THE EFFICACY OF ANTI-MONEY LAUNDERING REGULATIONS AMONG BANKING INSTITUTIONS IN KENYA

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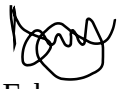
DECLARATION

I, ONSOMBI DAISY NYATICHI, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: 

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This dissertation has been submitted for examination with my approval as University Supervisor.

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ABSTRACT

This research study assesses adherence and effectiveness of the anti-money laundering regulations among financial institutions in Kenya specifically Banks. It aims to provide a macro analysis of Kenya's anti-money laundering (AML) legislation. In examining the context and consequences of these regulations and seeks to analyze the effectiveness of current Kenya legislation. The major AML regulations in Kenya are covered under The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA). This research will then attempt to determine the effectiveness of current POCAMLA, particularly on the financial Institutions, by looking at cases of alleged failure to maintain effective AML Compliance Programs by the Act. Analysis of Kenya's AML legislation is severely needed.

The result of this study will indicate that there are indeed loopholes in AML regulations in Kenya and there is a need to adapt to new anti-money laundering regulations to curb money laundering and recommend the way forward on the laws and regulations that Kenyan Banks can adopt.

ABBREVIATIONS

AML Anti-money Laundering

ESAAMLG Eastern and Southern Africa anti-money Laundering Group

FATF Financial Action Task Force

FIC Financial Intelligence Centre

FINTRAC Financial Transactions and Reports Analysis Centre

FRC Financial Reporting Centre

KYC Know Your Customer

STR Suspicious Transaction Reporting

TFML Task Force on Money Laundering

UN United Nations

CBK Central Bank of Kenya

FATF Financial Action Task Force

ML Money Laundering

POCAMLA Proceeds of Crime and Anti-Money Laundering Act

SARs Suspicious Activity Reporting

MOU Memorandum of Understanding

CDD customer Due Diligence

DCI Directorate of Criminal Investigations

PFMA Public Finance Management Act

ATA Anti-Terrorism Act

CSIS Canadian Security Intelligence Service

RCMP Royal Canadian Mounted Police

CRA Canada Revenue Agency **AMPs** administrative monetary penalties

1.1 INTRODUCTION

Money laundering is the process through which the proceeds of crime are converted into objects that appear to be genuine funds or other assets.[1] Criminals who dispose of enormous sums of money through unlawful operations must "clean it up" to make it appear legitimate, thus, the term "laundering". A more recent variation of money laundering involves the transfer of primarily legal cash for unlawful goals, such as financing terrorists, as opposed to the traditional method of hiding the source of illegally obtained funds and making them appear legal.[2] It is further defined as converting illegally obtained funds from drug trafficking, terrorism, or other serious crimes into legal funds or funds from legitimate sources.[3] Furthermore, Thanasegaran and Shanmugam defined money laundering as making large sums of money through illegal activities.[4] Corruption, extortion, prostitution, illegal liquor, and gambling are all illegal activities. Money laundering is a global phenomenon that governments are concerned about because of the widespread economic and social consequences for the global economy.

Anti-money laundering regulations are important to prevent illegal financial activities in banking institutions, aiming to detect, prevent, and report money laundering and terrorist finance activities. These regulations lie in the bank's ability to safeguard the integrity of the financial systems, promote transparency and deter financial crimes**.**

Kenya's money laundering problem has grown in importance as the country has become a major financial hub for East Africa.[5] Kenya has come under increasing pressure from international organizations like the Financial Action Task Force and because of continuous scrutiny, In May 2008, the Proceeds of Crime and Anti-Money Laundering Bill was introduced in Parliament extending reporting requirements to legal professionals. However, the bills failed in each of the previous two sessions of Parliament review but were later ratified in 2009, and it became the Proceeds of Crime and Anti-Money Laundering Act

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[1] MS Korejo, R Rajamanickam, "the concept of money laundering: a quest for legal definition" 2021.
[2] Elods Takats, 'A Theory of Crying Wolf: The Economics of Money Laundering Enforcement (IMF Working Paper, 2007) available at: http://www.imf.org/external/pubs/ft/wp/2007/wp0781.pdf, accessed 18 June 2022
[3] Towards a New Data Mining-Based Approach for Anti-Money Laundering in an International Investment Bank | SpringerLink' <https://link.springer.com/chapter/10.1007/978-3-642-11534-9_8> accessed 18 June 2022
[4] Thanasegaran, Haemala, and Bala Shanmugam. "International trade-based money laundering: the Malaysian perspective." Journal of Money Laundering Control 2007.
[5] Mutuku, Joseph Mbuvo. "The money laundering phenomenon-preventive and practical problems of implementation, a case study of east Africa region." (2010).

(POCAMLA)[6]. Section 24 of the Act is Kenya's most comprehensive AML legislation, outlining the requirements for reporting, penalties, and money laundering offenses.[7] Section 21 the Act also established the Financial Reporting Centre (FRC), which receives Suspicious Transaction Reports (STRs).[8] The Act also includes provisions for tracing, freezing, and seizing criminal proceeds.[9] The POCAMLA requires Kenyan financial institutions to develop and implement training programs to combat money laundering and terrorist financing. Furthermore, Kenya also signed and ratified all the United Nations (UN) Conventions on Combating Money Laundering and Terrorist Financing and criminalized money laundering under the Narcotics Drugs and Psychotropic Substances (Control) Act No. 4 of 1994.

The Central bank of Kenya on the other hand has the mandate to regulate and supervising the banking sector, ensuring that all institutions comply with Kenya's Proceeds of crime and Anti-money Laundering Act (POCAMLA) and regulations issued by Financial Reporting Centre.[10]

1.2 STATEMENT OF THE PROBLEM

Money laundering has been a common phenomenon in many economies, with many studies conducted locally and abroad on the issue of money laundering.[11] This illegal act is crucial because it allows the criminal to benefit from the income without disclosing their source. Many multi-specialized transactions are used in money laundering to conceal these assets, and cash can be exploited as legitimate sources arising from legal and commercial ventures. This is why there is a need for research on the effectiveness of anti-money laundering regulations among banking institutions, with a need to curb this issue.

The research will primarily focus on the Anti Money Laundering regulations, mainly the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), to identify the shortcomings and the loopholes that exist and why the Act as one of the regulations has not been able to contain the growing cases of money laundering among banking institutions in Kenya. That despite the regulations being in, there is no evidence that Kenya's coordinated efforts and the rules and regulations put in place to combat money laundering

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[6] The Proceeds of Crime and Anti-Money Laundering (Amendment) Act, 2022
[7] Section 24 of the proceeds of crime and Anti-money laundering Act, cap 59A.
[8] Section 21 of the proceeds of crime and Anti-money laundering Act, cap 59A.
[9] Section 21 of the proceeds of crime and Anti-money laundering Act, cap 59A.
[10] Section 44 of the proceeds of Crime and Anti-Money laundering Act, cap 59A.
[11] Bartlett, Brent L. "The negative effects of money laundering on economic development." Asian Development Bank Regional Technical Assistance Project No 5967 (2002).

and, by implication, crime, have been successful. Also, the practicability of the regulations, and how effective they have been.

1.3 RESEARCH OBJECTIVES

a) To identify challenges and the risks faced by various banks in Kenya to fight money laundering.
b) To assess the effectiveness of Anti-Money Laundering regulations mainly on commercial banks as financial institutions.
c) To identify the guidelines and regulations that the Central Bank of Kenya has implemented to ensure that AML regulations are adhered to by banks in Kenya.
d) To evaluate the degree to which Kenya can gain knowledge and insights from other jurisdictions regarding various aspects of addressing money laundering and organized crime.
e) To suggest and recommend solutions for curbing money laundering.

1.4 RESEARCH QUESTION

a) What are the challenges and risks faced by various banks in Kenya to fight against money laundering?
b) What is the effectiveness of Anti-Money Laundering regulations on commercial banks as financial institutions?
c) What guidelines and regulations have the Central Bank of Kenya implemented to ensure that AML regulations are adhered to by banks in Kenya?
d) How can Kenya gain and apply knowledge and insights from other jurisdictions regarding various aspects of addressing money laundering and organized crime?
e) What are the recommendations for curbing money laundering?

1.5 RESEARCH HYPOTHESIS

The hypothesis of this research is that.

a) The existing Anti-Money Laundering (AML) regulations in Kenya are insufficient in effectively curbing money laundering and organized crime within the banking sector.
b) Despite the implementation of AML reforms by the Central Bank of Kenya (CBK), the current guidelines and enforcement mechanisms fail to significantly reduce money laundering activities.

1.6 JUSTIFICATION OF THE STUDY

In recent reports from the past years, Kenya indicates that it has become vulnerable to money laundering, financial fraud, and terrorism financing.[12] The increased use of mobile money transfer platforms, the hawala banking system, and Trade-Based Money Laundering, perpetuate the vices. Money laundering not only facilitates organized crime and corruption but also diminishes the integrity of financial institutions. Despite the existence of Anti-Money Laundering (AML) regulations, their effectiveness remains questionable, as evidenced by continued financial crimes and scandals within the sector. This research hopes to evaluate the gaps in the current regulatory framework and propose actionable reforms that align with global best practices. The study aims to provide insights that can strengthen AML measures, enhance compliance, and ultimately protect Kenya's economy from the adverse effects of financial crimes.

1.7 THEORETICAL FRAMEWORK

1.7.1 Transparency-stability theory

Transparency-stability theory suggests that greater disclosure and greater transparency facilitates efficient resource allocation by reducing informational asymmetry.[13]This theory emphasizes that transparency is key to maintaining stability within institutions, particularly in the financial sector. Transparency, which is defined as the clear, accessible, and accurate disclosure of financial activities, directly contributes to the stability of financial systems by reducing risks associated with corruption, fraud, and illicit activities. This theory suggests that when financial institutions operate transparently, they create an environment where illegal activities, such as money laundering, are difficult to conceal, thus ensuring a stable and trustworthy financial ecosystem. Transparency helps build trust among customers, regulators, and international partners, ensuring that institutions remain stable and compliant with global standards.

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[12]Ngari, Jesse, "*Countering Money Laundering in the Financial Services Sector in Kenya*." University of Portsmouth, 2023.
[13] Al Owiti, Bessy D." Factors Promoting the Growth of Money Laundering Practices in Kenya." Diss. KCA University, 2024.

Banks that adhere to clear reporting practices, enforce strict "Know Your Customer" (KYC) policies, and disclose suspicious activities are better equipped to detect and prevent money laundering.[14] Also, since there is an improvement is technology today, the financial institution can use advanced technologies such as artificial intelligence and machine learning which can be useful to detect suspicious patterns in real-time, improving the speed and accuracy of compliance efforts. Furthermore, there should be strong reporting mechanisms to ensure timely identification and reporting of suspicious activities, supported by regular staff training on AML procedure. Finally, improving public accountability through audits, disclosures, and adherence to international standards demonstrates a commitment to integrity and builds trust. By prioritizing transparency, financial institutions can effectively combat money laundering, protect their reputations, and contribute to the stability of the financial system.

Conversely, institutions that lack transparency may inadvertently enable illicit financial flows, exposing themselves to regulatory penalties, reputation damage, and financial instability. When enforcement mechanisms are inconsistent or opaque, banks are less likely to prioritize compliance. By encouraging transparency at every level from internal operations to external regulatory frameworks financial institutions can enhance the effectiveness of AML measures, align with international best practices, and safeguard the stability of the financial system.

This theory is important because it promotes a culture of openness and accountability in financial institutions. This can be achieved through strong regulatory frameworks, stringent enforcement of AML laws, and the adoption of international standards like those set by the Financial Action Task Force (FATF).

1.7.2 Deterrence Theory

Deterrence theory is a concept in criminology that suggests that people are deterred from committing crimes if the perceived costs of committing the crime outweigh the potential benefits.[15] The theory assumes that individuals are rational decision-makers who will weigh the potential costs and benefits of their actions before committing a crime. Suppose the potential costs, such as the likelihood of getting

[14] Njagi, Lucy W. *Effectiveness of know your customer (KYC) policies adopted by commercial banks in Kenya in reducing money laundering and fraud incidences.* Diss. University of Nairobi, 2009.

caught, the severity of the punishment, or the social stigma associated with the crime, are high enough. In that case, individuals are less likely to engage in criminal behavior.[16]

The main idea behind anti-money laundering legislation is to prevent criminal activities through the deterrence theory. This concept of deterrence was first developed by legal and moral philosophers Jeremy Bentham and Cesare Beccaria in the 18th century.[17] They believed that the threat of formal legal punishment or penalties imposed by the State or legal authorities would discourage individuals from committing crimes. The anti-money laundering and confiscation of proceeds of crime are based on this legal theory of deterrence. The main goal of confiscating the proceeds of crime under Anti-Money Laundering regulations is to discourage criminal activities by making offenders afraid that they will lose their illegally obtained wealth to the government if caught and prosecuted. This approach is based on the belief that by confiscating the proceeds of crime and making it harder to launder illegal money, the motivation to participate in organized crime is reduced or deterred.[18]

Section 16 of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) outlines penalties for individuals and corporate bodies that contravene their provisions. [19] For violations of Sections 3, 4, or 7, individuals face imprisonment for up to 14 years, a fine not exceeding KES 5 million or the value of the property involved (whichever is higher), or both. Corporate bodies, on the other hand, may be fined up to KES 25 million or the value of the property involved, whichever is higher. For lesser infractions under Sections 5, 8, 11(1), or 13, individuals can be imprisoned for up to 7 years, fined up to KES 2.5 million, or both. Corporate bodies in such cases face fines of up to KES 10 million or the property's value, whichever is greater.

Anti-money laundering regulations are based on the secondary and complementary natural law theory, advanced by philosophers such as Thomas Aquinas. According to this theory, the law is a reasonable standard for conduct that agents have compelling reasons to obey and enforce. Money laundering is considered unethical and immoral because it involves attempting to conceal the source of funds.[20] As a

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[16] Robert Jervis, *'Rational Deterrence: Theory and Evidence*,' 1989.
[17] Altman, Matthew*,". A theory of legal punishment: Deterrence, retribution, and the aims of the State*." Routledge, 2021.
[18] J Mitchell Miller, 21st Century Criminology, (Thousand Oaks, Calif.: Sage, 2009) vol 2, 236
[19] Section 16 of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59A
[20] Golding, Martin P., and William A. Edmundson, editors. The Blackwell Guide to the Philosophy of Law and Legal Theory. Blackwell Pub, 2005

representative of society, the State considers money laundering highly immoral and has enacted a law prohibiting this behavior.

1.8 LITERATURE REVIEW

Money laundering

Over the past few years, several definitions have been put forward to explain money laundering. However, money laundering is essentially defined as obtaining money illegally and trying to make it legal.[21] This form of crime is mainly carried out in the banking sector through profit-motivated crimes such as corruption, fraud, embezzlement, and misappropriation, just to mention a few.

1.8.1 Stages of money laundering

According to Billy Steel, money laundering consists of various transactions intended to change the source of financial assets, thus not compromising the criminal offense.[22] The three stages outlined by Billy include placement, layering and integration. Placement refers to the stage where financial assets are physically distributed. At this stage, the main objective of the perpetrator is to remove cash from the location of acquisition by converting it into assets, thus preventing detection from the authority.[23]

Layering is the second stage, which involves creating complex financial transaction layers. By so doing, the perpetrator can cover audit tails, thus providing high levels of secrecy.[24] The layering process is essential in disguising the origin and ownership of funds. It is a critical stage as it disassociates the illegal funds from the source of the offense. At this stage, the perpetrators of this crime can involve other professionals such as lawyers, brokers, and consultants to enhance the secrecy and legality of the funds.[25]

The last stage in the money laundering process is the integration stage. This is the stage at which the perpetrators of the crime try to create the legitimate origin of the assets in question. This is the 'cleaning' stage, and the launder makes money appear legally earned. At this stage, great caution should be taken

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[21] 'What Is Money Laundering?' (*Investopedia*) <https://www.investopedia.com/terms/m/moneylaundering.asp> accessed 22 June 2022

[22] Billy Steel. Money-Laundering - Billy's Money-Laundering Information. Available at http://www.Countermoneylaundering.com.

[23] https://www.unodc.org/unodc/en/money-laundering/overview.html

[24] https://www.unodc.org/unodc/en/money-laundering/overview.html.

[25] https://www.unodc.org/unodc/en/money-laundering/overview.html

since this is where the launder makes it difficult for the authority to detect misdoings.[26] The huge sums earned through such dealings are mainly removed from the country of origin and cycled through international payments, thus making any audit attempt futile.[27] The laundered money is disguised to be from casinos, real estate sales, or fake imports of valuable goods. Money laundering is profit-motivated; for this reason, the perpetrators must ensure that what they do does not attract attention from the respective authorities.[28]

1.8.2 Regulatory Framework

Anti-money laundering (AML) framework is built upon the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), enacted in 2009. This legislation provides a legal foundation for combating money laundering by establishing preventive and enforcement mechanisms within financial institutions. One of its key features is the establishment of the Financial Reporting Centre (FRC), which is tasked with 1) making information collected by it available to investigating authorities, supervisory bodies and any other bodies relevant to facilitate the administration and enforcement of the laws of Kenya 2) Exchange information with similar bodies in other countries regarding money laundering activities and related offence and 3) Ensuring compliance with international standards and best practice in anti-money laundering measures.[29]

The act has been recognized and praised my many scholars for aligning with international standards, particularly the recommendations of the Financial Action Task Force (FATF), a global watchdog on financial crimes.[30] These recommendations guide countries on best practices for detecting and preventing money laundering. However, while the Act appears to be very effective on paper, significant challenges seem to erode its implementation. One of the issues is the inconsistency in enforcing its provisions. For instance, while larger financial institutions often have the resources to comply with regulatory requirements, smaller institutions may struggle due to limited infrastructure and expertise.[31]

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[26] https://www.unodc.org/unodc/en/money-laundering/overview.html
[27] *Ibid* at 215-16
[28] Mulig E and Smith M, 'Understanding and Preventing Money Laundering"
[29] Section 23 of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59.
[30] Mbowe, Prosper K." The Financial Action Task Force recommendations on anti-money laundering: a case study of East African banks", 2018.
[31] Muriithi, Samuel Muiruri, and Lynette Louw. "The Kenyan banking industry: Challenges and sustainability." Managing knowledge and innovation for business sustainability in Africa (2017): 197-222.

Harmonizing Kenya's AML framework with international norms remains a challenge. This is partly because of the dynamic nature of global financial crime, which often outpaces domestic regulatory capabilities. Furthermore, institutional weaknesses, such as understaffing and inadequate training within the FRC and other regulatory bodies, reduce the effectiveness of oversight.[32] Corruption and political interference also complicate enforcement, with some high-profile cases stalling due to a lack of political will or influence from powerful individuals.[33] These factors collectively hinder Kenya's ability to fully operationalize the goals of POCAMLA, despite its strong legislative foundation.

1.8.3 Institutional oversight

The Central Bank of Kenya (CBK) is at its efforts to ensure banking institutions comply with anti-money laundering (AML) regulations.[34] It serves as the regulator of financial institutions, issuing guidelines that require banks to carry out customer due diligence (CDD), maintain detailed records of transactions, and report any suspicious activities to the Financial Reporting Centre (FRC). These measures are designed to enhance transparency and prevent the misuse of financial systems for laundering illicit funds. CBK has demonstrated a commitment to strengthening the AML regime by introducing these directives and conducting periodic audits to assess compliance levels.[35]

However, despite these efforts, the actual implementation and oversight remain inconsistent. While some banks adhere to the regulations, others have been found wanting, with cases of non-compliance becoming a recurring issue. [36] Instances of banks failing to adequately screen clients, neglecting to flag suspicious transactions, or even facilitating illicit activities due to internal weaknesses have been reported. These gaps in monitoring mechanisms often stem from resource constraints, lack of better technology, and, in some cases, complicity by bank employees. Furthermore, the CBK's capacity to enforce penalties and follow up on reported violations has been questioned, as some offenders manage to escape stringent action.[37] These lapses not only undermine the credibility of the regulatory framework but also expose

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[32] FaCchin, Marta. "Corporate Governance and Regulatory Responses in Financial Services: Analyzing Market Failures and Reform Initiatives."

[33] Mugarura, Norman. "Uncoupling the relationship between corruption and money laundering crimes." Journal of Financial Regulation and Compliance (2016).

[34] Mochere, Shalline Nyaboke." Money laundering in the banking sector: a critical analysis of the enforcement procedures in Kenya". Diss. Strathmore University, 2020.

[35] Section 51A of the Central Bank of Kenya Act, Cap. 491.

[36] Dill, Alexander, "Bank regulation, risk management, and compliance: theory, practice, and key problem areas," informa law from Routledge, 2019.

[37] Murai, Eric K." Legal Responses Towards Tackling Financial Crime in Kenya's Banking Sector: is It Enough? "Diss. University of Nairobi, 2019.

Kenya's banking sector to continued exploitation by money launderers. To achieve meaningful progress, the CBK must strengthen its monitoring capacity, enforce stricter penalties for non-compliance, and invest in advanced technologies to detect and deter money laundering activities effectively.

1.8.4 Effectiveness and challenges of AML Regulations

The implementation of POCAMLA has enhanced the capacity of banks to detect and report suspicious transactions.[38] Banks have adopted Know Your Customer (KYC) protocols, automated transaction monitoring systems, and stringent reporting mechanisms to adhere to legal requirements. However, gaps remain in the enforcement of these regulations, particularly among smaller financial institutions that lack resources. Banks still face numerous challenges in combating money laundering, including inadequate technological infrastructure, limited expertise, and evolving money laundering techniques. The high cost of implementing advanced AML systems has also deterred some institutions from adopting comprehensive measures.[39] Another significant challenge is the risk posed by informal financial systems, such as mobile money platforms and hawala networks. These systems, while beneficial for financial inclusion, present vulnerabilities for money laundering due to their limited oversight.

1.8.5 Comparative perspective

When comparing Kenya's anti-money laundering (AML) framework to those of South Africa and Nigeria, several insights emerge that highlight both the strengths and weaknesses of Kenya's approach. These two countries are often regarded as having among the best AML enforcement on the continent, owing to their more established frameworks and stronger enforcement mechanisms.[40]

In South Africa, the Financial Intelligence Centre (FIC), established under the Financial Intelligence Centre Act, 2001, plays an important role in monitoring and analyzing financial transactions.[41] South Africa has implemented strong Know Your Customer (KYC) policies and enforces strict penalties for non-compliance. High-profile cases of financial misconduct are frequently prosecuted, signaling a

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[38] Gikonyo, Constance. *"Detection mechanisms under Kenya's anti-money laundering regime: omissions and loopholes."* Journal of Money Laundering Control 21.1 (2018): 59-70.
[39] Balakrishnan, Anandaganesh, et al. "*Blockchain Empowerment in Sanctions and AML Compliance: A Transparent Approach*." 2024.
[40] Gaviyau, William, and Athenia Bongani Sibindi. "*Global anti-money laundering and combating terrorism financing regulatory framework: A* critique." Journal of Risk and Financial Management 16.7 (2023).
[41] Yozi, Mhlezi, "*The Identification and Verification of Clients by Banks in South Africa: A Financial Intelligence Centre Act Requirement.*" University of Johannesburg (South Africa), 2020.

commitment to zero tolerance for money laundering.[42] Furthermore, South Africa's AML framework benefits from advanced technology, which aids in real-time monitoring and tracking of suspicious activities. The country's proactive stance has earned its recognition globally, with significant progress in meeting Financial Action Task Force (FATF) standards.

Nigeria, on the other hand, has made progress through its collaborative approach with international bodies and regional partners. The Nigerian Financial Intelligence Unit (NFIU) works closely with the FATF and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA)[43]. This cooperation has enhanced Nigeria's capacity to address cross-border money laundering activities. Nigeria has also invested in public-private partnerships to strengthen AML enforcement, enabling better coordination between financial institutions and regulators.[44] Despite challenges such as corruption and weak judicial systems, Nigeria's emphasis on international collaboration has contributed to improved outcomes.

Kenya, while making progress through the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), still lags these countries. Unlike South Africa, Kenya's enforcement mechanisms are often inconsistent, with limited follow-through on high-profile cases.[45] Additionally, while Nigeria has leveraged international partnerships to strengthen its efforts, Kenya's engagement in regional and global AML initiatives remains underutilized.

To strengthen its AML framework, Kenya can draw several lessons from these countries. From South Africa, Kenya can adopt stricter enforcement mechanisms, including harsher penalties for non-compliance and a focus on prosecuting high-profile offenders. Investing in advanced technological tools for transaction monitoring and data analysis can also enhance detection capabilities. From Nigeria, Kenya can

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[42] Mphidi, Azwihangwisi Judith, "An analysis of the rules and procedures of reporting fraud and corruption in the department of trade and industry." Diss. University of South Africa, 2015.
[43] Ifeakandu, Ibe Okegbe, and Habila Ardzard. "*The Role of Institutional Framework in Entrenching Effective Anti-Money Laundering/Combating Terrorist Financing in West Africa: Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) in Perspective*." Beijing L. Rev. 13 (2022).
[44] Klinton, Brown, and Sabir Kashar. "*Examining global aml frameworks, their challenges, and strategies for effective implementation.*"
[45] Kelly, Catherine Lena. "*Rule of law approaches to countering transnational organized crime in Africa: going beyond criminal justice*." Trends in Organized Crime 26.4 (2023).

increase collaboration with international and regional bodies to address cross-border money laundering and benefit from shared expertise and resources.

1.9 RESEARCH METHODOLOGY

This was primarily a doctrinal study that used primary sources such as cases and statutes as well as secondary material like published texts, articles and journals from online publishers and libraries. In particular, the primary source will be POCAMLA and the enabling Regulations together with the FATF. This study uses a doctrinal research approach, which analyzes legal principles, concepts, and doctrines to find quick answers to the practical challenges at hand. This research approach ensures a steady stream of material on a regular basis, provides insights into the evolution and development of the law, provides a logical explanation for the law, while also highlighting discrepancies and uncertainties. It is also easier to identify gaps, ambiguities, and inconsistencies in the law, resulting in a more focused and successful study outcome.

1.10 LIMITATIONS

This relies on existing legal texts, case law, and academic literature, which may not adequately address emerging issues or incorporate broader social, economic, or cultural perspectives. Furthermore, it is inherently static, analyzing laws as they are without considering the dynamic nature of legal systems or societal changes that influence legislation. There is also a lack of empirical data collection, such as surveys or interviews, which restricts its ability to assess the real-world impact of laws on individuals and institutions.

1.11 CHAPTER BREAKDOWN

Chapter One Introduction

This chapter will mainly be the initial foundation of the project that explains the phenomenon related to money laundering and what we mean by the concept of AML laws generally. It will also describe major issues to be addressed in other chapters, and this is an overview of this research.

Chapter 2

This chapter hopes to identify and elaborate various effectiveness and challenges faced by various banks in Kenya to fight money laundering. This will give us a comprehensive understanding of the obstacles and vulnerabilities that hinder Kenyan banks in effectively dealing with money laundering crime, thereby highlighting areas requiring improvement.

Chapter 3

This chapter focuses on the role of the Central Bank of Kenya (CBK) in enforcing anti-money laundering (AML) regulations within the financial sector. It examines the measures CBK has put in place to ensure that financial institutions comply with AML laws and prevent illicit financial activities.

Chapter Four

This chapter will deal with a comparative analysis of Kenya's anti-money laundering laws made.
with those of the South Africa and Canada, which have advanced anti-money laundering laws.
compared to Kenya. Therefore, these two countries can provide valuable insights into anti-money.
laundering legislation and the necessary institutional frameworks

Chapter Five.

The chapter also provides recommendations aimed at strengthening AML measures, including enhancing institutional oversight, adopting advanced financial crime detection technologies, and aligning Kenya's AML regulations with international standards. It emphasizes the need for better coordination between financial institutions, regulatory bodies, and law enforcement agencies to improve compliance and enforcement.

CHAPTER 2

CHALLENGES AND EFFECTIVENESS FACED BY VARIOUS BANKS IN KENYA IN FIGHTING MONEY LAUNDERING.

2.1 INTRODUCTION

Money laundering is a serious global issue that threatens the financial stability and security of countries all over the world.[46] It encompasses disguising the proceeds of illegal activity as legitimate funds. Many countries have implemented Anti-Money Laundering (AML) regulations to ensure that financial institutions are not used to launder the proceeds of illegal activities.[47] Section 57 of the Central Bank of Kenya (CBK) has implemented AML regulations that all Kenyan banking institutions must follow.[48] Even with these regulations, several flaws must be addressed to ensure effective implementation and compliance by banking institutions. These shortcomings continue to hinder the fight against Money Laundering, The Prevention of Terrorism Act. The Proceeds of Crime and Anti-Money Laundering Act (POCALMA) are the primary legal frameworks that govern anti-money laundering regulations for banking institutions. To understand the challenges, my preference would be specified on this Act as it forms a major part of the AML regulations in Kenya. Some of these challenges include the following:

2.2 CHALLENGES OF THE REGULATION

2.2.1 Failure to Report Suspicions Transactions.

Section 5 of the POCAMLA states that a person who willfully fails to comply with an obligation contemplated in section 44 (2) commits an offence.[49] Section 44 (2) states that Upon suspicion that any of the transactions or activities or any other transaction or activity could constitute or be related to money laundering or to the proceeds of crime, a reporting institution shall report the suspicious or unusual transaction or activity to the Centre in the prescribed form immediately and, in any event, within seven days of the date the transaction or activity that is considered to be suspicious occurred.[50] According to the

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[46] Bartlett, Brent L. "*The negative effects of money laundering on economic development*." Asian Development Bank Regional Technical Assistance Project No 5967 2002.
[47] International Monetary Fund, 'Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)' https://www.imf.org/external/np/leg/amlcft/eng/ accessed 28 March 2023.
[48] Section 57 Of The Central Bank Of Kenya Act Cap 491.
[49] Section 5 of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59.
[50] Section 44(2) of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59A.

law, reporting institutions must continuously monitor all transactions, including those that are complex, unusual, suspiciously large, or specified in the regulations, regardless of whether they have been completed. Section 44(3) adds that a reporting institution shall report all suspicious transactions, including attempted transactions to the Centre.[51] Reporting institutions must pay attention to unusual patterns of transactions, periodic patterns of transactions that have no apparent economic or lawful purpose, and report any suspicious transactions or activities related to money laundering or proceeds of crime to the Financial Reporting Centre.[52] Using the prescribed form, this reporting must be done immediately and within seven days of the suspicious transaction or activity. However, there are some challenges to implementing this law.

First, monitoring many transactions can be very challenging due to the sheer volume and frequency involved; casing point Safaricom has over 20 million registered M-Pesa users, making it difficult to investigate the purpose and legitimacy of all transactions.[53] Transactions occur in real-time, spanning diverse amounts, geographic locations, and user profiles, leaving limited time for verification. For example, M-Pesa allows users to send and receive money instantly, often bypassing traditional banking scrutiny. This becomes difficult to identify anomalies or suspicious patterns, as illicit transactions because they can easily blend into the vast stream of legitimate financial activities.

Second, Under POCAMLA, reporting entities, including banks, are required to file Suspicious Transaction Reports (STRs) with the Financial Reporting Centre (FRC) within seven days of detecting unusual activities. During this period, funds linked to potential money laundering can be transferred through multiple accounts, jurisdictions, or institutions. This "time lag" enables criminals to layer and integrate illicit money, making it almost impossible to trace its origin or destination.[54] For banks, this delay creates operational vulnerabilities. By the time investigations begin, the money may already have been withdrawn, transferred abroad, or used to purchase assets. The absence of a legal mandate to immediately freeze such transactions leaves financial institutions powerless to stop the flow of suspect funds.

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[51] Section 44(3) of the Proceeds of Crime and Anti-Money laundering Act, Cap 59A.
[52] The Financial Reporting Centre was established under Section 21 of the Act.
[53] Sungi, Simeon, Moses Osiro, and Terry Odhiambo. "M-Pesa and Transnational Organized Crime: Causes and Facilitation Factors." (2022).
[54] Daoud, George. "The Evolving Nature Of Financial Crime With The Increase Of Internet Capabilities. Challenge Identification, Legal Considerations and Policy Recommendations." Diss. School of Advanced Study, 2023.

Fourthly, the law requires reporting institutions to report based on speculation and suspicion rather than information that has been investigated and confirmed to be valid. Some transactions may appear to meet the threshold of money laundering due to frequency or amount, but further investigation may reveal that the transactions are legitimate and lawful. This means that reporting institutions may send false positive reports to the Financial Reporting Centre and overwhelm it with unnecessary reports if preliminary investigations are not conducted.[55]

2.2.2 Malicious Reporting

Section 10 states that any person who willfully gives any information to the Centre or an authorized officer knowing such information to be false commits an offence.[56] The act criminalizes malicious reporting which poses a significant challenge for banks in their efforts to fight money laundering. While the intention is to deter the deliberate provision of false information to the Financial Reporting Centre (FRC) or authorized officers, the absence of a clear definition for "malicious reporting" creates a precarious situation. Banks, as key reporting entities, are often tasked with filing Suspicious Transaction Reports (STRs) based on reasonable grounds of suspicion.[57] However, the fear of being accused of malicious reporting may discourage banks and their compliance officers from taking decisive action, particularly in cases where suspicions are later deemed unfounded.[58] In a context where money laundering schemes are suspicious, banks may hesitate to report suspicious activities, fearing legal repercussions if the reported transaction is ultimately deemed legitimate.[59] Such hesitation undermines the proactive identification of illicit activities and allows criminals to exploit the system. Furthermore, the potential for prosecution may lead to a cautious or overly conservative approach to reporting, resulting in under-reporting of suspicious transactions.

The challenge is further compounded by the subjective nature of identifying suspicious activities. Not all flagged transactions are clear-cut cases of money laundering; some may simply involve unusual patterns that warrant further investigation. Without explicit legal protections or clarity around what constitutes

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[55] Dutta, Oindrila and Athawale, Sanhita, 'National Education Policy 2020: A Critical Appraisal' (2021) 17(1) Journal of Education Planning and Administration 103, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4033785 accessed 28 March 2023

[56] Section 10 of the Proceeds of crime and Anti-Money Laundering Act, Cap 59A

[57] Rahman, Aspalella A. "The impact of reporting suspicious transactions regime on banks: Malaysian experience." Journal of Money Laundering Control 16.2 2013.

[58] Arafa, Mohamed. "False spring: Deep corruption and protecting the regime." Cornell Int'l LJ 56 2023

[59] Vineer, Annalise. "The Awkward Question: An Examination of Questioning Techniques Used By Banks To Prevent Financial Crime." 2018.

malicious reporting, banks may opt for a risk-averse stance, prioritizing the avoidance of liability over the comprehensive reporting of potential money laundering cases. This gap in the legal framework not only weakens the effectiveness of anti-money laundering (AML) regulations but also places banks in a difficult position, balancing their obligation to report with the potential consequences of being accused of wrongdoing.

Additionally, since Section 44 of the Act mandates financial institutions to actively keep an eye out for and report any suspicious financial activity related to money laundering, this can be challenging and expensive, as monitoring all transactions is complicated and time-consuming. As a result, institutions may increase their reporting threshold to avoid false alarms, which could cause them to miss out on identifying smaller yet still concerning transactions. It can be difficult for institutions to find the right balance between complying with the law and practically monitoring 100% of transactions. As the law doesn't specify the exact monitoring requirements, institutions create rules based on the situation. Therefore, accusing a reporting institution of breaking this section of the Act would be hard. Section 46(1) requires institutions to conduct proper background checks before accepting an individual or a company as a customer.[60] This involves verifying their identity using official documents like passports, birth certificates, and driving licenses. While this is a good measure, it puts pressure on institutions to validate the authenticity of these documents, which is difficult without the help of government agencies.[61]Obtaining information from these agencies can be time consuming and bureaucratic, which may cause customer delays and frustration.

2.2.3 Insufficient Customer Due Diligence (CDD)

Requirements Customer Due Diligence (CDD) is an important requirement in Anti-Money Laundering (AML) regulations that seeks to prevent criminals from using financial institutions to launder illicit funds.[62] CDD involves a series of checks and procedures that financial institutions must perform to verify the identity of their customers, understand their business activities, and assess the risks associated with their transactions.[63] In Kenya, CDD is governed by the Proceeds of Crime and Anti-Money Laundering

[60] Section 46 of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59A.
[61] Njoroge, Carolyn. *The Institutional Challenges Facing Implementation of Anti-money Laundering Law in Kenya*. Diss. University of Nairobi, 2021.
[62] Njoroge, Carolyn. The Institutional Challenges Facing Implementation of Anti-money Laundering Law in Kenya. Diss. University of Nairobi, 2021.
[63] https://www.fraud.com/post/customer-due-diligence.

Act (POCAMLA) and the Central Bank of Kenya's (CBK) Prudential Guidelines for Institutions Licensed under the Banking Act.59.[64] The CDD process involves three main components which includes;[65]

1. **Customer Identification**: Financial institutions must identify and collect basic information about their customers, including their name, date of birth, address, occupation, and source of funds. In Kenya, the identification process is guided by the Know Your Customer (KYC) requirements. KYC aims to establish the customer's identity and assess the risks associated with the customer and their transactions. For instance, if the customer is a politically exposed person (PEP), a higher level of scrutiny is required due to the potential for increased corruption risks.

2. **Customer Verification**: Financial institutions must verify the information provided by the customer using reliable and independent sources, such as government-issued documents, credit bureaus, or other reputable databases. In Kenya, financial institutions must verify customer identity using at least two independent documents, such as a national ID, passport, or driving license.

3. Customer Monitoring: Financial institutions must monitor customer transactions to identify unusual or suspicious activity. Monitoring involves reviewing the customer's account activity, transaction history, and other relevant information to assess the risk associated with their transactions. In Kenya, financial institutions must monitor customer transactions continuously and report any suspicious activity to the Financial Reporting Centre (FRC).

Implementing CDD requirements in Kenya has faced several challenges including limited resources, inadequate technology, and insufficient staff training.[66] Under inadequate technology, CDD relies heavily on advanced technological systems capable of analyzing large volumes of data, identifying suspicious patterns, and verifying customer identities against international watchlists and databases.[67] However, many Kenyan financial institutions lack access to such proper advanced systems.[68] Outdated systems often struggle to integrate with external data sources, such as government identification databases or international AML platforms. This technological gap results in incomplete or inefficient customer verification processes, allowing fraudulent identities or high-risk customers to slip through undetected.

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[64] Banking Act, cap 488.
[65] https://www.fraud.com/post/c customer-due-diligence.
[66] Njoroge, Carolyn "*The Institutional Challenges Facing Implementation of Anti-money Laundering Law in Kenya"*. Diss. University of Nairobi, 2021.
[67] Iheonunekwu, Prince. "*The trifecta against financial crime: A collaborative analysis of the roles of banks, consulting firms, and governments.*" (2024).
[68] Allen, Franklin, et al. "*Improving access to banking: Evidence from Kenya.*" Review of Finance, 2021.

Furthermore, the rise of digital and mobile banking has introduced new complexities, as institutions must now monitor and verify customers in real-time across multiple platforms.[69]

Also in Kenya, a significant number of financial institutions lack adequately trained staff to carry out the assessments and investigations required by CDD standards.[70] Many employees are unfamiliar with the complexities of AML regulations or rather lack the expertise to potential identify red flags in customer profiles or transaction patterns. Without proper training, staff may overlook critical risks, misinterpret regulations, or fail to escalate suspicious activities for further investigation. Additionally, high staff turnover in the financial sector exacerbates the problem, as institutions must continuously invest in training new employees.

These challenges have resulted in some financial institutions failing to comply with CDD requirements fully, thus making it easier for criminals to use the institutions for money laundering and terrorist financing.

2.2.4 Cross-Border Transactions

One of the primary challenges is the variation in anti-money laundering (AML) regulations across different jurisdictions.[71] Each country has its own set of rules and standards, which can differ significantly. This lack of uniformity makes it difficult for banks to ensure compliance across all regions involved in a transaction.[72] For instance, a transaction involving multiple countries may need to adhere to different reporting requirements, customer due diligence standards, and suspicious activity thresholds, complicating the AML process.

Cross-border transactions often involve multiple parties, financial institutions, and intermediaries, increasing the complexity of monitoring and detecting suspicious activities.[73] Criminals can exploit these complexities by layering transactions through various jurisdictions to obscure the origin of illicit funds. An example is the shell companies. Shell companies are business entities that exist only on paper, with no

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[69] Vives, Xavier. "*Digital disruption in banking*." Annual Review of Financial Economics, 2019.
[70] Chatain, Pierre-Laurent "*Preventing money laundering and terrorist financing: a practical guide for bank supervisors*." World Bank Publications, 2009.
[71] Amrani, Hanafi "*The development of anti-money laundering regime: challenging issues to sovereignty, jurisdiction, law enforcement, and their implications on the effectiveness in countering money laundering*." 2012.
[72] Skinner, Christina Parajon. "*Coins, Cross-Border Payments, and Anti-Money Laundering Law*." Harv. J. on Legis. 60 2023.
[73] Zhang, Yaolin. "*Developing cross-border blockchain financial transactions under the belt and road initiative*." The Chinese Journal of Comparative Law 8.1 2020.

physical presence, employees, or genuine economic activities.[74] They are often used to conceal the true ownership and control of assets, making it difficult for authorities to trace the origin of illicit funds.

Money launderers exploit these entities by creating a web of interconnected shell companies across multiple jurisdictions.[75] This complex network obscures the trail of money, making it challenging for banks and regulatory bodies to identify suspicious transactions.[76] For instance, funds can be transferred between several shell companies in different countries, each with varying levels of regulatory scrutiny. This layering process helps to disguise the illicit origin of the money, as each transaction appears legitimately on the surface.

Additionally, shell companies can be registered in jurisdictions with strict privacy laws and minimal regulatory oversight, often referred to as tax havens.[77] These jurisdictions provide an elevated level of anonymity, allowing the true owners of shell companies to remain hidden. This lack of transparency makes it difficult for banks to conduct thorough customer due diligence and identify the ultimate beneficial owners of the funds.

Effective AML efforts require coordination and information sharing between financial institutions and regulatory bodies across different jurisdictions.[78] However, differences in legal frameworks and data protection laws can hinder the sharing of information. Banks may face legal and operational barriers when attempting to share data on suspicious transactions with foreign counterparts, limiting their ability to track and prevent money laundering effectively.

Monitoring cross-border transactions for money laundering requires specialized knowledge and skills. Banks need personnel who are well-versed in international AML regulations and the latest money laundering techniques[79]. However, there is often a shortage of such expertise, making it challenging for banks to maintain effective AML programs.

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[74] Singh, Dharmvir. "*Incorporating with fraudulent intentions: A study of various differentiating attributes of shell companies in India.*" Journal of Financial Crime 17.4 2010.
[75] Pacini, Carl, Jerry W. Lin, and Gary Patterson. *"Using shell entities for money laundering: methods, consequences, and policy implications*." Journal of Forensic and Investigative Accounting 13.1 2021.
[76] https://amlsquare.com/blog/shell-companies-in-money-laundering-examples-how-to-identify-it/.
[77] Aliprandi, Giulia, Thijs Busschots, and Carlos Oliveira. "Mapping the global geography of shell companies." 2023.
[78] https://financialcrimeacademy.org/aml-challenges-in-cross-border-transactions/
[79] https://complyadvantage.com/insights/top-aml-challenges-for-cross-border-payments-firms-in-2023/

2.3 EFFECTIVENESS OF THE REGULATIONS

2.3.1 Adequate Legal Framework

The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) strong legal foundation that empowers the financial institutions.[80] Section 45of the act outlines clear guidelines and measures such as Customer Due Diligence (CDD), transaction monitoring, and the reporting of suspicious activities. This ensures that financial institutions are keen on identifying and addressing potential money laundering risks. For instance, CDD obligates banks to verify the identities of their customers, assess their risk levels, and continuously monitor their transactions and this makes the banks to be vigilant.[81] Similarly, a reporting institution shall monitor on an ongoing basis all complex, unusual, suspicious, large or such other transactions as may be specified in the regulations, whether completed or not, and shall pay attention to all unusual patterns of transactions, and to insignificant but periodic patterns of transactions which have no apparent economic or lawful purpose as stipulated in the regulations.[82]Additionally, the Act mandates the reporting of suspicious transactions to the Financial Reporting Centre (FRC), which serves as the authority responsible for analysing and investigating these activities.[83]

Also, the establishment of the Financial Reporting Centre (FRC) under POCAMLA marked a meaningful change in Kenya's efforts to fight money laundering. The FRC serves as the central agency responsible for receiving, analysing, and disseminating suspicious transaction reports (STRs) submitted by financial institutions and other reporting entities.[84] By centralizing these functions, the FRC has enhanced coordination and streamlined the flow of information, which is essential for identifying and addressing potential money laundering activities.

Additionally, The FRC plays role in bridging the gap between financial institutions and law enforcement agencies. Once an STR is analysed and deemed credible, the FRC forwards actionable intelligence to relevant authorities for further investigation and prosecution. This process ensures that cases are built on well-substantiated evidence, improving the likelihood of successful legal outcomes. Furthermore, the FRC centralized structure allows it to be able to identify patterns and trends in money laundering activities,

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[80] Proceeds of crime and Anti-Money laundering Act, Cap 59.
[81] Section 45(2) of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59.
[82] Section 44(1) of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59.
[83] Section 24(a)(i) of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59
[84] Kathuli, Thomas Muli. "An Assessment Of The Effectiveness Of The Financial Reporting Centre And Financial Institutions In Prevention Of Money Laundering." A Case Study Of Nairobi County. Diss. University of Nairobi, 2018.

enabling a more strategic approach to fighting money-laundering crime across the country. Another important function of the FRC is that it provides guidance and feedback to reporting institutions by issuing advisories, typology reports, and best practice guidelines. The FRC helps financial institutions enhance their anti-money laundering (AML) measures and better comply with regulatory requirements.

POCAMLA raises awareness about the risks and consequences of engaging in money laundering schemes, making financial institutions key stakeholders in national and global anti-money laundering (AML) efforts. This legal framework ensures that compliance is not optional but a legal duty, emphasizing the role of banks in safeguarding the financial system's integrity. Furthermore, the Act gives a standardized approach across all banking institutions ensuring consistency in how institutions manage money laundering issues. However, while the legal guidelines are comprehensive, its effectiveness on the ability of financial institutions to implement these measures amidst challenges such as resource constraints, technological limitations, and operational inefficiencies still poses as problem.

2.3.2 Penalties and Deterrence for Money Laundering

The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) prescribes the penalties for non-compliance, which shows Kenya's determination to combat money laundering and related financial crimes.[85] These penalties serve as a deterrent against institutional negligence and individual complicity in anti-money laundering. By imposing these measures, POCAMLA encourages financial institutions and individuals to prioritize compliance, even amid operational challenges.

Under POCAMLA, institutions that fail to report suspicious transactions, conduct proper customer due diligence, or implement anti-money laundering (AML) measures face heavy fines, reputational damage, and revocation of operational licenses. For example, Section 16 of POCAMLA dictates that institutions found in violation of the Act may be subjected to fines of up to KES 5 million or more, depending on the nature and extent of the violation. Such penalties not only bring about financial costs but also show the potential reputational risks that could deter customers and partners, creating strong incentives for institutions to adhere to AML regulations.

For individuals, POCAMLA provides for severe punishments, including imprisonment and fines. For instance, anyone found guilty of knowingly facilitating money laundering activities or failing to report suspicious activities faces imprisonment for a term of up to 14 years or a fine not exceeding KES 5 million,

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[85] Section 16 of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59.

or both. These penalties show the seriousness with which the law views individual culpability, deterring potential offenders from engaging in money laundering or aiding such crimes. The Act includes provisions targeting malicious reporting.[86] While malicious reporting is penalized to prevent abuse of the system, the penalties for non-compliance with genuine AML obligations are markedly stringent. This balance aims to create a reporting culture that is both responsible and effective.

The deterrent effect of POCAMLA penalties has compelled financial institutions to invest in compliance mechanisms, such as improving strong monitoring systems, staff training, and adherence to Customer Due Diligence (CDD) requirements. Despite the associated costs, the fear of regulatory sanctions, legal battles, and reputational harm has driven banks and other financial institutions to align their operations with the law.

2.4 ARE THERE STILL CASES OF MONEY LAUNDERING AMONG BANKING INSTITUTIONS AND WHY IS THAT?

Yes, despite the Kenyan legal framework to fight money laundering crime, there are still cases occur among financial institutions. Kenya has enacted and amended strong laws and established mechanisms to tackle money laundering, including the **Proceeds of Crime and Anti-Money Laundering Act (POCAMLA)** and the creation of the **Financial Reporting Centre (FRC).** The following are the reasons as to why there are still cases of money laundering crimes among banking institutions.

2.4.1 The use of improved and complicated schemes by money launderers

Day by day due to technology advancement, money launderers evolve their tactics, employing complex methods such as layering, where illicit funds are transferred across multiple financial institutions, accounts, or jurisdictions to obscure their origin.[87]This deliberate fragmentation makes it challenging for regulatory authorities to trace the funds, especially when transactions occur in countries with varying levels of compliance with anti-money laundering (AML) standards. Additionally, emerging technologies like cryptocurrencies pose significant challenges for the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).[88] Cryptocurrencies provide a high degree of anonymity and decentralization, enabling

[86] Section 10 of the Proceeds of Crime and Anti-Money Laundering Act, Cap 59

[87] Sinno, Roy Majed, Graham Baldock, and Kimberly Gleason. "The evolution of trade-based money laundering schemes: a regulatory dialectic perspective." Journal of Financial Crime 2023.

[88] Ngari, Jesse "Countering Money Laundering in the Financial Services Sector in Kenya." Diss. University of Portsmouth, 2023.

money launderers to move funds without relying on traditional financial systems subject to regulation.[89] The decentralized nature of blockchain technology, coupled with peer-to-peer transactions and the use of privacy-enhancing tools like mixers, makes it difficult for authorities to track and link transactions to individual users. POCAMLA, while comprehensive, has yet to fully integrate measures to address the growth of digital financial innovations, leaving gaps that money launderers can exploit. This underscores the need for continuous updates to the legislation and the incorporation of advanced technologies for monitoring and enforcement.

2.4.2 Mobile Money Platforms

Mobile money services have revolutionized how people access financial services, particularly through platforms like M-Pesa. However, these platforms have also been targeted by money launderers due to their relatively lower levels of scrutiny compared to traditional banking systems. Features such as anonymous transactions, informal agent networks, and the ability to transfer money in small increments make it harder to detect suspicious patterns. Additionally, mobile money platforms are often linked to multiple accounts, enabling users to layer transactions and obscure the trail of illicit funds.

2.4.3 Weak enforcement mechanisms

Despite strict legal provisions outlined in the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), enforcement remains a challenge in Kenya among the financial institutions. There are resource limitations that pose a challenge within institutions such as the Financial Reporting Centre (FRC), the Directorate of Criminal Investigations (DCI), and the judiciary impede their capacity to effectively investigate and prosecute money laundering cases. A lack of specialized training further exacerbates this issue, as many law enforcement officers and financial institution personnel are not well equipped to detect and respond to increasingly money laundering schemes. Corruption within regulatory bodies and financial institutions compounds the problem, as some officials may deliberately overlook suspicious activities or collude with offenders in exchange for bribes.[90] These enforcement gaps not only undermine the

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[89] Campbell-Verduyn, Malcolm. "*Bitcoin, crypto-coins, and global anti-money laundering governance*." Crime, Law and Social Change, 2018.

[90] Levi, Michael, Maria Dakolias, and Theodore S. Greenberg. "*Money laundering and corruption. The many faces of corruption*,"2007

effectiveness of POCAMLA but also reduces public confidence in financial institutions as well as the country's ability to combat financial crime.

Conclusion

while Kenya has made efforts in establishing a legal framework to combat money laundering through POCAMLA, numerous challenges hinder its effective implementation within financial institutions. Limited technological resources, insufficient staff training, high transaction volumes, and ambiguities in legal provisions undermine the ability of banks to comply fully and enforce anti-money laundering measures effectively.

CHAPTER 3

THE GUIDELINES AND REGULATION THAT THE CENTRAL BANK OF KENYA HAS IMPLEMENTED TO ENSURE ANTI-MONEY LAUNDERING REGULATIONS ARE ADHERED TO BY BANKS IN KENYA

3.1 INTRODUCTION

Section 51A of the Central Bank of Kenya (CBK) has acknowledged the presence of money laundering in Kenya and has taken steps to combat it.[91] In its annual reports and other publications, the CBK has repeatedly stated its commitment to combating money laundering and other financial crimes in the country.[92] For example, in its 2021-2022 Strategic Plan, the CBK stated that it would continue to promote and enforce sound AML/CFT policies and practices within the financial sector to mitigate the risk of money laundering and terrorist financing in Kenya.[93]The plan also identifies AML/CFT as a key strategic priority for the CBK.[94]

The prevention of money laundering and the financing of terrorism were the main topics of Circular No. 2 of 2019, which was released by the Central Bank of Kenya (CBK).[95] The circular explained the CBK's need that all commercial banks, microfinance banks, and mortgage finance firms submit thorough documentation of their compliance with AML/CFT laws. The financial institutions had until May 31, 2019, to choose an impartial external third party to examine their AML/CFT compliance systems as part of proving compliance. The independent reviewer examined the banks' due diligence procedures, AML/CFT risks, associated internal controls, monitoring/reporting systems, among other things, and eventually provided the CBK with a report that included a full analysis of their findings. These CBK directives had the express purpose of enhancing the credibility of Kenya's financial systems an indicator of how CBK are taking into account and acknowledging existence of Money Laundering and the urge to

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91 Section 51A of the Central Bank Of Kenya Act, Cap 491.
92 Njoroge, Carolyn "T*he Institutional Challenges Facing Implementation of Anti-money Laundering Law in Kenya*." Diss. University of Nairobi, 2021.
93 https://www.centralbank.go.ke/aml-cft-cpf/.
94 'AML/CTF Policies And Procedures: The Anti Money Laundering Policies And Procedures' <https://financialcrimeacademy.org/aml-ctf-policies-and-procedures/> accessed 13 March 2023.
95 Banking Circular No. 2 of 2019.

fight it.[96] This chapter will focus on how the CBK has put measures and played their role to ensure that money laundering problems is under control.

3.2 STRENGTHENING REGULATORY AND SUPERVISORY FRAMEWORKS

The Central Bank of Kenya (CBK) plays a significant role in ensuring that the country's financial system is resilient against money laundering and terrorist financing threats by continuously strengthening its regulatory and supervisory frameworks. This initiative-taking approach involves a systematic review of existing policies, guidelines, and statutory provisions to identify and address vulnerabilities that could be exploited by criminals. The CBK benchmarks its frameworks against international standards such as those set by the Financial Action Task Force (FATF) and works in collaboration with global bodies like the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) to align its regulations with global best practices.

The CBK employs risk-based supervision, which allows financial institutions to be categorized based on their exposure to money laundering and terrorism financing risks. This enables targeted supervision and the allocation of resources where they are most needed. The CBK conducts both on-site examinations whereby all financial institutions are physically inspected and off-site monitoring, which involves the review of reports and data submitted by institutions.[97] Through these measures, the CBK ensures that banks and other financial entities adhere and comply to the requirements, including customer due diligence, transaction monitoring, and reporting of suspicious activities.

Moreover, the CBK has embraced technology to enhance its supervisory capabilities. Advanced data analytics and digital tools are now being used to identify patterns and anomalies that may indicate illicit financial activities.[98] These tools provide the CBK with real-time insights, enabling swift interventions when risks are detected. Additionally, the CBK frequently updates its reporting requirements to reflect evolving threats, such as the use of cryptocurrencies for illicit purposes or the increasing complexity of cross-border financial transactions.

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96 'CBK Issues New Checks To Curb Money Laundering - Money Laundering - Kenya' <https://www.mondaq.com/money-laundering/802786/cbk-issues-new-checks-to-curb-money-laundering> accessed.
97 Section 51A(b) and (c) of the Central Bank Of Kenya Act, Cap 491.
98 Bank Annual supervision Annual Report, 2023. https://www.centralbank.go.ke/uploads/banking_sector_annual_reports/69043552_2023%20Annual%20Report.pdf.

Additionally, under Section 33(D) of the Banking Act, the Central Bank of Kenya (CBK) issues guidelines that are legally binding for all financial institutions operating within the country.[99] These guidelines provide a comprehensive framework that ensures institutions adopt effectively to Anti-Money Laundering (AML) policies and procedures to prevent, detect, and address illicit financial activities. The guidelines mandate financial institutions to implement systems for accurate and timely reporting of suspicious transactions to the Financial Reporting Centre (FRC), which is a vital step in the fight against money laundering and terrorism financing. Record-keeping is another cornerstone of these regulations, requiring institutions to maintain detailed records of customer information and transaction history for a minimum of seven years. This ensures that essential information is available for regulatory audits and investigations when necessary. The CBK also expects institutions to align their internal policies with international AML standards, to ensure there is transparency and accountability in financial institutions.

3.3 COLLABORATION WITH OTHER GOVERNMENT AGENCIES

The Central Bank of Kenya (CBK) collaborates with other government agencies to create a united and effective front in combating money laundering and terrorist financing. One of its key partners is the Financial Reporting Centre (FRC), Kenya's primary agency for receiving, analyzing, and disseminating financial intelligence related to suspicious transactions. The CBK works closely with the FRC to ensure that financial institutions comply with their obligations to report suspicious activities. This collaboration includes sharing data, trends, and intelligence on financial crimes, enabling both agencies to identify patterns that may indicate systemic risks or emerging threats.[100]

The CBK also partners with law enforcement agencies, such as the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC). The DCI is tasked with investigating crimes, which includes money laundering and terrorist financing.[101] Its specialized units, such as the Financial Investigations Unit (FIU) and the Cybercrime Unit, are equipped to manage complex cases involving digital and cross-border transactions. The DCI relies on intelligence shared by the CBK to initiate investigations, trace illicit funds, and uncover criminal networks. The CBK provides critical data, such as transaction records, account information, and risk analyses, which help the DCI build strong cases for prosecution. The EACC on the other hand focuses on corruption and economic crimes, which often

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99 Section 33(D) of the Banking Act, Cap 488.
100 https://www.centralbank.go.ke/wp-content/uploads/2016/08/STR_Guidance_Note.pdf
101 https://www.dci.go.ke/investigation-bureau.

intersect with money laundering.[102] Funds obtained through corruption are typically laundered to disguise their illegal source. The CBK works with the EACC by providing financial intelligence and supporting the investigation of corruption-related money laundering cases. The CBK also ensures that banks and financial institutions report any suspicious transactions involving public officials, which are flagged as high-risk clients.

The Central Bank of Kenya (CBK) also works with the judiciary to establish a strong legal framework and ensure effective prosecution of financial crimes such as money laundering and terrorism financing. The CBK provides input during the formulation and review of laws and regulations related to financial crimes. The CBK also advises lawmakers on global best practices, emerging risks, and loopholes in existing legal provisions. For instance, the CBK contributes to the drafting of legislation such as the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), ensuring that it aligns with international standards set by bodies like the Financial Action Task Force (FATF). Additionally, the CBK offers technical support to the judiciary during the prosecution of cases involving financial crimes. Many such cases involve highly complex financial transactions, data analysis, and technical evidence that require specialized expertise to interpret. The CBK provides insights into financial systems, regulatory compliance, and forensic analysis to help prosecutors build strong cases. For example, the CBK may explain how certain transaction patterns suggest money laundering or how specific banking records link suspicious activity.

3.4 IMPLEMENTATION OF INTERNATIONAL AML/CFT STANDARD

Kenya's membership in the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and its adherence to the Financial Action Task Force (FATF) standards shows the country's commitment to fighting money laundering and terrorist financing through compliance with international norms. As a member of ESAAMLG, the CBK participates in initiatives aimed at strengthening regional cooperation and harmonizing Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) measures across member states.[103] ESAAMLG provides a platform for member countries to share information on emerging threats, trends, and best practices in tackling financial crimes. The CBK

[102] "National Ethics And Anti-Corruption Policy," Sessional Paper No. 2 Of 2018
[103] https://www.esaamlg.org/reports/Kenya_FUR-April%202024.pdf.

contributes to and benefits from mutual evaluations conducted by ESAAMLG, where the effectiveness of a country's AML/CFT frameworks is assessed.

The FATF's 40 Recommendations form the foundation for global Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) measures.[104] The CBK works diligently to incorporate these recommendations into Kenya's regulatory framework. This includes establishing robust legal and institutional frameworks for AML/CFT, implementing risk-based supervision, promoting financial transparency, and ensuring the identification and mitigation of money laundering and terrorist financing risks. The CBK ensures that all financial institutions comply with FATF guidelines, such as conducting customer due diligence (CDD), maintaining comprehensive records, and reporting suspicious transactions to the Financial Reporting Centre (FRC).

CBK enforces international AML/CFT standards by ensuring that financial institutions establish compliance programs that meet FATF and ESAAMLG requirements. This includes appointing Money Laundering Reporting Officers (MLROs), conducting risk assessments, and implementing advanced monitoring systems to track and flag suspicious activities.[105] Institutions are also required to maintain high levels of transparency, particularly identifying the ultimate beneficial owners of accounts and transactions.

The CBK facilitates Kenya's participation in international efforts to combat money laundering and terrorism financing by fostering collaboration with other countries and organizations. This includes sharing financial intelligence, conducting joint investigations, and contributing to the development of global policies on AML/CFT. Such cooperation strengthens Kenya's ability to tackle cross-border financial crimes and ensures its compliance with global AML/CFT obligations.

3.5 PENALTIES FOR VIOLATIONS RELATING TO MONEY LAUNDERING

Section 51(B)(1) of the Central Bank of Kenya Act states that no money remittance, foreign exchange bureau, digital credit provider, director, officer, employer, agent or any other person shall violate or fail to comply with any provision of the Proceeds of Crime and Anti-Money Laundering Act cap 59A, or any regulation, guideline, rule, direction or instruction issued under the said Act or under this section.[106]

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104 https://www.fatf-gafi.org/en/topics/fatf-recommendations.html
105 https://www.lexisnexis.com/en gb/glossary/mlro?srsltid=AfmBOoq5aQ3MjOc6hV7lOPe6sXMIgXp3sq3oRjCtV7gaa0c38fZZq6xw
106 Section 51(B)(1) Of The Central Bank Of Kenya Act Cap 491.

Section 51(B)(2) adds that if a person who violates or fails to comply with the provisions of subsection (1) shall be liable[107]

(a) In case of a legal person, to a penalty not exceeding five million shillings.
(b) In the case of a natural person, to a penalty not exceeding one million shillings; and
(c) To additional penalties not exceeding one hundred thousand shillings in each case for each day or part thereof during which such violation or non-compliance continues.

This provision establishes a legal foundation that ensures compliance with anti-money laundering (AML) and countering the financing of terrorism (CFT) regulations. By holding both institutions and individuals accountable, it ensures that financial entities cannot operate with impunity and must adopt stringent measures to prevent financial crimes. The significant penalties for non-compliance serve as a powerful deterrent, encouraging proactive adherence to the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) and related guidelines. The additional daily fines for ongoing violations further incentivize swift corrective action, ensuring that breaches are addressed promptly.

Additionally, these measures promote the integrity and credibility of Kenya's financial system by reducing the risk of exploitation by criminals. Compliance with such provisions also strengthens Kenya's alignment with international standards, such as those set by the Financial Action Task Force (FATF), enhancing the country's reputation in the global financial community. Furthermore, the penalties highlight the importance of individual accountability, ensuring that directors, officers, and employees of financial institutions actively participate in upholding compliance measures.

Conclusion

The Central Bank of Kenya (CBK) has implemented a comprehensive framework of guidelines and regulations to ensure strict adherence to Anti-Money Laundering (AML) standards by financial institutions. These measures are designed to enhance the integrity, transparency, and security of Kenya's financial system while aligning it with international best practices. The enforcement of significant penalties for non-compliance, coupled with ongoing supervision, underscores the regulator's commitment to accountability and deterring illicit activities. Furthermore, the CBK's collaborative efforts with other government agencies and international bodies strengthen its capacity to address

107 Section 51(B)(2) Of The Central Bank Of Kenya Act Cap 491.

emerging risks and challenges in the financial sector. Overall, the CBK's guidelines and regulations provide a solid foundation for safeguarding Kenya's economy.

CHAPTER 4

A COMPARATIVE ANALYSIS OF THE ANTI MONEY LAUNDERING REGULATIONS IN KENYA VIS- A- VIS SIMILAR LAWS IN OTHER JURISDICTION AND HOW KENYA CAN GAIN INSIGHTS

4.1 INTRODUCTION

This chapter analyzes the legal systems of Kenya, South Africa, and Canada that are in place in order to combat money laundering. The Proceeds of Crime (Money Laundering) Act was passed in Canada in 1991, while the Prevention of Organized Crime Act was passed in South Africa in 1998. Both countries have developed structures and authorities to police the law and assist early identification. Additionally, both countries have established institutions and authorities to ensure legal compliance and to aid in the early discovery and prevention of money laundering schemes. By critically evaluating these two countries' legislative provisions and operational frameworks, significant insights into crucial components that Kenya might implement to strengthen its own anti-money laundering law system can be gleaned. To understand further on the same, we will have a study of both countries that is combating money laundering in South Africa and Canada as point of reference.

4.2 COMBATING MONEY LAUNDERING: THE CASE OF THE REPUBLIC OF SOUTH AFRICA

In South Africa, prominent profit-generating crimes include fraud, theft, corruption, racketeering, precious metal smuggling, abalone poaching, Nigerian-style economic and investment frauds, and pyramid schemes.[108] The country has seen an increase in complex and large-scale economic crimes perpetrated by criminal syndicates.[109] Furthermore, South Africa serves as a transit point for drug trafficking, and corruption remains a major issue. According to analysis, foreign nationals frequently recruit the assistance

[108] Geldenhuys, Kotie. "Typical crimes committed by organised criminal groups in South Africa." Servamus Community-based Safety and Security Magazine 109.4 2016.

[109] 'The Abalone Connection: The Ties That Bind Poaching and Smuggling with the SA Crystal Meth Industry' <https://www.dailymaverick.co.za/article/2021-05-02-the-abalone-connection-the-ties-that-bind-poaching-andsmuggling-with-the-sa-crystal-meth-industry/> accessed 26 June 2023.

of South Africans, particularly women, to send illegally obtained money to foreign countries.[110] In addition, there is a booming black market for smuggled and stolen items.

Money laundering trends also include investment frauds via pyramid schemes and examples of fraud involving counterfeit checks. Funds have been laundered through lawyers or other service providers, property purchases, the formation of shell companies, and home-based businesses. Authorities have observed an increase in the sophistication and scale of economic crime and crimes committed by criminal syndicates. South Africa has demonstrated a strong commitment to implementing its anti-money laundering and counter-terrorism financing systems, which require close cooperation and coordination among various governmental departments and agencies. In 1998, the country introduced the Prevention of Organized Crime Act, followed by the implementation of the Financial Intelligence Centre Act.[111] In 2004, South Africa approved the Protection of Constitutional Democracy against Terrorist and Related Activities Act, serving as the comprehensive national legislation addressing terrorism. This act criminalizes terrorist financing and includes provisions to freeze funds associated with terrorism in line with international obligations.[112]

4.2.1 The Criminalization of Money Laundering in South Africa

In South Africa, the criminalization of money laundering is addressed through three separate provisions within the Prevention of Organised Crime Act (POCA).[113] These provisions specifically target the conversion or transfer, concealment or disguise, possession, and acquisition of property, aligning with the principles outlined in the 1988 United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) as well as the 2000 UN Convention against Transnational Organised Crime (Palermo Convention). It is worth noting that the acquisition, possession, or use of proceeds from unlawful activities does not apply to the individual who committed the initial offense. South Africa takes an inclusive approach, encompassing a wide range of offenses across 20 designated categories under the all-crimes approach. Additionally, there is a comprehensive range of offenses associated with money laundering. Both natural persons and legal entities can be held liable for money laundering, and the determination of knowledge can be inferred from objective factual

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[110] 'South Africa – KnowYourCountry' <https://www.knowyourcountry.com/southafrica> accessed 26 June 2023.
[111] Financial Intelligence Centre Act.
[112] Protection of Constitutional Democracy against Terrorist and Related Activities Act.
[113] Prevention of Organised Crime Act, Act No. 121 of 1998. See sections 4, 5 and 6 of the Act.

circumstances. Penalties for money laundering include fines of up to ZAR 100 million or imprisonment for a maximum period of 30 year.[114]

4.2.2 Proceeds of Crime Confiscation, Freezing, and Seizing

The relevant legislation in South Africa provides for both criminal forfeiture, which is based on conviction, and civil forfeiture, which does not depend on a conviction.[115]The confiscation and forfeiture regime is effectively implemented, as indicated by the high value of proceeds confiscated. The Asset Forfeiture Unit within the National Prosecuting Authority is responsible for administering and implementing the freezing and forfeiture provisions outlined in the Prevention of Organised Crime Act (POCA). These provisions cover a wide range of proceeds (both direct and indirect) and property of corresponding value.[116] In addition to POCA, section 20 the Criminal Procedure Act allows for the search, seizure, forfeiture, and disposal of instruments used in the commission of crimes.[117] Through an ex parte application, any property that may be subject to confiscation or civil forfeiture can be frozen. Under section 4 of the provisions of the Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA), authorities are also empowered to freeze assets associated with property believed to be owned, controlled, or directed by entities involved in specified offenses, including terrorism. The National Director of Public Prosecutions can make an ex parte application to a judge in chambers for a freezing order when there are reasonable grounds to believe that the property is connected to terrorism. In practice, such a freezing order can be obtained quickly, has an indefinite duration, and can be obtained without initiating a criminal investigation or prosecution in South Africa.

4.2.3 The Financial Intelligence Centre

The Financial Intelligence Centre is established as the national institution responsible for receiving, analyzing, and disseminating information related to suspected cases of money laundering and terrorist financing. It was established under the Financial Intelligence Centre Act (FIC) and began operating on February 3rd, 2003. The Centre operates independently and autonomously, free from undue influence or

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[114] 6 'SOUTH AFRICA: WHITE-COLLAR CRIME – LAW AND PRACTICE' (Africa notes, 21 November 2019) <https://hsfnotes.com/africa/2019/11/21/south-africa-white-collar-crime-law-and-practice/> accessed 29 June 2023.
[115] Prevention of Organised Crime Act, s 13.
[116] Asset Forfeiture Unit | NPA' <https://www.npa.gov.za/asset-forfeiture-unit> accessed 29 June 2023.
[117] Criminal Procedure Act 51 Of 1977

interference. It is a statutory body with legal personality, possessing the general powers of a corporate entity. The Centre is situated within the Ministry of Finance and is accountable to the Minister of Finance.[118]

The Director, appointed by the Minister of Finance, leads the Centre as the chief executive officer and accounting authority.[119] The Director holds the responsibility for the organization's administration, development, management, as well as the supervision and discipline of the Centre's staff, in accordance with the Public Finance Management Act (PFMA). The Centre's funding sources are legally restricted to appropriations made by Parliament for its purposes, government grants, and other legally acquired funds. Donations can only be accepted with the prior written approval of the Minister.

According to Section 12 of the FIC Act, all staff members must undergo security vetting before being employed by the Centre.[120] Additionally, upon joining the Centre, all staff are required to sign an oath of secrecy. These measures demonstrate that the Centre is a well-structured and properly functioning Financial Intelligence Unit (FIU) with adequate funding and staff. Under the Act, any person conducting a business, managing such a business, or employed by such a business is obligated to report suspicious and unusual transactions related to money laundering and terrorist financing to the Centre.[121]

4.3 COMBATING MONEY LAUNDERING: THE CASE STUDY OF CANADA

In 1991, the Proceeds of Crime (Money Laundering) Act was passed to straighten with the FATF Forty Recommendations. This act recognized demands for record-keeping and also customer recognition within the monetary market assisting the examination coupled with prosecution of money laundering offenses under the Criminal Code of Canada along with the Controlled Drugs as well as Substances Act.[122]

In 2000, the Proceeds of Crime (Money Laundering) Act went through changes to widen its application coupled with a nationwide economic knowledge system referred to as FINTRAC. Ultimately, the range of the act increased once again in December 2001 with changes passed under the Anti-Terrorism Act

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[118] 'Financial Intelligence Centre Act 38 of 2001 | South African Government' <https://www.gov.za/documents/financial-intelligence-centre-act> accessed 29 June 2023

[119] Ibid s3

[120] Section 12 of the FIC Act.

[121] 'FIC Act with 2017 Amendments (1) (1). Pdf' <https://www.fic.gov.za/Documents/FIC%20Act%20with%202017%20amendments%20(1)%20(1).pdf> accessed. 29 June 2023

[122] 'AML Legislation in Canada | Duhaime's Anti-Money Laundering & Financial Crime News' (Duhaime's AntiMoney Laundering & Financial Crime News | Anti-money laundering law and terrorist financing law, 30 September 2010) <https://www.antimoneylaunderinglaw.com/aml-law/aml-legislation-in-canada> accessed 29 June 2023.

(ATA) which was intended to prevent terrorist acts by removing money resources as well as networks utilized by terrorists complying with the occasions of 9/11. Subsequently the act was renamed the Proceeds of Crime (Money Laundering) as well as Terrorist Financing Act.[123]

4.3.1 Criminalization of Money Laundering in Canada

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act of Canada outlines the offense of money laundering as described in subsection 462.31(1) of the Criminal Code. According to this legislation, money laundering in Canada is considered a criminal act under section 462.31 of the Criminal Code of Canada. It states that anyone who intentionally conceals or converts property or proceeds obtained directly or indirectly from the commission of a designated offense in Canada, or an act that would be considered a designated offense if it occurred in Canada, commits an offense. The prohibited actions include using, transferring, sending, delivering, transmitting, altering, disposing of, or dealing with the property or proceeds in any manner or by any means. Those convicted of money laundering can face a maximum prison sentence of ten years. 126 In Kenya, the Penal Code does not specifically mention money laundering as a crime. Rather, the definition and legal provisions for money laundering are found solely in the Proceeds of Crime and Anti-Money Laundering Act, which distinguishes it from Canadian laws. Furthermore, in Kenya, a conviction for money laundering carries a potential fourteen-year prison sentence as well as the option of a fine.

4.3.2 The Financial Transactions and Reports Analysis Centre (FINTRAC)

The Financial Transactions and Reports Analysis Centre (FINTRAC) is an independent federal government agency in Canada which was established in 2000 through amendments to the Proceeds of Crime (Money Laundering) Act. It serves as the financial intelligence unit for Canada and reports to both the Minister of Public Safety and Emergency Preparedness and the Minister of Finance.[124]

Some of its objectives include:

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[123] Department of Justice Government of Canada, 'About the Anti-Terrorism Act' (15 October 2001) <https://www.justice.gc.ca/eng/cj-jp/ns-sn/act-loi.html> accessed 27 June 2023.

[124] 128 Financial Transactions and Reports Analysis Centre of Canada Government of Canada, 'The Financial Transactions and Reports Analysis Centre of Canada | FINTRAC – Canada.Ca' (4 May 2020) <https://fintraccanafe.canada.ca/intro-eng> accessed 29 June 202

1. Collecting, analyzing, assessing, and disclosing information to aid in detecting, preventing money laundering and terrorist financing.

2. Ensuring the protection of personal information under its control from unauthorized disclosure.

3. Enhancing public awareness and understanding of matters related to money laundering.

4. Ensuring compliance with the record-keeping, identity verification, reporting, and registration requirements of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

FINTRAC's primary output is case-specific financial intelligence, but it is also well-positioned to provide strategic intelligence regarding money laundering and terrorist financing trends and typologies. Given the international nature of these illicit activities, FINTRAC actively engages in information exchange with foreign Financial Intelligence Units (FIUs) through agreements, facilitating the sharing of crucial financial intelligence for cases involving the international movement of funds. Additionally, FINTRAC collaborates with various law enforcement and intelligence agencies within Canada, such as the Royal Canadian Mounted Police (RCMP), provincial and municipal police agencies, the Canadian Security Intelligence Service (CSIS), Canada Revenue Agency (CRA), and others, to provide relevant financial intelligence when there are reasonable grounds to suspect its importance to investigations or prosecutions.[125]

Since December 30, 2008, FINTRAC has been granted the legislative authority to impose administrative monetary penalties (AMPs) on reporting entities that fail to comply with Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act. In terms of criminal penalties, it has the ability to disclose cases of non-compliance to law enforcement authorities in situations where there is significant non-compliance or little expectation of immediate or future compliance. The criminal penalties for non-compliance can include things like Failure to report suspicious transactions: Up to $2 million in fines and/or a maximum of 5 years imprisonment.[126] Disclosure of the fact that a suspicious transaction report

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[125] 0 Office of the Privacy Commissioner of Canada, 'Financial Transactions and Reports Analysis Centre of Canada' (21 September 2017) <https://www.priv.gc.ca/en/opc-actions-and-decisions/audits/ar-vr_fintrac_2017/> accessed 29. June 2023.

[126] Financial Transactions and Reports Analysis Centre of Canada Government of Canada, 'Administrative Monetary Penalties Policy | FINTRAC – Canada.Ca' (31 October 2018) <https://fintrac-canafe.canada.ca/pen/2-Eng> accessed 29 June 2023.

was filed or disclosing its contents with the intention to hinder a criminal investigation: Up to 2 years imprisonment.

CONCLUSION

South Africa and Canada are more developed economically and socially than Kenya, and as a result, they are more advanced in terms of technology and specialized expertise. In terms of financial resources, for example, can be cited as a factor in the gaps identified at Kenya's Financial Reporting Centre in terms of human and technical resources. The South African intelligence center, which receives compassionate funding, is staffed by highly qualified personnel, and receives strong backing from accountable institutions. It has compiled statistics that can be used to demonstrate that it has produced results since its inception. Canada, on the other hand, has been combating money laundering since 1991, while Kenya only passed its first substantive anti-money laundering law in 2009, two decades later. The Canadian anti-money laundering regime is strong and stable, with strong institutions and equally strong laws to back it up. The goal of this chapter was thus to identify legal provisions and institutional operating modalities that Kenya can borrow from the two jurisdictions in order to improve its own legal provisions, build institutional capacity, and can be adapted by financial institutions such as banks who are prone to money laundering.

CHAPTER 5

FINDINGS RECOMMENDATION AND CONCLUSIONS

5.1 INTRODUCTION

AML regulations in Kenya on banks as financial institutions together with regulatory framework are insufficient to effectively address the increasing problem of money laundering. This problem is attributed to both weaknesses in legal provisions and institutional deficiencies. It is also important to acknowledge that complete eradication of money laundering is not feasible, and even countries like Canada and South Africa, which are often looked upon as models, face challenges in combating money laundering.

It is clear that ongoing efforts and improvements are required to keep up with evolving money laundering trends. Addressing gaps in legal provisions, strengthening institutions, improving coordination among relevant agencies, and increasing resources allocated to anti-money laundering and counter-terrorist financing efforts are critical steps toward effectively combating these illicit activities.in order to effectively ensure that the regulations that are in place completely serve the purpose they are intended to then both law reforms and institutional reforms must be taken into consideration

5.2 INTITUTIONAL AND LAW REFORMS LAW REFORMS

5.2.1 Risk profiling and classification of reporting institutions

To improve the effectiveness of anti-money laundering measures, Kenya should consider revising and expanding the classification and risk profiling of reporting institutions. Currently, the Proceeds of Crime and Anti-money Laundering Act in Kenya defines reporting institutions as financial institutions and designated non-financial businesses and professions. The designated non-financial businesses and professions listed in the Act include casinos, real estate agencies, dealers in precious metals and stones, legal professionals, and accountants.[127]

However, this list is not exhaustive and omits key players in the commercial world such as accountants, foreign exchange bureaus, and mobile money transfer agencies. To address this gap, Kenya should expand the list of reporting institutions to include these entities that have a potential risk of money laundering. By

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[127] Kennedy Kithinji and Damaris Muia, *'The Proceeds Of Crime And Anti-Money Laundering (Amendment) Act, 2022'* accessed 29 June 2023

including accountants, foreign exchange bureaus, and mobile money transfer agencies as reporting institutions, this will enhance its ability to detect and prevent money laundering activities in these sectors. It should be noted that these entities often handle significant financial transactions and have the potential to be exploited by money launderers. Therefore, subjecting them to reporting requirements and implementing appropriate risk profiling measures can help identify suspicious transactions and ensure greater transparency and accountability.

5.2.2 Strengthening of The Legal Framework

The legislation should include provisions for both criminal and civil forfeiture. Criminal forfeiture is conviction-based and allows authorities to confiscate assets once a perpetrator has been found guilty. Civil forfeiture, on the other hand, does not require a criminal conviction and enables the seizure of assets suspected to be linked to unlawful activities. This dual approach ensures that illicitly obtained assets can be confiscated, even in cases where a conviction is not feasible, such as when suspects evade prosecution or operate transnationally. These measures enhance asset recovery efforts and weaken the financial incentives of criminal enterprises.

Furthermore, Kenya must prioritize the criminalization of terrorism financing as a distinct offense within their legal systems. Laws should empower authorities to promptly freeze and seize assets linked to terrorism-related activities, ensuring compliance with United Nations Security Council resolutions and other international obligations. By establishing mechanisms for the rapid identification and immobilization of such funds, governments can disrupt financial networks that support terrorism and mitigate risks to national and international security. This comprehensive approach not only strengthens domestic resilience against financial crimes but also reinforces international cooperation in combating money laundering and terrorist financing.

5.2.3 Practice of Due Diligence

The Proceeds of Crime and Anti-money Laundering Act of Kenya requires reporting institutions to verify the identity of their customers and maintain customer records as per section 45 and 46.[128]However, there are certain challenges and gaps in the due diligence requirements which include.

[128] Section 45, 46 0f The Proceeds Of Crime And Anti-Money Laundering Act Cap 59A.

Firstly, the Act does not provide specific guidelines or procedures for reporting institutions to follow in order to verify the authenticity and validity of identification documents provided by potential customers. This lack of detailed guidance leaves room for interpretation and creates a loophole in the verification process. Reporting institutions are left to determine their own means of verifying customer identities, which can vary in effectiveness and consistency.

In contrast, section 5 of the Canada Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations specify the obligation of reporting institutions to ascertain the identity of every person with whom they conduct a transaction.[129] These regulations also outline measures to be taken when dealing with Politically Exposed Persons (PEPs), including reporting timelines and additional measures to mitigate the risk of money laundering.

To align with international standards, specifically FATF recommendation 6, Kenya should revise the Proceeds of Crime and Anti-money Laundering Act to include provisions for handling PEPs.[130] This would involve acknowledging the risk exposure posed by PEPs and prescribing specific measures to address and manage transactions involving them. By implementing strong procedures for handling PEPs, Kenya can enhance its efforts in preventing money laundering and reducing the risk associated with politically exposed individuals. Additionally, it would be beneficial for the Act to provide more clarity and guidance on the due diligence procedures that reporting institutions should follow. This could include specifying the acceptable methods for verifying customer identities and setting standards for the authenticity of identification documents. By establishing clear requirements and guidelines, reporting institutions will have a more structured framework to follow, promoting consistency and effectiveness in the due diligence process. In conclusion, strengthening due diligence requirements, incorporating provisions for handling, and providing clearer guidelines for customer verification would enhance the anti-money laundering efforts in Kenya and align them with international best practice this was also make banks have a smooth sailing on verification of its customer.

5.2.4 Strengthening Financial Intelligence Institutions

The Financial Reporting Centre began operation on April 12, 2012.[131] However, it does not have an investigation or prosecutorial authority under the Proceeds of Crime and Anti-Money Laundering Act. As

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[129] Section 5 of the Canada Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations
[130] 'FATF Standards - 40 Recommendations'
[131] https://www.frc.go.ke/?page_id=7

a result, the Centre is extremely reliant on other institutions such as the Police and the Director of Public Prosecutions office to effectively carry out its duty.

Kenya's Financial Reporting Centre (FRC) should be empowered to operate autonomously and free from undue influence, drawing lessons from South Africa's Financial Intelligence Centre (FIC) and Canada's Financial Transactions and Reports Analysis Centre (FINTRAC).[132] An independent FRC ensures that its decisions and operations are impartial, fostering trust among stakeholders and enabling effective enforcement of anti-money laundering laws. To achieve this, the Kenyan government must allocate adequate funding and resources to the FRC, allowing it to attract and retain skilled personnel while also investing in modern technologies for financial intelligence analysis. Additionally, requiring all FRC staff to undergo rigorous security vetting and sign confidentiality agreements would bolster the integrity of its operations, safeguarding sensitive financial data and fostering public and institutional trust in its capabilities.

Kenya should also expand the scope of institutions obligated to report suspicious transactions to the FRC.[133] Currently, the focus is primarily on financial institutions such as banks. However, adopting Canada's approach would bring other high-risk sectors, such as lawyers, real estate agents, accountants, and other intermediaries, under the reporting framework. These entities often facilitate transactions involving large sums of money, making them potential conduits for laundering illicit proceeds. Broader reporting obligations would increase the detection and disruption of money laundering activities across diverse sectors.

5.2.5 Improve Asset Confiscation and Freezing Mechanisms

The Assets Recovery Agency was established under Section 53 of the Proceeds of Crime and Anti-Money Laundering Act No.9 of 2009 as a body corporate with the mandate of combating money laundering, terrorist financing, and proliferation financing through identification, tracing, freezing, seizure, and confiscation of proceeds of crime under Section 54.[134] Given the huge mandate given to this agency and

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[132] Bédard, Jean, and Yves Gendron. "*Strengthening the financial reporting system: can audit committees deliver?*" International journal of auditing, 2010, pg 174-210.

[133] Warui, Beth N." *Implementation and Enforcement of the Law on Money Laundering: an Analysis of Kenya's Legal and Institutional Framework."* Diss. University of Nairobi, 2016.

[134] Section 53,54 The Proceeds of Crime and Anti-Money Laundering Act Cap 59A.

the fact that it is totally dependent on the outcome of investigations conducted by other law enforcement agencies such as the Policy.

Kenya should enhance its asset confiscation and freezing mechanisms by empowering authorities to take swift action against proceeds of crime. Drawing lessons from South Africa's Prevention of Organised Crime Act (POCA), Kenya could introduce provisions for ex parte applications that allow assets linked to criminal or terrorist activities to be frozen without the need to initiate a formal criminal investigation. This approach enables authorities to act quickly and prevent the dissipation or concealment of illicit assets. Such a mechanism would significantly strengthen Kenya's ability to disrupt criminal operations and safeguard illicit proceeds while investigations or prosecutions are underway, addressing a critical gap in the current framework.

Additionally, Kenya should expand the scope of seizure and confiscation provisions to include indirect proceeds of crime and property of equivalent value. This means that assets acquired through intermediaries or converted into other forms, such as luxury goods or real estate, can still be targeted for confiscation. By adopting this approach, as practiced in South Africa, Kenya would prevent criminals from exploiting loopholes to shield their illicit gains. Furthermore, the ability to confiscate property of equivalent value ensures that even if the original proceeds are no longer traceable, the offender remains financially liable. These enhancements would create a more comprehensive and effective system for asset recovery, deterring economic crimes and reducing the profitability of engaging in illegal activities.

5.3 CONCLUSION

The global momentum of the anti-money laundering campaign, once just a concept, has significantly grown worldwide. Developing nations like Kenya, recognized as a trade and finance hub in East Africa, are compelled to comply with the requirements set by more advanced nations, led by FATF, in order to participate in global money markets and engage in international commerce. Kenya has taken a significant step by enacting the Proceeds of Crime and Anti-money Laundering Act; however, there is still much work to be done in terms of law reform and strengthening the capacities of relevant institutions.

The aim of this study was to assess the feasibility of enforcing the anti-money laundering regulations with proceeds of crime and anti-money laundering law at the core as a way of combating money laundering and organized crime among banking institutions in Kenya. The study has exposed the shortcomings and

weaknesses that have hindered effective and practical enforcement of the law. To address these weaknesses, the research suggests several measures, although not exhaustive, that could enhance the legal provisions of the regulations, making compliance and enforcement more feasible and practical.

The hypothesis of this study posited that the AML regulations including Proceeds of Crime and Anti-money Laundering Act as an have not effectively curtailed money laundering and organized crime in Kenya, thereby necessitating law reform in this domain. It is important to note that while implementing the recommendations outlined in this study may not completely eradicate the shortcomings of the law, these measures will certainly contribute significantly to building institutional capacity, improving money laundering detection capabilities, fostering legal compliance, and increasing the likelihood of successful prosecutions.

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