATION.
A STUDY OF KENYA.**

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DECLARATION

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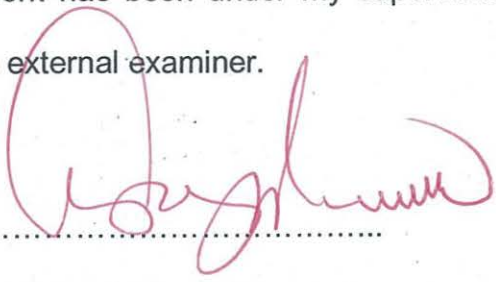
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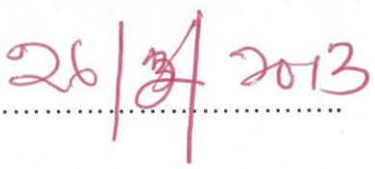
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APPROVAL

This piece of work has been under my supervision and now it is ready to be submitted to the external examiner.

Signature 

Supervisor: Mr. Ajayi Gbenga

Date 

DEDICATION

This book is dedicated to my parents Margaret Ngala and Stanslous Baya whose love, support and interest in what I was doing enabled me to endure and overcome all the hardships. You still remain a source of inspiration to my heart.

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I would like to thank the almighty God for granting me good health, grace, love, care and knowledge for I have registered success all through. Glory and honor be unto him.

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LIST OF CASES

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2. Amaigamated Metal Trading v City of London Police (2003) 1 WLR 271
3. Three Rivers District Council and Others v the bank of England (2004)
UKHL 48 at 111
4. Salomon v Salomon (1897) AC 22

LIST OF STATUTES

1. The proceeds of crime and Anti money Laundering Act, 2009.
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1. Basle Statement of Principles
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3. Financial Action Task Force (FATF)
4. The United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance.

LIST OF ACRONYMS

AML	-	Anti money laundering
CFT	-	Combating the financing of terrorism
FATF	-	Financial Action Task Force
IMF	-	International Monetary Fund
CDD	-	Customer Due Diligence
POCAMLA	-	Proceeds of crime and Anti money Laundering Act.
FIU	-	Financial Intelligence Unit
KYC	-	Know your Customer
PEPs	-	Political Exposed Persons.

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ABSTRACT

Money laundering is a global phenomenon. Globalization and technology have resulted in an increase in international commerce, capital flows and the movement of goods and services across borders.

Such factors have also increased opportunities to launder money and reintegrate the proceeds of crimes into the legitimate economy, in response to such developments as well to perceive threats to the national economies. Although Kenya recently enacted a legislation to combat money laundering, it has not really served the intended purpose bringing worries about this malaise which is yet to reduce.

It is these worry which stimulates this discourse and which galvanizes this piece to advocate for more global actions against the scourge of money laundering not only in Kenya but across the world.

CHAPTER ONE

1.0 INTRODUCTION

A stable financial system is one of the most important factors for the continued growth of any economy¹. Today in the wake of the recent financial crisis in Africa and their contagious effects, the stability of the financial system has become the issue of global concern². In the 1997 report of the 9-10 on Financial in Emerging Market Economies, it was concluded that a financial system that is robust is less susceptible to the risk that a financial crisis will erupt in the wake of real economic disturbances and is more resilient in the face of crisis that do occur³. While financial crises can erupt in developed financial markets as well as those of emerging economies, experiences over the past decade have shown that those crises are more likely to occur in the later than in the former. For emerging economies, the 9-10 Report noted that banking and financial crises can have serious repercussions in terms of heightened macro-economic instability reduced, economic growth and a less efficient allocation of savings and investments⁴. Hence for these countries the stability of financial is crucial for their sustainable economic development.

A country cannot, however, have a stable financial system without also maintaining its financial integrity. It has been noted that one of the most valued assets held by

¹ Joseph J. Norton international cooperative efforts and implications for law reform in bank failures and Bank Insolvency in Economies in Transition (Rosa M. Lastra and Henry N.)⁴th edition, 1999 at P.g 156.

² JOSEPH J, Norton, Devising International Bank Supervisory Standards. (1995) at pg 45

³ Report of the 9-10 Working Party on Financial Stability in Emerging Market Economies, a strategy for the formulation, adoption and implementation of sound principle and practices to strengthen financial systems.

⁴ Ibid

investors, financial institutions are a reputation for integrity, soundness, honesty and adherence to standards and codes.

However, various forms of a financial system abuses, financial crime, and money laundering may compromise the reputation of financial institutions and jurisdictions undermine the trust of investors, and weaken the financial system.⁵

The protection of the system from these sorts of abuses is generally known as the protection of the integrity of the financial system. The financial stability and financial integrity therefore are inextricable linked.

The connection between them is under scored by the Basel Core Principles for Effective Supervision and in the Code Good Practices on Transparency in Monetary and Financial Policies⁶.

Among many forms of financial systems abuses, money laundering is of the most concern nowadays. Economic damage to the reputation of a country from being lack of integrity because it is used as a laundering channel can affect the willingness of economic agents, particularly those outside the country, to conduct business with it, for example, making investments or set up banking correspondent relationship.⁷ Adverse effects may also be outwards. A country or jurisdiction whose lack

⁵Back ground paper on financial system abuse, financial crime and money laundering, IMF at pg 8-9 (12 Feb 2001)

⁶These would refer to those principles and that most directly address the prevention uncovering and reporting of financial system abuse, including financial crime and money laundering in particular the Basel core principles 14, 15, 18, 19 and 21 the guidelines on central bank, internal governance and audit on the public officials and on the accountability and assurance of integrity by financial institutions contained in the code of good practices on transparency in monetary and financial policies.

⁷Ibid

of integrity is noted will find it very difficult to get access to foreign capital, for example, by way of offering shares in foreign markets.

For emerging economies that generally depend on foreign investments to fund their own development processes, the damage to the reputation in this respect may seriously upset the economic development in these countries. Money laundering also increases their potential for a country to get into financial instability. The movements of funds for laundering purposes are likely to be temporally⁸.

Banks and financial institutions involved in money laundering are likely to develop unstable liability base and unsound asset structure which would expose the financial system to the increased risk of instability within a country.

The danger of money laundering to the integrity and stability of bank is explicitly recognized in the preamble of the Basel Statement of Principle for the Prevention of Criminal Use of the Banking System for the Purposes of Money Laundering 1988. It was stated in the Basel committee that:

“Public confidence in banks and hence their stability, can be undermined by their adverse publicity as a result of inadvertent association of banks with criminals.”

It is clear that money laundering must be effectively controlled. In developed countries such as the United Kingdom and United States of America, measures to fight against money laundering have been in place for quite sometime. This is not the case in many emerging economies which have just started to address the problem. One of the

⁸A mode of best practice for combating money laundering in the financial sector common wealth secretariat (2000)
At,pg 5.

reasons may be that the implementation and the enforcement of counter measures against money laundering in the developed markets has driven criminals to turn on these emerging economies to launder the proceeds of crime. Since their financial system is not robust and may easily run into crises, money laundering poses a serious threat to their financial stability and it follows that there is a pressing need for them to effectively control money laundering.⁹

There are two more reasons why the emerging economies should fight against money laundering. First, as earlier noted, these countries generally need foreign investments to fund their own development process. To attract foreign investments, countries must have a system free of corruption and organized crimes. However, these countries often have severe and wide spread corruption problems. To fight against money laundering would help them to attract more foreign investments. Second financial markets around the world are now integrated. As result, money laundering is an international problem.

The success of the control of money laundering in particular and therefore, organized crime in generally will rarely be realized, if efforts to contain it are of national dimension. Thus the emerging economies should join developed nations in fighting against money laundering.

In fighting against money laundering, a number of legal measures must be provided to law enforcement agencies. As today recognized, they comprise of preventive and repressive (criminal) measures.

⁹Indeed the Control of Money Laundering is a necessary part of the larger scheme to the financial sector law reform in emerging economies to ensure the stability of the financial system.

JOSEPH. J NORTON, FINANCIAL SECTOR LAW REFORMS IN EMERGING ECONOMIES 29 (2000) at pg 5

On the prevention, those providing financial services are to conduct a number of duties that is customer identification, due diligence with regard to transactions, recordskeeping, transactionreporting and compliance programs. On the repressive side, countries are to criminalize money laundering, enable confiscation of proceeds located abroad.

At present, many emerging economies have laws providing for those measures.

However, the success of the control of money laundering depends not only on whether those measures exist under the law but also on whether, at a practical level, they are capable of being enforced. So far as concerned emerging economies,these measures are relatively new. It is very likely that problems at the enforcement stage are to happen and if they are not properly addressed the control of money laundering in Kenya will not be effective or successful.

1.1 BACKGROUND AND HISTORICAL PERSPECTIVE

Money laundering is the process by which large amounts of illegally obtained money (from drug trafficking, terrorist activity or other serious crimes) is given the appearance of having originated from a legitimate source.

Money laundering is the basis by which, the perpetrators of criminal or illegal acts to exert control over the proceeds of their activities without drawing attention to the underlying criminal acts.¹⁰

¹⁰Deitz.A. &Buttle. J: Anti money laundering handbook. Sydney : Thomson Lawbook co 2008. Pg 4

In the UK and other common law jurisdiction as well in the EU¹¹ money laundering generally amounts to taking action with any form of property¹², derivative of a criminal act that will disguise the fact that property is the proceeds of a crime or obscure its beneficial ownership¹³. In other jurisdiction, such as the US money laundering is engaging in financial transactions to conceal the identity, source, or destination of illegal gained money, where as in the other cases the offence of handling the proceeds of crime, suffices to include money laundering.¹⁴ It has been estimated that laundered monies account for between 2 to 5 percent of the world's gross domestic product. Money laundering plays a fundamental role in facilitating the ambitions of the drug trafficker, the terrorist, the organized criminal, the insider dealer, the tax evader as well as the many others who need to avoid the kind of attention from the authorities that sudden wealth brings from illegal activities.

Kenya is one of the countries that have enacted counteractive laws with regard to money laundering. Kenya's money laundering is governed by the Anti Money Laundering Act of 2010. This law seek to create a comprehensive legislative framework to combat the offence of money-laundering and to provide for the identification of, the tracing of, the freezing of, the seizure of and eventual confiscation of the proceeds of all crimes including drug trafficking and corruption and economic crimes and to establish a financial reporting center and assets recovery agency, to criminalize money laundering

¹¹As under definition given under article 1 of council of directive 91/308/EEC money laundering is 'the conversion or transfer of property derived from criminal activity for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity in evading the legal consequences of his action..'

¹² Article 3(3) 2005/60/EC

¹³ Proceeds of Crime Act 2002 part 7 and The Money Laundering Regulations 2007.

¹⁴Deitz.A. &Buttle.J. Loc. Cit

to require financial institutions, designated non financial businesses and professions to take prudential measures to help combat money laundering and for other connected purposes.

The historical evolution of money laundering as provided by Bill Steel in his article on money laundering could be traced to Mafia ownership of Laundromats in the United States. Gangsters were earning huge sums of money in cash from extortions, prostitution, and gambling. They needed and were expected to show a legitimate source or sources for this money.

They were able to succeed by purchasing outwardly legitimate business and these gangsters chose mixing them with their illicit earnings and Laundromats because they were cash businesses. This was an advantage to someone like Al Capone who purchased them. It was an increasing awareness of the huge profits generated from this criminal activity and a concern at the massive drug problem in western society, which created the impetus for government to act against the drug dealers by creating legislation that would deprive them of their illicit gains.

Al Capone, however, was prosecuted and convicted in October 1931 for tax evasion. It was for this reason rather than the predicate crime that he was sent to prison.

It seems, however that the conviction of Al Capone for tax evasion may have been the trigger for getting the money laundering business off the ground. Meyer Lansky was particularly affected by the conviction of Al Capone for something as obvious as tax evasion. Determined that the same fate would not befall him, he set about searching for ways to hide money. Therefore, the history of modern day money laundering could be

traced as far back as the 1930's, following the activities of Mayer Lansky who introduced in 1932, an off-shore account in a Swiss bank. The account was used to hide the profits or proceeds of the illegal activities of Governor Huey Long of Louisiana, United States of America. Lansky later established slot machine houses in New Orleans. The Swiss bank provided funds as 'loans' to Lansky & Co., thereby allowing the return of "illegal" money into the United States of America.

The use of the Swiss facilities gave Lansky the means to incorporate one of the first real laundering techniques, the use of the 'loan-back' concept, which meant that hitherto illegal money could now be disguised by 'loans' provided by compliant foreign banks, which could be declared to the 'revenue' if necessary, and a tax deduction obtained into the bargain. Subsequently, this phenomenon was given consideration during the Second World War, when some Nazi officers carted away war loots and stacked them in secret bank accounts in Switzerland. Since then, the phenomenon of money laundering has developed both in patterns and manifestations, and further entrenched by technological advancement¹⁵. Money laundering, as an expression, is one of fairly recent origin. The original sighting was in newspapers, reporting the Watergate scandal in the United States in 1973. The expression first appeared in a judicial context in 1982 in America in the case of **US v. \$ 4,255,625.39**¹⁶. The case was an appeal from the United States District Court for the Southern District of Florida.

This appeal involved two civil forfeiture cases, consolidated in the court below, and it arose under 21 U.S.C. Sec. 881 (a) (6), which applies to the proceeds of

¹⁵Adewale, A. O (1997) History and Definition of Money Laundering"

¹⁶(1982) 551 F supp. 314

narcotic transactions, and 31 U.S.C. Sec. 5317, which applies to currency transported across the borders of the United States without the filing of a required report. Acting under these two statutes, the District Court ordered the forfeiture to the United States of \$ 4, 255,625.39 in currency and \$3,686,639 in funds on depositing a bank account. Claimant Beno Ghitis, whose company, owned both the currency and the bank account, appealed from the District Court's judgment, asserting that 21 U.S.C. Sec. 881 (a) (6) was inapplicable because first, government failed to prove a "substantial connection" between the forfeited money and narcotics transactions; secondly, the money did not constitute the "proceeds" of such transactions and third, Ghitis had no knowledge of such transactions. However Ghitis also claimed that 31 U.S.C. Sec. 5317 did not apply because first, the forfeited money did not cross the United States border, secondly, the money was not "in the process of transportation" when it was seized, third, the funds on deposit in the bank account did not constitute a "monetary instrument", and lastly there was no evidence that whoever may have transported the money knowingly failed to file the required reports.

Numerous additional claimants holding cheques written on the forfeited bank account appealed from the District Court's entry of summary judgment against them.

The Appeal Court held that both the currency and the funds in the bank account were forfeitable under 21 U.S.C. Sec. 881 (a) (6).

The government then demonstrated a "substantial connection" between the forfeited money and narcotics transactions, and Ghitis failed to prove that he lacked knowledge of such transactions. In view of these conclusions, the appellate court

did not address Ghitis' argument concerning the applicability of 31 U.S.C. Sec. 5317. And finally, the court held that the District Court did not err in entering summary judgment against those persons holding cheques written on the forfeited bank account.

It thus affirmed the judgment of the court below ordering forfeiture of both the currency and the funds in the bank account to the United States.¹⁷ This then marked the origin of popular usage of the term money laundering at the world stage.

1.2 STATEMENT OF THE PROBLEM

Although there has been the presence of appropriate legal framework in Kenya it is still difficult to fully implement the laws to prevent the occurrence of money laundering, in the financial and commercial sectors and all other spheres prone to money laundering such as the markets, casinos, business dealers to mention but a few.

This has been due to various challenges such as the loopholes in the law, important people using their positions and powers to achieve their selfish desires which weaken the social fabric, collective ethical standards, and the democratic institutions of society, bringing the economy down.

The world is changing very fast and so does the launders of money get more and new ideas each day to accommodate the changing dynamics such as the new technologies. The law should be steadfast in updating the legal framework to also be fit to deal with the new changes which money laundering brings.

¹⁷<http://ftp.resource.org/courts> viewed on 24th October 2012.

1.3 OBJECTIVES OF STUDY

The main objective of the study is to find out the effectiveness of money-laundering laws with regards to the preventive measures and the practical problems of implementation.

The extent of money laundering in Kenya.

The effectiveness of money laundering regulations in Kenya.

The preventive measures.

Practical problems of implementation.

1.4 RESEARCH QUESTIONS

In the course of the study, the researcher shall endeavor to answer the following questions so as to establish the preventive measures in Kenya and further propose solutions to the said problem. This shall include;

What is money laundering?

What are the causes of money laundering?

Does the Kenyan legal system have express provisions on preventing money laundering?

How has the principle of client advocate privilege contributed to money laundering?

Is there a platform to ensure the challenges of preventing money laundering are overcome?

1.5 SCOPE OF THE STUDY

This study shall focus on the preventive measures of money laundering and the challenges of implementing it in Kenya and also to discuss the other international legislations that have been put in place for the same effect.

Reference to scholarly work on the topic will also be of importance in finding solutions to the problems of implementing the preventive measures.

1.6 SIGNIFICANCE OF THE STUDY

This paper is significant to the government, institutions and to people both inside and outside the legal profession as it seeks to identify the preventive measures of money laundering as well as identify the challenges posed in prevention and possible solutions to it. The significance includes:

It will help create awareness of money laundering amongst the people so that they can understand its existence as a white collar crime.

It is going to provide a good platform for the courts to enforce proper mechanisms to ensure the money laundering crime is prevented and that the challenges are overcome.

That the legal framework in Kenya can work hand in hand with the international legislations to ensure money laundering is prevented, since money launderers use crime proceeds by transferring it to other countries through the various financial institutions present in the markets

It is also a relevant study to other countries in the continent faced with the challenge of preventing money laundering, and to also encourage other countries like Uganda who have not implemented anti money laundering laws to do so, so as to create integrity in their financial sector and encourage foreign investments to raise their economy.

It will identify the loopholes of the present law and proffer recommendations to the legislature to fill in the gaps.

1.7 RESEARCH METHODOLOGY

The research shall mainly involve a study of scholarly work that has already been done on the topic. Much reference will be made to international legislations which were already in place to ensure prevention of money laundering globally.

The research shall also involve interviews of persons with knowledge of money laundering; their opinion on what sustains money laundering, its causes and how the principle of "client advocate privilege" in the justice system contributes to money laundering.

First-hand evidence such as interviews is accurate and shall establish the real situation on the ground with a view to establish that indeed the laws in Kenya really intend to prevent money laundering and that the challenges of implementation are being overcome.

The internet shall be very resourceful to the researcher who shall access materials globally with the aim of producing quality recommendation that are compliant with international standards.

CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 DEFINITION AND NATURE OF MONEY LAUNDERING

The word "money laundering" is used to describe the investment of profits or transfers of funds made from criminal activities or illegal sources into legitimate or legal business, so that the original source becomes difficult to trace. Thus, to "launder money" that has been obtained illegally means to pass it through a legitimate business or to send it abroad to a foreign bank; so that nobody knows that it was illegally obtained.¹⁸ However, there are variations from the various definitions of the concept of money laundering.

Money laundering has generally been defined as the process of converting or transferring criminal proceeds with the intention of disguising their illicit origin¹⁹. The extent of the problem becomes clear, considering that, in 1996, the International Monetary Fund (IMF) estimated the money laundering business at around 2-5 per cent of the world's gross domestic product²⁰, which amounts to up to US\$1.5 trillion²¹. Moreover, it is claimed that the money laundering business is the third biggest industry worldwide following "the international oil trade and foreign exchange"²².

In one of the definitions it says conversion transfer of any property, knowing such property is gotten from drug related offense or even acting in the scheme to conceal the

¹⁸ Ohanye A.N a paper on strategies in combating money laundering in the financial system presented at national Seminar on economic crime in Nigeria on 22 July, 2002 pg 1-4.

¹⁹ UN, article on money laundering in 2000: article 3(a)(i)

²⁰ Amdessus, M 1998 Capital Account regulations and the role of the fund at the national press club, April 2 1998 pg 2

²¹ Financial Action Task Force quoted Kern Alexander, "International Anti- Money laundering control" Vol 4 No. 3 (2001), p. 233

²² Preller, Strategies in combating money laundering and ways forward. (2007) Pg 234.

true information of the origin of such property in order to protect such person from facing the legal consequences of his/her action.

Okogbule in his article on money laundering in 2007 defined money laundering as a way where funds are obtained from illegal sources, and put into an account that cannot be traced for possible action. Money laundering has also been described as "the processing of funds derived from illegal or illegitimate sources, through legal financial channels with a view to legitimizing and concealing or disguising the source of such funds"²³.

It is worthy to observe that the United Nations' (UN) definition fits into the foregoing premise. It therefore defines money laundering as "The conversion or transfer of property knowing that such property is derived from an offence, for the purpose of concealing or disguising the illicit origin of the property, or of assisting any person who is involved in the commission of such an offence to evade the legal consequences of his actions."²⁴

On the other hand Robert Powes Opines defined money laundering as "The use of money derived from illegal activities by concealing the identity of the individuals who obtained the money, converted it to assets that have come from a legitimate source."²⁵ This means the conversion of money illicitly obtained or the proceeds of illicit

²³AjayiOlukonyisola and OsosamiSimisola, 2007. Nigeria: On the trail of Spectre - Destabilisation of Developing and transitional Economies. Journal of Money Laundering Control, vol. 1, No. 4, pp. 342-35.

²⁴Document and the UN Global Program Against Money Laundering, VichaAustrali, 1999pg 12.

²⁵A paper on History, Stages and International Prevention against Money Laundering presented at a seminar in Nigeria on 6-7May 1996. At Pg. 1

transactions into clean money through legitimate transactions, thus concealing the criminal origin of the money.

Adewole A.O, a Nigerian writer defines money laundering as an “illegitimate attempt to legitimize acquisition.”²⁶He went ahead to state that, money laundering is the washing of dirty money clean in order to cover its dirty origin. The need to launder money arises because its origin is criminal and therefore illegitimate assets²⁷.Adewole concludes that, the integration of illicit funds into the main- stream of legitimate finance in order to conceal the criminal sources and nature of such funds, and ultimately make the funds look clean. It is the smuggling in, of funds with criminal stain into the channel of the legitimate financial system.²⁸

According to Robinson,Money laundering is called what it is because that perfectly describes what takes place – illegal or dirty money is put through a cycle of transactions, “or washed” so that it comes out the other end as legal or clean money. He states that the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income.²⁹

²⁶Mu' Azu A Umar, “effects of money laundering on the global economy and international efforts to fight it, A paper presented at a conference, in Nigeria in 2003 Vol. 1 pg. 2.

²⁷ Jeffrey Robinson” laundrymen:London pocket at pg 15.

²⁸ Javier carcia, “International measures to fight money laundering”. .Journal of money control, vol. 3 no 1 (2000) pg 37.

²⁹Ibid pg 17.

The common elements amongst all the definitions of money laundering are “the transfer of illegal assets (funds) into the official economic system.”³⁰

The Black’s Law Dictionary defines Money laundering as “the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced.”³¹

Money laundering, therefore, may be generally defined as making the funds used in, or resulting from, criminal activity appear legitimate.³² Although drugs are an important factor behind money laundering, it is not limited to drug related activities. Money laundering facilitates all manner of crimes, including terrorism, extortion, kidnapping, bribery, corruption, immigrant smuggling, fraud, robbery and tax evasion.³³ In fact, large scale criminal activity would only be able to operate at a fraction of current levels without the ability to hide and move, through various laundering techniques, the enormous wealth that it generates.³⁴

Billy Steel also describes money laundering as the crime of the ‘90s’ and states that:

Money laundering is sleight of hand... a magic trick for wealth creation ... the lifeblood of drug dealers, fraudsters, smugglers, arms dealers, terrorists, extortionists and tax-evaders. It is also the world’s third largest business

³⁰ Javier Garcia, “International Measures to Fight Money Laundering”, Journal of Money Control, Vol. 3 No. 1 (2000), p. 37.

³¹ Black’s law dictionary at pg 230

³² International chamber of commerce, guide to prevention of money laundering Vol. 6, 199 at pg 15..

³³ James D. Harmon, Jnr, “United States Money Laundering Laws: International Implications” L. 1,2 (1988)pg 43

³⁴ Billy’s Money laundering Information Website: [http:// www.laundryman.u-net.com](http://www.laundryman.u-net.com), retrieved on 26th January 2013.

The Financial Action Task Force (FATF), the only international body solely designed to combat money laundering, defines money laundering as: The conversion or transfer of property knowing that such property is derived from an offence, for the purpose of concealing or disguising the illicit origin of the property, or of assisting any person who is involved in the commission of such an offence to evade the legal consequences of his actions.

Money laundering is being employed by launderers worldwide to conceal criminal activity associated with it such as drug/arms trafficking, terrorism and extortion. From an estimate of the International Monetary Fund, the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's gross domestic product.³⁵ Money laundering is known as the "alternate economy", thriving as world third largest business after foreign exchange and natural gas³⁶. Part of the difficulty in seizing these culprits relates to the particular quality of money: Money is the fungible of all commodities. It can be transmitted instantaneously and at low cost. It can change its identity easily and be traced only with great effort...These characteristics work to the disadvantage of governments and their efforts to tax, regulate and control economic activity.³⁷

³⁵Ganash' "Overview of Money Laundering" on <http://rbdocs.ribs.org.in/ribadmin/script/BTC> Display Retrieved On 26/12/2012

³⁶Jeffry Robinson "The Lundrymen":(London: Pocket, 1998), p. 15.

³⁷Launrese Krause quoted in Phil William, "Transactional Criminal Organizations and International Security", survival Vol. 36, No 1 (spring 1994),pg. 318.

Sulltzer suggest that money laundering is the process of taking the proceeds of criminal activity and making them appear legal³⁸. Laundering allows criminals to transform illegally obtained gain into seemingly legitimate funds. It is a worldwide problem, with approximately \$300 billion going through the process annually in the United States. The sale of illegal narcotics accounts for much of this money. Those who commit the underlying criminal activity may attempt to launder the money themselves, but increasingly, a new class of criminals provides laundering services to organized crime. This class consists of lawyers, bankers and accountants. The absence of, anti-money laundering regime in a particular country permits criminals and those who finance terrorism to operate using their financial gains to expand their criminal pursuits and fostering illegal activities such as corruption, drug trafficking, illicit trafficking and exploitation of human beings, arms trafficking, smuggling, and terrorism. It was from an increasing awareness of the huge profits generated from this criminal activity and a concern at the massive drug abuse problem in western society, which created the impetus for governments to act against the drug dealers by creating legislation that would deprive them of their illicit gains.³⁹

³⁸Sultzer, Scott Money Laundering: The scope of the problem and attempts to combat it, "Tennessee Law Review 1995 at pg 63..

³⁹African Journal of Law and Criminology Vol. 1 number 1 pg 116 of 2011.

2.2 THE PROCESS OF MONEY LAUNDERING.

Money Laundering techniques have become so complex and fluid that the perpetrators are always very cunning in circumventing the laws. They avail themselves of information/communication technology such as internet connectivity to perpetrate the crime.

The process of money laundering is accomplished through three processes namely: placement, layering and integration.⁴⁰

Placement

This is the first stage in the money laundering process where illegally obtained monies from say, drugs business, piracy, corruption and other related business, piracy, corruption and other related scandals are channeled into the financial system. This being a stage where the money is most vulnerable to detection and seizure, the culprits struggle to introduce the unlawful proceeds into the financial system or retail economy without attracting attention of financial institutions or law enforcement. This practically is actualized by removing the cash from the location of acquisition so as to avoid detection from authorities and then transmit it into other asset forms. These proceeds are placed into the economy through financial institutions, insurance companies, casinos, shops, bureau de change and other businesses, both local and abroad.

This for example may also be done by converting the proceeds to travelers cheques, money orders, postal order etc. in order to disguising the source of the proceeds.⁴¹

⁴⁰African Journal of Law and Criminology Volume 1 Number 1, pp 116 -130 (2011)

⁴¹Akpala, E. P. & Amusu, H. O. "Money Laundering and other Financial Crimes". Paper presented at the 1997 Bank Examination Conference held at CBN Training Centre in Lagos on 9th October, 1997.

Placement may also involve the introduction of the proceeds of criminal activity into the main stream financial system. This may involve the opening of bank account with genuine or fictitious names and the subsequent lodgment of funds in the account; or funds exported or cash used to buy high value goods, property or business assets. It is also involves importation of goods at deliberately inflated price and the actual price is deposited offshore and repatriated as they (perpetrators) wish. Placement may also be by way of smuggling or shipping large amount of currencies out of a country. It includes conversion of currency to commodities and making physical deposits in the bank⁴².

Layering

This process involves the creation of a complex layer of financial transactions with the aim of evading the audit trail. It describes an activity intended to obscure the trail which is left by illegitimate proceeds. Here the money launderer endeavor' to separate illegally obtained assets or funds from their original source. In the course of this stage, a launderer may conduct a series of financial transactions in order to build multifaceted layers between the funds and their illicit source. Movement of illicit funds between accounts, business and buying and selling assets locally and internationally actualizes this stage. For example a sequence of bank to bank funds transfer would constitute layering.⁴³

It is worse where the transactions of this nature involve fund transfer between tax haven and bank secrecy jurisdictions because it makes it difficult for government agencies to

⁴²supra

⁴³ Ibid at pg 21

follow the trail of money. The more transactional layers are created, the more difficult it becomes for anyone, such as auditors to trace the original source of illicit funds and therefore anonymity, is achieved. This sheer volume of daily transactions and the high scale of anonymity available render the probability of laundering transactions being traced to miniscule.

Due to these big numbers of wire transactions, the law enforcement agencies rely on banks, insurers, bureau of exchange and other financial institutions to tip them off through suspicious transactions reports. However, this is not always fruitful since the money launderers either have great influence on the particular financial institutions, insurance companies or even own the same.

Integration

This refers to the reinvestment of those funds in an ostensibly legitimate business so that no suspicion of its origins remains and to give the appearance of legitimizing the proceeds. Having been placed initially as cash and layered through a number of financial transactions, the criminal proceeds are now fully integrated into the financial system and can be used for any purpose. This is commonly actualized by intergrating the illicit funds with other proceeds from legitimate commercial activities as they enter the mainstream economy.

This stage involves the recycling of the laundered wealth to the direct benefit of the launderer to appear as if it was derived from legitimate activity. It may involve the selling off of some valuable items, which were purchased during the layering process. It may

also involve false loan repayments or forged invoices used as cover for laundered money. Here, income realized from property or legitimate business assets could be regarded as being clean.⁴⁴

2.3 METHODS OF MONEY LAUNDERING

People with a whole lot of dirty money typically hire financial experts to handle the laundering process and its complex by necessity. The whole idea is to make it impossible for authorities to trace the dirty money while it's cleaned.

There are however lots of money laundering techniques which authorities know about and probably countless others that are yet to be uncovered. Here are some of the popular ones:

Black Market Colombian Peso Exchange

This system is the "largest drug money-laundering mechanism in the Western Hemisphere and came to light in the 1990s. To avoid the Colombian government's taxes on the money exchange from pesos to dollars and the tariffs on imported goods, businessmen can go to black market "peso brokers" who charge a lower fee to conduct the transaction outside of government intervention. A drug trafficker turns over dirty U.S. dollars to a peso broker in Colombia. The peso broker then uses those drug dollars to purchase goods in the United States for Colombian importers. When the importers receive those goods and sell them for pesos in Colombia, they pay back the peso broker from the proceeds. The peso broker then gives the drug trafficker the equivalent

⁴⁴ An article on money laundering by bill steel on Pg 2

in pesos (minus a commission) of the original, dirty U.S. dollars that began the process.⁴⁵

Structuring deposits.

Also known as **smurfing**, this method entails breaking up large amounts of money into smaller, less-suspicious amounts. In the Kenya, this smaller amount has to be below \$10,000 -- the dollar amount at which Kenyan banks have to report the transaction to the government. The money is then deposited into one or more bank accounts either by multiple people (smurfs) or by a single person over an extended period of time⁴⁶.

Investing in legitimate businesses.

Launderers sometimes place dirty money in otherwise legitimate businesses "to clean" it. They may use large businesses like brokerage firms or casinos that deal in so much money it's easy for the dirty stuff to blend in, or they may use small, cash-intensive businesses like bars, car washes, strip clubs or check-cashing stores. These businesses may be "front companies" that actually do provide a good or service but whose real purpose is "to clean" the launderer's money.

The launderer can combine his dirty money with the company's clean revenues and the company reports higher revenues from its legitimate business than it's really earning or the launderer can simply hide his dirty money in the company's legitimate bank

⁴⁵ Ibid at pg 18

⁴⁶ National Drug Intelligence Centre (2011) National Drug Threat Assessment retrieved on 25th January 2013.

accounts in the hope that authorities won't compare the banks' balance with company's financial statements.

Shell companies

These are fake companies that exist for no other reason than to launder money. They take in dirty money as "payment" for supposed goods or services but actually provide no goods or services; they simply create the appearance of legitimate transactions through fake invoices and balance sheets.⁴⁷

Overseas banks

Money launderers often send money through various "offshore accounts" in countries that have bank secrecy laws, meaning that for all intents and purposes, these countries allow anonymous banking. A complex scheme can involve hundreds of bank transfers to and from offshore banks. According to the International Monetary Fund, "major offshore centers" include the Bahamas, Bahrain, the Cayman Islands, Hong Kong, Antilles, Panama and Singapore.⁴⁸

Most money-laundering schemes involve some combination of these methods, although the Black Market Peso Exchange is pretty much a one-stop-shopping system once someone smuggles the cash to the peso broker. The variety of tools available to

⁴⁷Financial Action Task Force; Global Money Laundering and Terrorism Financing. Threat assessment retrieved on 15th January 2013.

⁴⁸The global Anti Money Laundering regime. A short overview by Richard Throwitz Cayman islands, 2012 at pg 5.

launderers makes this a difficult crime to stop, but authorities do catch the bad guys every now and then.

2.4 AREAS PRONE TO MONEY LAUNDERING

Bill Steel⁴⁹ in his article on money laundering gave the following areas to be prone to money laundering. They include:

Banking

Bertolt Brecht an English philosopher, stated that the best method of both stealing and laundering money is to own a bank. And though banks are at a risk in relation to their main functions of deposit, taking and opening of accounts, what can be done against this crime is if the bank is international and in complicity with vast numbers of its depositors facilitating the national interest.

Furthermore money laundering becomes a relatively easy thing to do when a banking institution and a number of its key officials co-operate in the laundering activity⁵⁰

⁴⁹ An English writer

⁵⁰ The money launderers: lessons from the drug wars, how billions of illegal dollars are washed through banks and Bussineses. By powis. Robert E. in 1992 at pg 67.

Underground-banking

Sometimes called 'parallel' banking is a system that tends to mirror more conventional bank practices, but is highly efficient and wholly unauthorized method of transferring money around the world.

Examples include: "Chop", "Hundi", and "Hawallah" banking which take place within various ethnic communities, and which enables the avoidance of any conventional paper record of the financial transaction. Such methods do not require the actual movement of money but nonetheless facilitate the payment of funds to another party in another country in local currency, drawn on the reserves of the overseas partner(s) of the "Hawallah" banker.

The system is dependent on considerable trust and considerable simplicity - the money launderer places an amount with the underground bank - the identifying receipt for a transaction being something as innocuous as a playing card or post-card torn in half, half being held by the customer and half being forwarded to the overseas banker. The launderer then presents his receipt in the target country to obtain his money, thus avoiding exporting cash out of the country and limiting the risk of detection.⁵¹

Bureau de change/international money transmitters/travel agents

All these offer a wide range of services that can be used by the money launderer. Airline tickets, foreign currency exchanges in the form of cash and travellers cheques, are recognized as being widely used techniques. Money transmitting services in the form of

⁵¹Dirty Money by William C. Gilmore at pg 40

wire, fax, draft, cheque or by courier exist for people who are unable to use traditional financial institutions. Customer anonymity is a primary feature of such transmissions which identifies the inherent level of risk.⁵²

Casinos

Casinos and gambling establishments are particularly attractive to money launderers. Cash can be deposited with a casino in exchange for chips or tokens. After a few turns at the table the player can cash in the remainder for a cashier's cheque which can be deposited in their account. Another method is to buy winning tickets from people in bookmakers and saying you have won making bookmakers vulnerable to being used.

Antique dealers/jeweler's/designer goodssuppliers

Any area that possesses the characteristics which represent high value goods that possess great portability and in many cases are used to being paid in cash is an attractive area for money launderers. All the above satisfy these criteria and owners and staff have to be aware of their obligations under the legislation if they are to avoid being unwittingly used in a money laundering scheme.⁵³

⁵² supra

⁵³ ibid at pg 28

Professional Advisors such as Accountants/solicitors/stockbrokers

If these people get involved in investment activity, this group is covered in the Regulations. For example, their clients' account can be used as a bank account by clients and can put him at risk. An example is in the case of Michael Relton a Solicitor who was convicted in relation to money laundering proceeds from Brinks Mat robbery⁵⁴.

2.5 Money laundering and terrorism

It is important to note that money laundering cannot be discussed without including terrorism because it is the major sector involved in money laundering. The financing of terrorism involves the raising and processing of funds to supply terrorism with resources to carry out their attacks. They usually exploit the vulnerability in financial systems that allow for inappropriate level of anonymity and non transparency in the execution of financial transactions.

The International Monetary Fund (IMF) in 2000 responded to calls from the international community to expand its work in the area of Anti Money Laundering (AML) after the tragic events of September 11, 2001, the fund intensified its AML activities and extended them to include Combating the Financing of Terrorism (CFT). In 2009, the IMF launched a donor supported trust fund to finance technical assistance in AML/CFT. In 2011, the IMF's Executive Board reviewed the effectiveness of the funds AML/CFT

⁵⁴The Glasgow Herald News Paper on 8th July, 1988 at pg 3.

program and gave strategic guidance for the work ahead. In 2012, Min zhu, the Deputy Managing Director of the IMF said the following on money laundering and financing of terrorism.⁵⁵,

"Money laundering and the financing of terrorism are a financial crimes with economic effects. They can threaten the stability of countries financial sector or its external stability more generally. Effective anti money laundering and combating the financing terrorism regimes are essential to protect the integrity of markets and of global financial framework as they help mitigate the factors that facilitate financial abuse. Action to prevent and combat money laundering and financing of terrorism thus responds not only to a moral imperative, but also to an economic need".

2.6 Money laundering and corruption

Corruption in Kenya takes many forms all of which result in the loss of public funds or other resources. The government of Kenya lost more than 12 billion shillings through fraudulent payments in the 1996 – 97 financial year alone. In the period of 1990-95 a total of 127 billion shillings was lost through corruption

In 1990s golden berg scandal which involved the alleged export of nonexistence gold and diamonds occurred in Kenya causing direct loss to the public and negative effect on the economy. This scandal was a series financial scams that were distinct and separate from one another. There was inter alia, the export of gold and diamonds, the pre

⁵⁵IMF 2012; The IMF and the Right Against Money Laundering and the Financing of Terrorism. Retrieved, 19 January 2013 at 11am.

shipment finance for gold and diamonds which led to the loss of unknown value by the government.

Furthermore according to corruption perception index published by transparency international in 2001, Kenya was ranked number seven from bottom in the ascending list of the most corrupt countries in the world. Judiciary and the police among other states organs were perceived as the most corrupt while the judiciary was ranked sixth. It was in the same year when three judges of the court of appeal publicly accused each other of corruption.⁵⁶

It should be noted that some corrupt members of society place their proceeds in reputable banks outside the origin of the proceeds.

2.7 money laundering and drug trafficking

Drug trafficking is generally defined as the distribution of illegal drugs.⁵⁷ Kenya is perceived to be mainly the transshipment center for drugs especially narcotics and psychotropic substance destined for markets in other parts of the world. This is basically because of the coastline in Kenya. It is through tis coastline that Kenya is believed to be in drug trade partnership with Pakistan for heroin and Colombia for cocaine⁵⁸.

According to Argwings Odera report⁵⁹ some of the leading drug barons in Kenya include, Kamlesh Pattni, Ibrahim Akasha⁶⁰, Nassir Ibrahim Ali,among others.

⁵⁶ Main report of the constitution of Kenya review commission, 18th September 2002, pg 163.

⁵⁷ Us legal definations. Us.legal.com retrieved on 25th February 2013.

⁵⁸ The daily nation on 23rd march 2011 at pg 5.

⁵⁹ ArgwingsOdera, Kenya turned into haven for drug barons, expression toady, 11th February 1999 pg 1.

According to the report the drug barons funded elections for the ruling party in 1992 and 1997. None of these suspects were brought to justice in relation to at least drug trafficking given the fact that the law against money laundering did not exist at that time neither can they be charged for money laundering today or tomorrow because the law is not effective retrospectively.

Other international channels to launder money include:

(i) Organized Maritime Piracy and Related Kidnapping for Ransom

In recent years, there has been a growing concern over organized piracy on the high seas and kidnapping for ransom. These activities present a number of potential risks to the international financial system and challenges to the law enforcement and regulatory framework worldwide. The FATF has completed a study that provides an overview of this problem and analyses the related money flows to the extent that this is possible. In addition to informing the work of other international bodies dealing with this issue, the report, which will be published shortly, will also serve as a useful source of general information on the subject.

(ii) Money Laundering Risks Arising from Trafficking of Human Beings and Smuggling of Migrants

FATF has carried out a study which describes the money flows related to trafficking of human beings and smuggling of migrants, and attempts to assess their scale. The report provides a series of red-flag indicators for the various destination / origin

⁶⁰ A Mombasa based billionaire, now deceased

countries and different sectors to help financial institutions to better detect related suspicious financial activity.

2.8 Effects of money laundering

The effect of money laundering revolves around social, economic and security terms.

On the socio-cultural end of the spectrum, successfully laundering money means that criminal activity actually does pay off. This success encourages criminals to continue their illicit schemes because they have to spend the profit with no repercussions. This means more fraud, more corporate embezzling which means more workers losing their pensions when the corporation collapses, more drugs on the streets, more drug-related crime, law-enforcement resources stretched beyond their means and a general loss of morale on the part of legitimate business people who don't break the law and don't make nearly the profits that the criminals do.

The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and ultimately, the democratic institutions of society. This criminal influence can undermine countries undergoing the transition to democratic systems. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generates it. Laundering enables criminal activity to continue. The good image of this country had been badly dented by unwholesome activities of a few

misguided and unscrupulous elements that indulge in MoneyLaundering and criminal activities. This imposes some constraints on Kenya ininternational economic relations.⁶¹

Under the economic effects Money Laundering affects indigenou entrepreneurs, more so with the trade liberalization. Proceeds of drug sales and consequent money launderingactivities are used in bringing goods to the market, and such goods are soldbelow cost prices in the exporting countries. The reason for this is not far –fetched and that is that, the drug barons embark on the importation with thedisguised intention to transfer dirty money and not for profit making.This situation discourages domestic production due to inviting pricingof the imported products. The return on investment from domestic productionand other legitimate business activities will fall and becomes lower than thehigh returns made by the money launderers, thus, domestic production isthereby adversely affected. This situation affects small and medium scaleenterprises in particular, which are the integral parts of government'smillennium development goals. This will ultimately lead to decline in foreigninvestment, as investors will be scared of the economic environment whereillicit monies are allowed to play a significant role in the allocation ofresources.⁶²

Money Laundering has a direct impact on the Foreign Exchange Marketin any economy. This has been recognized by the European Union (EU) inwhat is called the EU directive on money laundering. The Foreign Exchange Market is vulnerable due to

⁶¹Inim, V. E., "Money Laundering, History, Processes and Impact", being a paper presented at a seminar on Money Laundering at Eko Hotel Lagos, 2000.

⁶²Joseph O. S. Sanusi , Central Bank of Nigeria's Stand Point of Anti-Money Laundering Compliance. A Speech at the Conference on Anti-Money Laundering in ECOWAS: Bringing the Anti-Money Laundering Requirement in Compliance with International Standard June 3,2003 at pg 50

the volume of cash involved in the trade.⁶³ Apart from the above impact on capital formation, money laundering could lead to an increase in the liability and heighten the risks for assets quality in the financial system. When this happens, it may create systemic risks for the financial services industry and consequently to the loss of confidence and credibility in the system. Money Laundering could also encourage the proliferation of the underground, unregulated thriving informal market. The purpose of money laundering is not only to avoid detection, but also to avoid or evade tax; this may create some trade imbalance and balance of payment.

Other major issues facing the world's economies include errors in economic policy resulting from artificially inflated financial sectors. Massive influxes of dirty cash into particular areas of the economy that are desirable to money launderers create false demand, and officials act on this new demand by adjusting economic policy. When the laundering process reaches a certain point, or if law enforcement officials start to show interest, all of that money will suddenly disappear without any predictable economic cause, and that financial sector falls apart.

Some problems on a more local scale relate to taxation and small business competition. Laundered money is usually untaxed, meaning the rest of us ultimately have to make up the loss in tax revenue. In addition, legitimate small businesses can't compete with money laundering front businesses that can afford to sell a product cheaper because their primary purpose is to "clean money" not earn a profit.

⁶³Quirk, Peter, Macro- Economic Implications of Money Laundering a publication of the monetary and exchange department of the International Monetary Fund (IMF), April 1996.

The majority of global investigations focus on two prime money-laundering industries: Drug trafficking and terrorist organizations. The effect of successfully cleaning drug money is clear: More drugs, more crime, and more violence. The connection between money laundering and terrorism may be a bit more complex, but it plays a crucial role in the sustainability of terrorist organizations. Most people who financially support terrorist organizations do not simply write a personal check and hand it over to a member of the terrorist group. They send the money in roundabout ways that allow them to fund terrorism while maintaining anonymity. And on the other hand, terrorists do not use it and checks to purchase the weapons, plane tickets and civilian assistance they need to carry out a plot. They launder the money so authorities can't trace it back to them and foil their planned attack. Interrupting the laundering process can cut off funding and resources to terrorist groups.⁶⁴

⁶⁴ G7 Finance Ministers vow to hit Money Laundering", Toronto Star,(July 11, 2000) at pg. 7.

CHAPTER THREE

3.1 LEGAL FRAMEWORK FOR PREVENTING MONEY LAUNDERING

Generally, laws are intended to govern the society. Thus the Kenya's Proceeds of Crime and Anti-Money Laundering (AML) Act (POCAMLA) which was signed in December 2009 and came into effect on June 28 2010 was intended to enable the identification of, the tracing of, the seizure of and eventually the confiscation of the proceeds of crimes including drug trafficking, corruption, economic crimes and to establish a financial intelligence centre and assets recovery agency, to criminalize money laundering, to require financial institutions, designated non financial business and professions to take prudential measures to help combat money laundering.⁶⁵

Offences

The POCAMLA⁶⁶ provides a list of money laundering offences and related offences. There in section 3 provides that, a person who knows or ought to have known that a part of property forms part of the proceeds of crime and enters into an agreement with a person in connection, with the effect of concealing or disguising the nature, source, location disposition or movement of the property, commits an offence.

Another offence is acquisition, movement or use of proceeds of crime,⁶⁷ with regard as to whether the funds constitute proceeds of crime, it was held in the case of

⁶⁵ An article by Alex Kimathi and Bernard Muange titled " New Law to Combat Money Laundering in Kenya – At last! May 2010 pg 1

⁶⁶ Part ii of POCAMLA

⁶⁷ Section 4 of POCAMLA

Amalgamated Metal Trading v City of London Police⁶⁸ that a full hearing would be required with both the potential victim and the client participation. There would be proof on the balance of probabilities that the funds were not the proceeds of crime.

Failure to report a suspicions regarding proceeds of crime⁶⁹, misrepresentation where a person knowingly makes a false, fictitious or fraudulent statement or representation or makes or provides any false document, or fraudulent entry to a reporting institution tor to a supervisory body or to the center commits an offence under section 9.⁷⁰ Another offence is known as tipping off provided under section 8. Malicious reporting is also an offence under section 10.

The financial institutions are not given freedom to do whatever they want and therefore the Act restricts them. POCAMLA provides under section 11, that failure of the institution to comply with requirements provided under section 44, 45 and 46. This provides for requirement of institutions to monitor and report suspected money laundering activity, obligation to verify customer identity, and obligation to establish and maintain customers' records respectively.

The failure to report conveyance of monetary instruments into or out of the country, or materially misrepresents the amount of monetary instruments in accordance with the law commits an offence⁷¹. Misuse of information as provided under section 13 is also an offence. Section 14 also considers failure to comply with an order of court as an offence

⁶⁸(2003) 1 WLR 271

⁶⁹Section 5 of POCAMLA

⁷⁰supra

⁷¹Section 12

under the Act. Furthermore the hindrance of person in performance of functions under this act is also considered as an offence.

Penalties

These are provided for under section 16. Where a person contravenes section 3, 4 and 7, is liable to imprisonment or a term not exceeding fourteen years or a fine not exceeding five million shillings, or the amount of the value of the property involved or whichever is high or both. However in a case of body corporate the penalty is a fine not exceeding twenty five million or the amount of the value of property whichever is higher.

Another penalty is provided for the contravening section 5, 8 and 13, where in case of a person is imprisonment for a term not exceeding seven years or a fine not exceeding two million five hundred shillings or both however where the party is a corporate body the penalty is a fine not exceeding ten million shillings or amount of the value of the property or whichever is higher.

Contravening of section 9, 10 and 14, penalizes a natural person to imprisonment not exceeding two years and a fine not exceeding ten million shillings while a corporate body pays a fine not exceeding five million or value of the property involved.

Client Advocate Relationship

Although financial institutions owe a duty of secrecy to their customers, the POCAMLA overrides this obligation⁷² even if that duty is imposed by other laws or otherwise and no

⁷²Section 17 of POCAMLA

liability of breach shall be claimed. As it is known advocates owe a duty of secrecy to its client the legislators overrode this duty so as the advocates can help the regulatory bodies trace the money launderers.

This does not however exempt the Client Advocate Relationship provided for under POCAMLA since a judge of the High Court may make an application and order the advocate to disclose information available to him in respect of any transaction or dealing in relation to the matter under investigation⁷³. This particular law is put in place to prove that money laundering is a serious crime and affects the economy of every country and therefore the client advocate relationship although protected globally cannot be a bar to trace the money launderers.

It is significantly important to vest some responsibility to lawyers in relation to money laundering this is because criminals who commit money laundering rely on lawyers as gate keepers to conduct their illegal business. Lawyers like any other profession need checks and balances to prevent illegal and immoral behavior. And according to recommendation 16⁷⁴, lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious when, on behalf of or for client, they engage in a financial transaction.

⁷³Section 18(3) of POCAMLA

⁷⁴Financial Action Task Force quoted Kern Alexander, "International Anti- Money laundering control" Vol. 4 No. 3 (2001), p. 233

Due diligence

However the law under section 19⁷⁵ grants the Reporting Institutions, government entities or any other officer immunity from any suit arising from a report or information transmitted in good faith done on behalf of other person with due diligence. In addition, section 20 of POCAMLA, goes ahead to provide protection of information and informer.

The establishment of financial reporting center, provided under part iii⁷⁶, shall be a body corporate with perpetual succession and common seal, with powers of suing and be sued, purchase, acquire, hold or dispose movable and immovable property, enter into contract and any other thing lawfully required by the act.⁷⁷ This corporate personality as established in the case of **Salomon v Salomon Ltd**⁷⁸, enables the center to perform acts for the proper performance of its functions under the law which may be lawfully done by a body corporate, the center should work in cooperation with other law enforcement agencies for investigation and other consequential purposes⁷⁹. In addition, the center is required to exchange information with similar bodies in other countries regarding money laundering activities and related offences⁸⁰ and ensure compliance with international standards and the best practices in anti-money laundering measures⁸¹, this is because the practice is still very new in Kenya.

It should be noted that the financial institutions are obliged by the Act to designate non-financial businesses and professions to monitor and report to the financial intelligence

⁷⁵Supra

⁷⁶Supra

⁷⁷Section 21 of POCAMLA

⁷⁸(1897) AC 22

⁷⁹Section 22(a) of POCAMLA

⁸⁰Section 22(2)(b) of POCAMLA

⁸¹Section 23(2)(c) of POCAMLA

center in case of complex, unusual, large transactions, which cast suspicion, to verify customer identity by entering into any transactions and requesting him/her to produce an official record which would reasonably identify him such as birth certificate, passports, national identification cards, driving license so as to maintain records on those transactions exceeding the amount specified by law⁸².

Implementing bodies.

For a particular law to effectively fulfill the intended purpose by the legislators, it must take into account consideration all the stake holders who help in offering advice and implementation of the law in their respective sectors. A board known as the Anti-Money Laundering Advisory Body is established where the chairperson will be appointed by the minister and the board shall consist of the Permanent Secretary, Attorney General, the Governor of Central Bank of Kenya, the Commissioner of police, Chairman Kenya Bankers Association, Chief Executive Officer, Institute of Central Public Accounts of Kenya and two other persons appointed by the minister from public sector.⁸³ The board will offer advice to the center and also help in improvement in the effectiveness of the policies and measures to combat money laundering among other tasks.

Part IV of the Act provide for the Reporting Institution under which certain obligations are imposed. They include, to monitor and report suspected money laundering activities⁸⁴, establish and maintain customer identity⁸⁵, establish and maintain customer

⁸²Section 44 of POCAMLA

⁸³Section 49 of POCAMLA

⁸⁴Section 44 of POCAMLA

⁸⁵Section 45 of POCAMLA

records, including name, physical and postal address, occupation, conduct of the transactions as well as the method used by the reporting institutions⁸⁶.

In addition is the Property Recovery Agency which is a quasi-autonomous body under the office of Attorney General charged with an obligation of recovering property subject to the law against Money Laundering.

It is provided for under part VI of the POCAMLA and is capable of holding and alienating movable and immovable property and engage in any lawful activity whether alone or together with any organization to achieve the objective of the Act. Pursuant to section 61⁸⁷, the Attorney General, property agency may apply after the conviction of a defendant for a confiscation order. This however takes a civil approach rather than a criminal approach which existed until conviction and thus if a court grants a confiscation order, it will be executed as a civil judgment. The court in addition to the conviction may order the defendant to pay the government or property recovery agency a total sum of what he or she benefited in relation to money laundering and related offences.

Orders

An order known as the restraint order provided under section 62 of the Act, restrains a person to whom it is sought from dealing in a particular way. It is made by way of ex parte application seeking court to temporarily prohibit the defendant in acting in a particular manner. In granting the order, the court may make other court orders authorizing discovery and seizure of any property subject to the restraint order. However, if there is reason to believe that a property has been used in the commission

⁸⁶Section 46 of POCAMLA

⁸⁷POCAMLA

of offence or is a proceed of crime, the court can order upon an exparte application by the claimant, a preservation order prohibiting any person from dealing with a subject property in any manner.

In addition,an applicant in the course of money laundering proceedings can apply to court for production orders, which occurs when a person charged with or convicted of an offence holds a document relevant to identifying, locating or quantifying of property of the person. This can take the form of discoveries, inspections and interrogatories.⁸⁸

It should be noted that, these court orders are discretionary in nature and that the court has to be satisfied in the circumstances before issuing them. The court may however alter, vary or rescind these orders.

It is after a successful confiscation, restraint, and reservation and forfeiture orders when the question as to where the surrendered monies are to be kept arises. The POCAMLA establishes a Criminal Assets Recovery Fund⁸⁹, which consists of monies derived from the fulfillment of consificattion and forfeiture orders. The parliament and government may also deposit some monies or other grants from foreign bodies for facilitation purposes in relation to recovery of illegal proceeds.

The POCAMLA has gone a step further to provide for International Assistance in Investigations and Proceedings⁹⁰ and applied the principle of mutuality where money laundering is involved and to cooperate with other states in investigation to find evidence in and out of the various states with the authority of the Attorney General. The

⁸⁸Section 72 of POCAMLA

⁸⁹Part xi of POCAMLA

⁹⁰Part xii of POCAMLA

president of Kenya in November 2011, signed the Mutual Legal Assistance Act which will allow increase in cooperation with international partners.

3.2 PROBLEMS OF IMPLEMENTATION

This chapter attempts to look at the challenges the new law on money laundering faces in its implementation.

Weak enforcement mechanisms

The Kenya law enforcement authorities lack the institutional capacity, inventive skills and resources to conduct complex financial investigations. For instance in order to demand bank account records or seize an account, the police must present evidence linking the deposits to a criminal violation so as to obtain a court warrant. The confidentiality of this process is however very difficult to maintain because of leaks accounts holders are tipped off about the investigations and then move their accounts or may sometimes contest the warrants.

In addition, the authorities cannot trace transactions entities. The lack of supervision of this sector and the lack of reporting from the obliged entities contribute to the vulnerability posed by this sector. However the tracking, reporting and investigating suspicious transactions are more difficult for the Kenyan authorities than those using the formal financial sector.⁹¹

The judiciary has been until the recent transformation in 2012 been riddled with corruption and has been a major hindrance to the implementation of the law. However, the recent changes to the judiciary and on the going police reforms will strengthen and efficiently help in dispensing justice.

⁹¹An article by Alex Kimathi and Bernard Muange titled " New Law to Combat Money Laundering in Kenya – At last! May 2010 at pg 2

Inadequacies in the legal frame work

The proceeds of crime and Anti money laundering Act has not been fully implemented because some authorities such as the Financial Reporting Centre provided for under part iii have not yet been established save for the Anti-Money Laundering Advisory Board which has already been put in place. Due to this, the POCAMLA has not been used to prosecute any crimes yet.

Terrorist financing which is a major area in money laundering has not been covered in the Act but instead have been addressed in the draft anti-terrorism bill which is yet to be enacted into law. This is a weakness to the legal system because it means those engaging in this crime walk scot free because no law provides for it. The legal mechanism to freeze and seize criminal accounts provided for under the Act⁹² has not been put into practice due to lack of enforcement mechanism and legal authority which would take charge of freezing and seizing accounts used for financing terrorists.

Know your Customer (KYC) measures related to politically exposed persons have not been adequately addressed under the Act. This is an important area and would boost the fight against money laundering since majority of money laundering offences since independence have been practiced by the Political Exposed Persons. (PEPs) These people include James Gichuru, former finance minister Chris Okemo, former managing director of Kenya power, who have been charged with money laundering in jersey island in the United Kingdom.⁹³

⁹²Part vi of POCAMLA

⁹³Jersey Evening Propaganda, Tuesday May 31 2011 pg 15

Failure by banks to report suspicious transactions

The bankers are not reporting illegal transaction to the relevant authorities even if they knew where or how the money comes about; all they are after is to have a customer with a large amount to deposit with their bank due to stiff competition in the banking sector of the country. According to Andrew⁹⁴ some "banks might count themselves lucky to have large volume of illicit funds deposit with them" and such banks collude with the money launderers in order to keep the money safe and will even keep it away the regulatory agency, which they are directed to report to on such illegal activities.

Advancement in information technology

Information and communication technology industry has grown in Kenya thus Kenya has been ranked ahead of other countries in east Africa in internet usage and communication sector⁹⁵.

The advancement in information technology has been exploited by criminals in the country to perpetrate their illicit transaction. The use of microchip based electronic money for financial transactions, smartcards and other modes arising as a result of advancement in technology have not been incorporated in the institutions which enforce laws. This is a major challenge as most of the transactions used in money laundering are through electronic devices and sophisticated wireless means.

⁹⁴Haynes, Andrew (2004). Wolfsberg Principles - an Analysis. Journal of Money Laundering Control. Vol 7, No 3. Pp 207.

⁹⁵ The New Vision 21st April 2012 Pg 5

Inadequate funding of the agencies/officials

Another very serious factor that inhibits the fight against moneylaundering in Kenya is inadequate funding of the various agencies and officials that are supposed to fight this crime. The officials of these agencies are not well remunerated and this situation kills the urge and morale of the officials in putting their utmost in the performance of their job. Money Laundering is a sophisticated crime and the operators employ electronic devices and other hi-tech equipment to perpetrate the crime. Hence, the officials of the enforcement agencies need capacity building, not only in terms of staff training, but also in the provision of modern equipment in developing databases that will enable them to stay ahead of the criminals. But the funds to provide such equipment are not available.⁹⁶

Globalization of the world's economy

Globalization is the buzzword: bringing together nation states, as it were, in what might be called a "global village". Criminals are now taking advantage of the globalization of the world economy by transferring funds quickly across international borders. Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money laundering more cumbersome. The deeper "dirty money" gets into the international banking system, the more difficult it is to identify the origin.

Lack of political will

The lack of political will has been a great challenge in implementing POCAMLA. It has been stated that without demonstrated commitment from the higher political class, there

⁹⁶ Money laundering and financial crimes in Nigeria by A.N Ohanyere at pg 65

is lack of moral authority to enforce laws and to punish the corrupt⁹⁷, an absence of confidence among rule enforcers that enforcement against powerful people will be supported by the top leadership is serious⁹⁸.

The parliament is charged with the mandate to make laws and in discharging this mandate, the member of parliaments are expected to have the interests of the people at heart, however the practice has been where a bill if passed will be detrimental to the political class, such laws never passed.

Piracy

Kenya being the regional financial and trade center for Eastern, Central and the horn of Africa its banking and financial sectors haveaversely grown thus making it vulnerable to money laundering.⁹⁹ The laundering of funds derived from corruption, smuggling and other financial crimes is substantial problem and due to its proximity to Somalia it likely creates a destination for laundering of piracy related proceeds and a conduct for terrorism related funds¹⁰⁰.

The absence of legislation to cover terrorism financing to compliment POCAMLA has proved to be a major challenge in combating proceeds of crime. This has led to the Al shaabab a terror group in Somalia to capture several ships off the IndianOcean and has received huge sums of money in ransom.

⁹⁷Langseth and Stapenhurst(1997) "The role of a National Integrity system in fighting corruption" commonwealth law bulletin 508 at pg 68

⁹⁸PaatiOfusu "Combating corruption: A Comparative review of selected legal aspects of state practice and International Intiaatives 1999 at pg 35

⁹⁹Nyakira Maureen Akinyi : A dissertation on legal framework in combating corruption, Pg 2.

¹⁰⁰A report on Effects of Piracy in Kenya by Julius Mwangipg 1:12.

Drug trafficking

Money laundering is as a result of domestic and foreign activities. The coastal region is the one that has been greatly affected due to the presence of the port that makes it a transit point for international drug traffickers¹⁰¹. This has led to few individuals to become wealthy due to the drugs while the, majority engage in criminal activities such as prostitution in order to get money to buy drugs, this has made it difficult to regulate drug trafficking and also in recovering the proceeds of criminal activities. This has been as a result of lack of effective legislation under the Narcotic Drugs and Psychotropic Substances Control Act 1994.

In 2011, three members of parliament and two prominent businessmen were named by the US intelligence as launders of money through drug trafficking. However, despite the setting up of a parliamentary committee to investigate the individuals and also police investigations, no arrest or prosecution has been conducted.

¹⁰¹Ibid at pg 49

3.3 INTERNATIONAL INSTRUMENTS FOR PREVENTING MONEY LAUNDERING

3.3.1 The United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (Vienna Convention)

International concern about global problems date as far back as the League of Nations which was formed as a result of experience of the First World War (1914 - 1919), the experiment of the League of Nations in the collective security collapsed with the outbreak of the world war two in 1939. There have been efforts to address problems related to crime as far back as 1950s, the first time United Nations were committed to fight against organized crime was in 1975, during the Geneva Convention on 12 September¹⁰² in Switzerland.

The Convention creates offences and spelt out specific sanctions and procedure for the confiscation of the crime proceed in Articles 3 and 5. Article 3(b) (i) provides legal definition of what constitute money laundering¹⁰³.

Article 5 (1-9) enjoin all member states to adopt such measure as maybe necessary to enable confiscation of the proceeds derived from offences established in Article 3. The parties are enjoined to adopt measures to identify, trace and freeze or seize the proceeds, properties or any other thing referred to under the definition in paragraph b (i) of Article 3. It was based on the provision of 1988 Convention, that many national laws against money laundering are derived, with modifications to suit domestic situations.

¹⁰²Shehu, A. Y. (2005). International initiative against corruption and money laundering: An overview. Journal of financial crime, Vol. 12 No. 3, pp. 221 - 245

¹⁰³Supra

Article 7 of the 2000 Convention introduces additional measures aimed at enlisting the support of financial institutions and others, in preventing the use of financial systems to launder illicit funds and for detecting and tracing of suspected funds of criminal origin. And such measures include reporting requirement for individuals and businesses that move substantial amount of cash and negotiable instruments across the borders.

Article 27 (1-3) of the Convention provides for law enforcement cooperation in combating money laundering, which includes adoption of special investigation techniques, such as controlled deliveries and other forms of surveillance on the movement of the proceeds of crime or property associated with serious crime. It emphasized on the importance of exchange of information and coordination of administrative and other measures to detect the proceeds of crime, and encourage member states to enter into bilateral or multilateral agreement or arrangement on direct cooperation between their law enforcement agencies where necessary and appropriate.¹⁰⁴

'Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.'

Seeking to address the contentious issue of bank secrecy, Article 40 states that:

'Each state party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate

¹⁰⁴Shehu Abdullahi .Y. 2004. Combating Corruption in Nigeria - Bliss or Bluster? Journal of financial crime, vol. 12, No 1, pg. 69-87

mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.'

3.3.2 Financial Action Task Force (FATF) Recommendations

The FATF recommendations are the international endorsed global standards against money laundering and terrorist financing. The objectives of FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering terrorists financing and other related threats to the integrity of the international financial system.

Customer due diligence and record keeping

Recommendation 1 - 3 of the Financial Action Task Force is all about criminalizing the Money Laundering offence, as it was declared at the United Nations conference, that all countries should criminalize money laundering. Kenya although a member has not carried out diligently what is required by the recommendations.

The first principle of the Wolfsberg, which is the primary objective of the financial institutions group is to ensure that the services offered by banks and their world -wide operations are not abused for criminal purposes.

This means that banks should only accept clients whose sources of funds and wealth are established as legitimate¹⁰⁵.

¹⁰⁵Hinterseer, Kris (2001). The Wolfsberg Anti Money Laundering Principles. Journal of Money Laundering, Vol 5, pg 1.

Recommendation 5 of Financial Action Task Force (FATF) state that "Banks should not keep anonymous accounts or accounts with fictitious names" and it insist banks should know their client. It further suggests that by no means banks should keep an anonymous account and should not enter into or maintain commercial relationship with a counter party whose true identity cannot be readily identified, or whose activity reveal a questionable pattern of activity.

Hinterseer argues that the principles state that money laundering is best fought at the placement stage which is the first stage of the criminal activity, by instituting checks and disclosure requirements in order to make it difficult for criminally tainted money from entering the financial system.

The recommendation 5 of the Financial Action Task Force states that measures are to be taken in identifying a customer. This includes:

1. Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
2. Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer.

3. Obtaining information on the purpose and intended nature of the business relationship.
4. Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Where the financial institutions are not satisfied with the information from sub - section (1-3) they reserve the right not to open an account, commence business relation or perform transaction; or they can even terminate the business relationship and consider writing a report on suspicious transaction in relation to the customer. However when we go back to the POCAMLA there are provisions for Customer Due Diligence, but they are not been carried out by the financial institutions completely.

The provision relating to the Politically Exposed Person in Recommendation 6 of FATF, states that before commencing a business relationship with the customer the institution must have appropriate risk management system, which will determine whether the customer is politically exposed or not. The branch is required to obtain a senior management approval before establishing a relationship with the customer and take a reasonable step to establish the sources of the funds and an ongoing monitoring of the business relationship. According to FATF, "Politically Exposed Persons" (PEPs) are individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior

government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories. However the POCAMLA is silent on it.

In recommendation 12, the customer due diligence and record-keeping requirements set out in Recommendations 5, 6, and 8 to 11 apply to designated non-financial businesses and professions in the following situations:

1. Casinos - when customers engage in financial transactions equal to or above the applicable designated threshold.
2. Real estate agents - when they are involved in transactions for their client concerning the buying and selling of real estate.
3. Dealers in precious metals and dealers in precious stones - when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.
4. Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning certain activities such as buying and selling of real estate, managing client money, securities or other assets, management of bank savings and accounts among others.

Reporting of suspicious transaction and compliance

The reporting of suspicious transaction in the financial institution, such as the bank or any other institutions that are engaged in form of financial activity, have become an obligatory. In Recommendation 13 of the FATF, it states that, If financial institution suspect or has a reasonable grounds to suspect that funds are proceeds of criminal activity or related to terrorist financing, it is required by law or regulation to report promptly it is suspicious the Financial Intelligence Unit (FIU).¹⁰⁶

However, Recommendation 14 protects the financial institution from any legal action that the individual customer might take due to the disclosure of his information by the institution.

The Directors, Officers and Employees are to be protected from Criminal and Civil liability for breach of any restriction on disclosure of information imposed by the contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal was, and regardless of whether illegal activity actually occurred and is prohibited by law from disclosing the fact that a suspicious transaction report or related information is being reported to FIU.

Financial institutions are required to develop programs against money laundering and terrorist financing within the institution.¹⁰⁷ These programs should include:

¹⁰⁶ Recommendation 13 of FATF

¹⁰⁷ Recommendation 15 of FATF

1. The development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees.
2. An ongoing employee training program.
3. An audit functions to test the system.

This is to ensure staffs/employees are trained in the fight against money laundering in the financial institution and to provide an internal control mechanism to check any illegal activity.

This is also in the POCAMLA, but the Banks are not fully implementing it to the latter. And all this contribute to the large scale of money laundering in Kenya. There should be a reporting Officer who is supposed to work independently without interference by Banks Officials when handling any issue of suspicious transaction and such officer is to report directly to the appropriate authority, all this are not been effectively implemented.

Regulation and Supervision

Recommendation 23 states that, Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.

For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner to anti-money laundering and terrorist financing purposes.

FATF requires financial institutions to be licensed or registered and appropriately regulated, and subject to supervision or oversight for anti-money laundering purposes, having regard to the risk of money laundering or terrorist financing in that sector. As a minimum, businesses providing a service of money or value transfer, or of money or currency changing should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.

Recommendation 24 also states that designated non-financial businesses and professions should be subject to regulatory and supervisory measures. It requires that countries should ensure that the other categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This is expected to be performed on a risk-sensitive basis performed by a government authority or by an appropriate self-regulatory organization, provided that such an organization can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

Competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in

applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.¹⁰⁸

3.3.3 The Wolfsberg Principles

The Wolfsberg principles are essentially Global Anti money laundering guidelines for private banks which was drafted by some of the world largest banks. The development of the principles on money laundering guidelines by the group of banks might be "surprising why should banks sit together and draft another legislation containing due diligence or as some say's know your customer principles"¹⁰⁹.

It is a positive principle by the banks sending a clear signal that they do not need dirty money however almost everyone committing financial crimes uses the banking system; banks are usually mentioned in connection with such crimes especially in true case of money laundering.¹¹⁰

The principle is required to be applied globally, which means that banks have to apply these standards in all their locations even if local law will not require such standards. It includes the common due diligence procedures for opening and keeping watch over accounts especially those identify as belonging to politically exposed person (PEP), who may combine corruption with drug money. The main objectives of the Wolfsberginitiative

¹⁰⁸ Recommendation 25 of FATF

¹⁰⁹ Bauer, Hans-peter and Peter, M. (2002). Global Standard for money laundering prevention. Journal of financial crime, Vol. 10 No. 1, pg 69 - 72

¹¹⁰ ShehuAbdullahi .Y. 2004. Combating Corruption in Nigeria - Bliss or Bluster? Journal of financial crime, vol. 12, No 1, pg. 69-87

are to bring leaders of private banking to cooperate in fighting money laundering 'outside competitive businesses'¹¹¹.

3.3.4 Basle Statement of Principles

On the financial front, the Committee on Banking Regulation and Supervisory Practices issued the Basle Statement of Principles on the prevention of criminal use of the banking system for the purpose of money laundering in December 1988.

The Statement of Principles does not restrict itself to drug-related money laundering but extends to all aspects of laundering through the banking system, for instance the deposit, transfer and/or concealment of money derived from illicit activities whether robbery, terrorism, fraud or drugs. It seeks to deny the banking system to those involved in money laundering by the application of the following principles:

- a. Know your customer (KYC)—where banks should make reasonable efforts to determine the customer's true identity, and have effective procedures for verifying the bona fides of new customers whether on the asset or liability side of the balance sheet.

- b. Compliance with laws - bank management should ensure that business is conducted in conformity with high ethical standards, laws and regulations being adhered to and ensuring that a service is not provided where there is good reason to suppose that transactions are associated with laundering activities.

¹¹¹supra

c. Co-operation with law enforcement agencies - within any constraints imposed by rules relating to customer confidentiality, banks should co-operate fully with national law enforcement agencies including, where there are reasonable grounds for suspecting money laundering, taking appropriate measures which are consistent with the law.

d. Adherence to the Statement - The full text of this section of the Statement is worth Quoting in full.

"All banks should formally adopt policies consistent with the principles set out in this Statement and should ensure that all members of their staff concerned, wherever located, are informed of the bank's policy in this regard. Attention should be given to staff training in matters covered by the Statement. To promote adherence to these principles banks should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for internal audit may need to be extended in order to establish an effective means of testing for general Compliance with the statement"

3.4 COMPARATIVE STUDY

3.4.1 Introduction

In the past two decades South Africa enacted various laws aimed at combating money laundering. The mainly criminal legislation was recently supplemented by the financial intelligence enter act 38 of 2001 (FICA) which creates the administrative framework for money laundering control.

Although international launderers have been prosecuted successfully in terms of South Africa common law as accessories after the fact¹¹², South Africa supplemented its law in this regard with statutory provisions in the drugs and drug trafficking act 140, 1992. This Act criminalizes inter alia, the laundering of the proceeds of specific drug related offences and required the reporting of suspicious transactions involving the proceeds of drug related offences and required the reporting of suspicious transactions involving the proceeds of drug related offences. The proceeds of Crime Act 76, 1996 broadened the scope of the statutory laundering provisions to all types of offences. In 1999 the proceeds of crime act as well as the laundering provisions of the drugs and drug trafficking act were repealed when the prevention of organized crime act into effect.¹¹³

3.4.2 Money Laundering offences

The Prevention of Organized crime Act (POCA) creates three main general laundering offences.

¹¹² S v Dustigar cc6/2000

¹¹³ Louis De Kokere: a research on money laundering in south Africa, paragraph 3

Firstly, a person who knows or ought reasonable to have known that property forms part of the proceeds of unlawful activities, commits an offence in terms of section 4 if he enters into an agreement which has the effect of concealing the nature or source of the property or its ownership. It is also an offence if that person enters into an agreement of enabling or assisting any person who committed an offence to avoid prosecution.

Secondly, a person commits an offence under section 5 if he knows another person has obtained the proceeds of unlawfully activities and enters into an arrangement or agreement for the retention or control on behalf of that other person of the proceeds of unlawful activity property on his behalf.

Thirdly, a person who acquires or uses property and knows or ought to know that it forms part of the proceeds of unlawful activities of another commits an offence section 6.

3.4.3 Penalties

A person who is convicted of a money laundering offences under section 4, 5 or 6 is liable to a maximum fine of R100million (US\$ 10 million) or to imprisonment for not exceeding 30 years.

3.4.4 Prosecutions and Conviction

Unlike Kenya south Africa has had a number of convictions for money laundering offences.

In *S v Dustigar*¹¹⁴, 19 persons were convicted for their involvement in the biggest armed robbery in South Africa's history. Seven of the accused were convicted as accessories after the fact on the strength of their involvement in the laundering of the proceeds and eight accused were convicted under the statutory laundering of proceeds of crime act 76 of 1996. Many of the accused were family members of the laundered.

In another case of *S v Van Zyl*¹¹⁵, Van Zyl's sister in-law stole R8.9 million from her employer. Van Zyl allowed her to make 79 transfers of money totaling R7.6 million from the account of her employer, into his personal account. Money was channeled on instructions by his sisters in law to her by means of cheques made out either to her or to people nominated by her. Some withdrawals were made at ATMS. According to the accused, he was led to believe that the money was as a result of successfully business venture. He acknowledged his beliefs were unreasonable. And was sentenced to a fine of R10 million and imprisonment for 10years, suspended for five years.

Although important success has been obtained by the criminal justice system in fighting against money laundering, the effectiveness of the legislation has been undermined by

¹¹⁴ Ccc6/2000 Durban and Coast local Division, unreported.

¹¹⁵ Case No. 27/180/98 court, cape town.

the fact that the general money laundering control legislation took a number of years to be finalized. As a consequence,, the offences had to be investigated and prosecuted although South Africa does not have a financial intelligence unit and while it lacked general legislation that required financial institutions to identify their clients and to maintain ant laundering compliance and training programs. The Financial intelligence center Act (FICA) 2001, close important gaps and ensures that the criminal provisions are applied more effectively.

The financial community of South Africa has a strict exchange regime¹¹⁶, it pays attention to international transactions with a view of determining their compliance with exchange control regulations. This system has certainly made South Africa less attractive destination for foreign criminals.

However the sector that has most compliance is the banking sector. Banks have a common duty to identify and verify prospective clients who wants to open banks accounts,¹¹⁷ which Kenya as a country lacks. Due to the comprehensive framework of money laundering control in south Africa, and if done correctly, the system could contribute to the economy as well combating other crimes in the country.

¹¹⁶ The relevant rules are set out in the regulation under currency exchange Act 9 of 1993.

¹¹⁷ Columbus joint venture V ABSA Bank ltd (2002) S.A 90 (SCA)

CHAPTER 4

4.0 REASERCH METHODOLOGY

4.1 INTRODUCTION

This chapter deals with the method used for conducting this research work. This study is aimed at strategically analyzing money laundering in Kenya. The methodological research approach and design is a framework that binds research together so that the research questions can be analyzed effectively¹¹⁸. The researcher used both qualitative and quantitative research methods which will help the researcher gather more in depth information about the topic at hand and provide more information from other perspective which would lead to future direction of how to deal with the problem.

4.2 Research Design

The qualitative research is an essential constructivist philosophical position and is concerned with how the complexities of the socio cultural world are experienced, interpreted and understood in a particular context and at an exact point in time¹¹⁹. The researcher chose qualitative research because it gives a holistic approach by examining social situation which allows the author to enter the world of others and since it focuses on descriptions and discovery, and the objectives are focused on extracting and interpreting meanings of experiences¹²⁰. Qualitative research is thus of benefit to use because it allows better understanding of phenomena embedded in situations through complex relationships. The researcher also used the quantitative research design

¹¹⁸Edmunson, A. C., & McManus, S. E. (2007) Methodological fit in management field research. *Academy of Management Review*, 32(4), 1155-1179.

¹¹⁹Blomberg and Volpe (2008), completing your qualitative dissertation: a road map from beginning to end pg 134

¹²⁰Denzin and Lincoln, 2003. *The landscape of qualitative research : Theories and issues*. At pg 50

because it provides the fundamental connection between empirical observation and mathematical expression of quantitative relationships which yields an unbiased result that can be generalized for some larger population.

4.3 Research population

A research population includes all elements that meet certain criteria for inclusion in a study¹²¹. It is a collection of individuals or objects that is the main focus of a scientific query.

However, due to the large sizes of populations, researchers often cannot test every individual in the population because it is too expensive and time-consuming. It is from the accessible population that researchers draw their samples. A population must be specific enough to provide readers a clear understanding of the applicability of the study to that particular situation and understanding of that same population. It therefore becomes important to select the proper method of sampling, the process by which representative individuals are randomly selected to provide insights into the entire population under study.

4.4 Sampling size

A sample is simply a subset of the population. It is a concept of sample arising from the inability of the researchers to test all the individuals in a given population. The sample

¹²¹Behling, O. and Law, K. (2006) Translating questionnaires and other research instruments; Thousand Oaks: Sage Publications at pg 30

must be therefore a representative of the population from which it was drawn and it must have good size to warrant statistical analysis.

Sample size is determined by the population to be researched on. The researcher concentrated on a particular target population where the results would be used to derive conclusions that would apply to the entire population.

Sampling size is much like a give-and-take process because population gives the sample, and then it takes conclusions from the results obtained from the sample.

4.5 Sampling method

The researcher intended to use nonrandom sampling especially the convenience sampling which is the practice of grabbing whoever is handy or willing to participate and the purposive sampling which involves selecting individuals known to meet certain clear criteria, such as advocates and court clerks.

Another sampling method used is the quota sampling which relies on interviews and studying members of particular demographic subgroups, such as age.

4.6 Research instruments

In order to get firsthand information from various people a lot of organization and preparations had to be made to ensure only the required data is got.

To ensure this the researcher used specific data instruments such as questionnaires to ensure time saving and efficiency and also interviews so as to obtain firsthand

information from people. These research instruments would ensure fast and easy compliance of all the data retrieved.

However for the already available data, the researcher designed instruments such as a checklist or compilation sheet and in inspecting the layout of the source documents, data extraction had to be done. This was the perfect instrument for the researcher because of affordability.

4.7 Data Collection

Data-collection techniques allow us to systematically collect information about our objects of study. Such information is sourced primarily and secondarily and it involves various past literatures, journals etc also included are published articles and textbooks were also studied.

The researcher used primary data which is based on data reports as well as secondary data.

The data collecting techniques used include:

- Interviews,
- Questionnaire
- Observations
- Using the available information. As secondary source of information from the internet, different journals, text books, various research thesis, reports, newspapers, magazines, and various articles already in place.

4.8 Limitations

The researcher in carrying out the research came across many difficulties known as limitations. Limitations are the boundaries that restrict the research scope and may cause difficulty in completing the research¹²².

The first limitation is time. The researcher being a student it was challenging to attend class and do the research at the same time especially in conducting interviews and distribution of questionnaires and even meeting the supervisor. However, the researcher managed to finish the research in due time.

The second limitation is limited resources. It was costly to print enough questionnaires to reach the target population and also money of travelling from one place to another was a challenge to the researcher.

In conclusion, this chapter is the basis of the research in the sense that it gives guidelines to the researcher on how to conduct the research in order to get the desired results. It should be noted that failure to get the correct methodology leads to wrong results.

¹²²Cooper, D. R., and Schindler, P. S. (2002) Business research methods (8th Ed.). Boston: Irwin from pg 23-35

4.9 RESEARCH FINDINGS AND DATA ANALYSIS

4.9.1 Introduction

The efforts made by stake holders the major one being the Kenyagovernment, pressure from the international community to enact legislations to combat money laundering, training and civic education; money laundering continues to thrive in our society. The lack of proper enforcement mechanisms in Kenya, technological innovation, lack of proper banking measures, misuse of client advocate privilege, and corruption are some of the limitations in the fight against money laundering.

This chapter presents the findings with reference to research questions. It entails an analysis of the opinion on money laundering by laymen, professionals like lawyers, bank officials and court clerks responding to different research questions contained herein.

Therefore, the chapter presents the findings from the various questionnaires administered to the laymen, interviews conducted on the subject amidst various categories of interviewees including cooperate lawyers, bank officials, and law students from various universities.

4.9.2 Demographic features

4.9.2.1 Respondents and response rate

A total of 30 laymen (law students) from Pwani university, Nairobi university and Moi university students in Eldoret responded positively to the interview questionnaires, while 5 practicing advocates, 3 bank managers and 2 senior court officials were interview one on one, making a total of 40 respondents, posting a response rate of 100%.

4.9.2.2 Respondent's age

The research findings depicted that out of the 40 respondents, 80% were between 21-35 years of age, and 20% were above 35 years as shown in table 1

Table 1: Frequency and percentage distribution of the respondent's age

Category	Frequency	Percentage
21-35	32	80
Above 35	8	20
Total	40	100

Source: field work

From table 1 it is clear that all the respondents were mature enough to respond to the questions.

4.9.2.3 The level of education of the respondents.

The research findings on the respondent's level of education clearly depicted that majority 60% were lay undergraduate students, 30% were diploma students while the remaining 30% were degree holders in different universities as shown in the table 2 below.

Categories	Frequency	Percentage
Undergraduate	24	60
Diploma	6	15
Degree holder	10	25
Total	40	100

Source: field data

Presumably, from the presented data on table 2 above, given the level of development in Kenya, the respondents were in position to have elementary information on the subject matter of this research.

4.9.2.4 Respondent's awareness of money laundering

The study on awareness of money laundering shows that majority of 5% don't know anything about money laundering, 30% have heard of it but they consider it a victimless crime, and a majority of 65.5% know much about it as illustrated in table 4 below.

Table 4: Frequency and percentage of respondent's awareness on money laundering

Category	Frequency	Percentage
Don't know	2	5
Heard of it considers it as victimless crime	12	30
Know it and understand its implication	26	65
Total	40	100

Source: field data

Based on the data obtained and presented in table 4 above, it is vividly clear that, majority of people in the region are aware of this vice, others consider it as a victimless crime that does not concern them, and only a few are unaware of its existence.

There is no doubt this awareness is the right course to help combat money laundering and its related offences.

4.9.2.5 Respondents' (only those who have at least heard and know what entails money laundering and its implications) opinions on what sustains money laundering

The research findings as presented in table 5 below attributed a majority of 28.6% to corruption, 17.8% to piracy, 35.7% to lack of proper legislation, 10.7% to the drug business, 3.6% to technology as factors causing and sustaining money laundering in the region.

Table 5: Frequency and percentage of respondent's opinion on what sustains money laundering

Category	Frequency	Percentage
Corruption	8	28.6
Drug business	3	10.7
Piracy	5	17.8
Lack of proper legislation	10	35.7
Terrorism	1	3.6
Technology	1	3.6
Total	28	100

Source: field data

Based on the data presented in table 5 above, corruption, piracy and lack of proper legislation among other factors take the lead on what many consider as contributing to money laundering in the case study. This probably is because the three factors have proved to be compatible with Kenyan setting.

Corruption as discussed in previous chapters of this research is a common challenge that spread from every small unit of community to the central governments.

Presumably, piracy has strongly increased its momentum in the region because of the geographical location of the region that is along the coastline combined with the presence of insurgents in Somalia among other reasons.

Lack of proper legislation has also been blamed for sustaining money laundering in the case study. Some of the laws enacted fail to conform with international setting, given the technology innovations in the region.

4.9.2.6 Respondents' views on the principle of client-advocate privilege vis-à-vis money laundering

The outcome of the research shows that 53.6% believe that the principle of client-advocate privilege undermines the fight against money laundering while 46.4% believe that it does not as demonstrated in table 6 below.

Table 6: Frequency and percentage of client-advocate privilege vis-à-vis money laundering

Category	Frequency	Percentage
Impediment	15	53.6
Does not impede	13	46.4
Total	28	100

Source: field data

The presentation in the above table demonstrates the controversial nature of the principle of client-advocate privilege as a loophole to the justice system despite being provided for under the Act.

The slim difference in the percentage of those respondents who believe it serves as an impediment and those who don't believe so suggests that this issue is very contentious and needs further research.

CHAPTER FIVE.

5.0 MAJOR FINDINGS, CONCLUSION AND RECOMMENDATION

5.1 Introduction

This chapter introduces the summary of the major findings of the research, recommendations and conclusions.

5.2 Major findings

In a nutshell, the research revealed that the rate of awareness on what money laundering entails is alarming. The initial questionnaires administered to 40 respondents reflected that a wide majority of the respondents in this category were students with a cross-sectional representation of various provinces that form Kenya.

Majority of people in Kenya know the basics of money laundering. These are the privileged who can afford a television set, radio and newspaper have been able to hear and read about it. However, because of the complexity of money laundering notwithstanding the level of literacy, these modes of media grants them elementary knowledge only.

Those who have been enabled by either their status or any other circumstances to hear or read about money laundering through the media, classrooms or by virtue of their work have different perception to what they hear, read or see. A number of people hold a view that, money laundering is not a big issue as the opposition and the media are making us to believe. They say that the phenomenon has been blown above proportions.

Some argued in the questionnaires that, the law should be made applicable against the 19th and 20th century colonialists who illegally (as they perceive it), exploited Kenya and placed, it as a victimless crime that does not affect the common man.

The majority who know and appreciate the implications of money laundering are a segment of educated class, those who have taken their time to research on it, lawyers, bank officials and the senior court officials who are obliged by their professions to understand it.

The trend of awareness among people undermines the fight against money laundering. It would be very difficult for Kenyan citizens to voice against a phenomenon they don't understand. Although the political will emanate from the government in power, majority of the common man is illiterate and has no idea such a crime exists. It would be so unfair and the government should create awareness as it implements the law because without it then it would not work.

The test as to what causes and sustain money laundering in Kenya; has been greatly blamed on corruption, piracy, lack of proper legislation, terrorism and technology by majority of the respondents. A big portion of blame is attributed to corruption. The post colonialism leadership in Kenya and even other states has been characterized by embezzlement of public funds and connected offences. It can be said that corruption from the look of things is now rooted deep in the mainstream of our society.

Based on data presented in Table 5 above, corruption, piracy and lack of proper legislation among other factors take the lead on what many consider as the cause of money laundering in the study.

Piracy has of recent been a major influence to money laundering. Due to the presence of the coastline being very close to Somali, which is the major practice of piracy, Kenya has been considered a victim. The geographical location of Kenya is supposedly the momentum of the effects of this criminal activity to be felt in the region. This is a major challenge, given the fact that Kenya has not taken real measures against piracy. They might have ratified instruments to combat piracy but they haven't domesticated them.

As to whether the principle of client-advocate privilege impedes the fight against money laundering, the researcher findings demonstrated that this is a contentious issue which triggers further research. A contested percentage of 52.4% believed that this principle serve as a hindrance while the remaining 47.6% believed otherwise. The slim majority stated that there are legal practitioners whom they confidently refer to as legal technicians, masquerading behind the principle of client-advocate privilege to orchestrate money laundering. They argued that, many of the culprits make the laundering transactions through their lawyers.

On the other hand, some respondents believe that, the principle of client-advocate privilege does not impede the right course. They argue that lawyers have preserved their integrity and honesty in their work and therefore secrecy should be maintained between a client and advocate. They aver that, waiver of the principle of client-advocate privilege cannot in isolation prevent the occurrence of money laundering.

5.3 Conclusion

After the above research and analysis the researcher make a conclusion that, the Government of Kenya has demonstrated genuine concern and commitment in the enforcement of money laundering laws. The signing by president Kibaki to the Mutual Legal Assistance Act in 2011, has added impetus and vitality to the fight against the crime thereby sending a signal to the perpetrators that there is no safe haven for them.

In addition the legislative efforts, establishment of relevant institutions together with the enforcement drive so far adopted comply with the requirements of the recommendations of the Financial Action Task Force (FATF) which represent the international standard which nations' performances are measured. (supra)

However, as we know law comes into being as a process of change and progression and responds to change in society¹²³ and the law is therefore expected to deal with the changes of society and without that achievement then the law fails to achieve its objective.

Although implementation of reforms to the judiciary and the police has been made the greatest challenge now lies with the government to ensure enforcement is made. The 2010 Constitution has brought fundamental changes regarding the powers of the president therefore creating a good atmosphere to judicial independence. These reforms will definitely make Kenya achieve its objective.

¹²³F.T.Z Patrick P. The Mythology of Modern Law (1992) PG 87

5.4 Recommendation

Based on the detailed research carried out, the researcher then made the following recommendations:

The war against money laundering should be co-ordinated under a common legal framework instead of being handled by multi-faceted institutions as is presently done. This will be in synergy with the recommendation of Financial Action Task Force (FAFT), which provides that, all financial crimes that are considered serious be organized and categorized as money laundering offences in corpus juris of a given legal system.

Kenya should continue to work and strengthen international partnerships, and maintain strong ties with its counterparts in the financial centers of the world. We must urge all countries to ratify the U. N. Convention and to pass more effective money laundering and forfeiture laws. Above all, we must continue to identify the points where the money is most vulnerable and identify what we can do to separate criminals from their ill-gotten gains.

Although the emphasis only focused on banks and financial institutions, to report customers' questionable transactions to anti-money laundering agencies, the focus should be extended to cover such bodies as insurance companies, micro-finance institutions, mortgage institutions, leasing companies, stock brokers, Bureau de change as well as other ongoing concerns.

The Central Bank of Kenya should strategize more in order to check the activities of banks from perpetrating money-laundering activities with their customers principally for the purpose realizing staggering amount of money as profits at the end of the financial year.

There is need to revise the law and make it up to date. This is because the POCAMLA is borrowed from the English law which we know does not cater for the African cultures and values especially since majority of Kenyan citizens are illiterate and therefore the law should be able to protect the illiterate in case they enter into contract or agreement with a launderer.

There is also need for training and re-training of personnel of Anti Money Laundering institutions, so that they would be properly equipped and positioned to tackle the crime conscientiously and holistically. Furthermore, the collective attitude of all Kenyans and even foreigners should be aimed at eliminating and totally eradicating this economic virus in the nature of money laundering.

Kenya also need to:

1. To have proper mechanisms for handling suspicious reports. Good mechanisms should be implemented to ensure suspicious reports are brought for investigations. Under this, the law should make provisions and make it a mandatory for the banks to submit reports monthly to the supervisory bodies so that any suspicion can be detected even where the bank fails to disclose.
2. Create a compliance culture among financial institutions and to ensure that they put proper systems and procedures in place. As it is evident that money laundering mostly

takes place in the financial institutions, proper compliances system such as investing the customers previous accounts in other banks before opening an account in a particular bank. This would help trap money launders that tend to open numerous accounts in various banks.

3.To encourage financial supervisors to apply bank licensing procedures strictly, exchange information and train practitioners. There is need to make the bank licensing procedure strict so as to ensure the banks qualify and have all it takes not only to protect their customer's interest but also ensure the state interest is also protected. The supervisory bodies should also be given the powers to investigate and financial institution any time.

There is also need to train the practitioners so that they can be efficient in their work and thus detect money laundering and related crimes at the earliest stage.

4.To create public awareness of the threat from money laundering. For instance public notices should be on newspapers, radios and TV stations. This should however be in all the local languages that are circulated throughout Kenya and to places such as hospitals, schools, post offices and other public places, such as billboards which should be placed in strategic areas of cities, towns and villages to create awareness.

Furthermore the trial of all suspects of money laundering should be made public so that people would be aware of the crime.

5.Increase coordination between multiple agencies, national and international involved and to improve the limited intelligence sharing. Money laundering takes place in a chain of process and with the new technology money can be transferred from one country to

another without being detected. It is for this reason that Kenya has to increase its coordination with multiple agencies and international intelligence so that laws can be enacted to combat this crime.

6. To focus on new technologies and increase countermeasures to combat their use for money laundering. It has become difficult to combat money laundering due to the innovations of new technologies that the money launderers use. To be able to fight it therefore new technology counter measures should be implemented to be able to combat this global crime.

7. Introduce measures that make the movement of money more visible. Such measures should include the source of money one is sending and for what reasons is the person transferring the money. Although the law provide that a person cannot transfer more than a thousand dollars, a launderer may transfer a large amount of money in small portions and therefore hides from detection. The legislators should go ahead to put how many times a person can transfer money in a week or month.

By implementing the recommendations above, the authorities should further strengthen the fight against the money launderer and show them that there is no place to hide.

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APPENDICIES

APPENDIX A

QUESTIONNAIRE TO STUDENTS

AmMercelyn Santa Bayapursuing a bachelor degree in law currently in my final year.
Am carrying out a research on Money Laundering, the preventive legal measures and
the practical problems of implementation in Kenya.

Precisely your response will be treated with confidentiality and information obtained will
be strictly for educational purpose.

Tick one or write the relevant information in the space provided.

SECTION A: DEMOGRAPHIC

1. Age

a) Below 21 years

b) 22-35 years

b) 35 and above

2. Sex

a) Male

b) fe le

3. Level of education

- a) Diploma b) undergraduate
- c) Degree holder d) others, (specify).....

SECTION B

5. Have you ever heard or read about money laundering? If yes, from which source?

.....

.....

6. Do you know what entails money laundering?

.....

.....

7. What are the implications and effects of money laundering in Kenya?

.....

.....

8. What factors cause or sustains money laundering?

.....

.....

9. Do you think the client-advocate privilege hinders the fight against money laundering?

.....

.....

10. What recommendation can you give?

.....
.....

THANKS FOR YOUR COOPERATION AND MAY GOD BLESS YOU.

APPENDIX B

INTERVIEW GUIDE TO THE BANK MANAGER

1. Title of the financial institution?
2. How does Money Laundering affect the banking business?
3. What measures have been taken by your bank to prevent money laundering transactions?
4. What are the major obstacles in combating money laundering?
5. What are your recommendations for this?

THANK YOU FOR YOUR COOPERATION AND MAY GOD BLESS YOU

APPENDIX C

INTERVIEW GUIDE TO THE LAW FIRM

1. What is the title of the law?
2. What are the effects of money laundering?
3. What is your take on the argument that, client-advocated privilege impedes the fight against money laundering?
4. What are the major obstacles in combining money laundering?
5. What recommendation can you give?

THANK YOU FOR YOUR COOPERATION AND MAY GOD BLESS YOU

APPENDIX D

INTERVIEW GUIDE TO SENIOR COURT OFFICIALS

1. How many cases on money laundering has the court undertaken?
2. What measures have been taken by the courts to prevent money laundering and related offences?
3. What are the major obstacles in combating money laundering?
4. What are your recommendations for this?

THANK YOU FOR YOUR COOPERATION AND MAY GOD BLESS YOU