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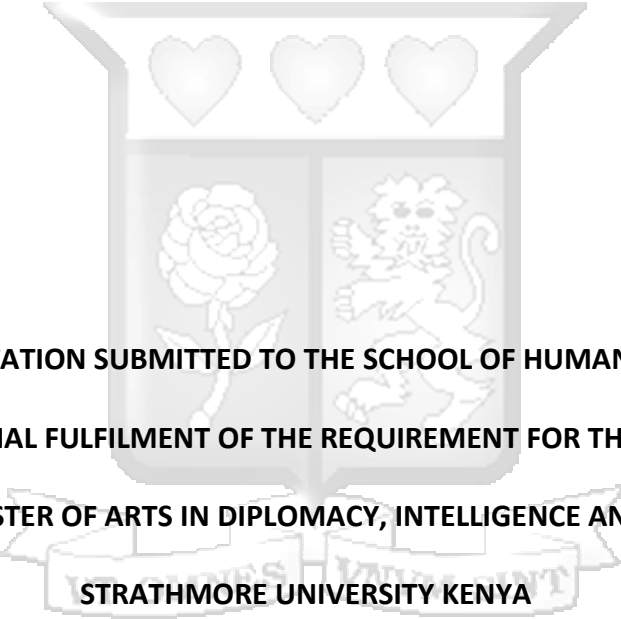
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THE ENFORCEMENT ASPECTS OF COMBATING MONEY LAUNDERING IN KENYA.

BY

CHELIMO FREDRICK SUTER

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**RESEARCH DISSERTATION SUBMITTED TO THE SCHOOL OF HUMANITIES AND SOCIAL
SCIENCES IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF THE
DEGREE OF MASTER OF ARTS IN DIPLOMACY, INTELLIGENCE AND SECURITY AT
STRATHMORE UNIVERSITY KENYA**

JULY 2021.

Declaration

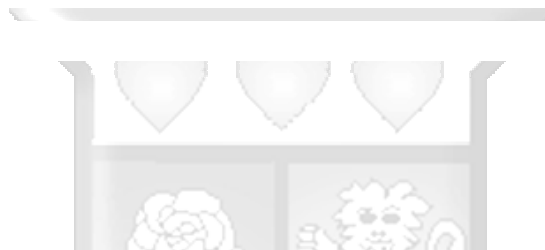
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Fredrick C. Suter

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Date: 14th October 2021



Approval

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DEDICATION

I dedicated this research study to my family, friends and relatives specifically **Mr. Emmanuel Kirolich Chesereck**; may his soul continue resting in peace for the support and encouragement that they gave me during the entire research process. God bless them all.



ACKNOWLEDGEMENTS.

My sincere regards go to the almighty God for enabling me to pursue this noble study. I acknowledge my research supervisor Prof. Robert Mudida (PhD) for the guidance and contribution that he offered throughout the research process.

Furthermore, I register my appreciation to the entire school of Humanities and Social sciences of Strathmore University for all the assistance they have extended to me throughout the research period.

Finally, I thank my family, relatives and the Government of Kenya for the continued financial support.



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LIST OF ACRONYMS AND ABBREVIATIONS

AML:	Anti-money laundering.
ARA:	Asset recovery agency.
ASEAN:	Association of South-eastern Asian Nations.
BCBS:	Basel committee on Banking Supervision.
CDD:	Customer due diligence
CPI:	Corruption perception index.
DCI:	Directorate of criminal investigation.
ESAAMLG:	East and Southern African anti-money laundering group.
FATF:	Financial action task force.
FI:	Financial institutions.
FIU:	Financial intelligence unit.
FRC:	Financial reporting centre.
FSRBs:	FATF- Style regional bodies.
GDP:	Gross domestic product.
GIABA:	Inter-Governmental action against money laundering in Africa.
GNP:	Gross national product.
IMF:	International monetary fund.
INTERPOL:	International police.
KP:	Kenya police service.
LEA:	Law enforcement agencies.
ML :	Money laundering.
ODPP:	Office of the directorate of public prosecution.

- OECD:** Organisation of economic co-operation and development.
- POCAMLA:** Proceed of crime and anti-money laundering Act.
- POCAMLR:** The proceed of crime and anti-money laundering regulation.
- PW:** Price water coopers.
- SAR:** Suspicious activity reports
- STR:** Suspicious transaction reports.
- TI:** Transparency international.
- UNODC:** United Nations office on drug and crime.
- WB:** World Bank.



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ABSTRACT.

Over time the rule of law has been formulated and used to regulate human conduct including discouraging the commission of crime. The purpose of the study is therefore to assess law enforcement aspects of combating money laundering in Kenya. This was done by exploring the regulatory and institutional mechanisms as key enforcement variables. Essentially, it is the mandate of the enforcement agencies to ensure that anti-money laundering (AML) policy is implemented. In spite of this, it still remains difficult to quantify the effectiveness, costs, consequences and challenges of enforcing AML regulations. The study is based on three objectives which are to establish the effects of anti-money laundering legal frameworks, anti-money laundering preventive measures, institutional capacities, and international coordination on combating money laundering in Kenya. To achieve these objectives, the study used descriptive study design and questionnaires to collect data from a sample size of hundred and five (105) employees working in the five purposively identified lead AML enforcement agencies within Nairobi City County. Eighty-eight targeted respondents managed to return filled questionnaires; leading to a response rate was 83.8%. Four institutions dealing with AML combined constituted the sample frame of the study. The study utilized stratified sampling to attain representation from three cadres of employees, that is, the management, supervisory and junior employees. Both descriptive and inferential statistics were used. Equally, Qualitative data was analyzed using content analysis and results presented in themes and prose format. Quantitative data was analyzed using SPSS for both inferential and descriptive statistics, and presented through charts, figures and tables for ease of understanding. The results indicate that the four variables of Money laundering framework, Anti-money laundering preventive measures, Institutional capacity, and international cooperation were associated with a 58.0% positive change in the state of combating money laundering in Kenya. Further, the four independent variables were significant predictors of combating money laundering in Kenya. Changes in money laundering framework (p-value of 0.034), anti-money laundering preventive measures (p-value of 0.014), and institutional capacity (p-value of 0.001) and, international cooperation (p-value of 0.00) were significant predictors of the state of combating money laundering in Kenya. Recommendations were that the government needed to strengthen regulation and enforcement mechanism of combating money laundering in Kenya. Secondly, there is a need to craft a clear coordination framework free of bureaucratic inconveniences to enable harmonious working relationship among the government bodies responsible for the implementation of the AML policy in Kenya. Thirdly, policymakers need to enact a policy that provide for specific incentives that can cheer up FI and the DNFIB to effectively make STRs and SARs as envisaged. Other recommendations are expounded in the study.

CHAPTER ONE: INTRODUCTION AND BACKGROUND TO THE STUDY.

1.1. Background of the Study.

Money laundering is a global phenomenon that has continued to negatively affect the security environment of the world.¹ It Manipulate government systems, fuel crime, taint institutional images, distort legitimate economy and generally degrade national values thereby limiting the ability of the state to project its national interests.² Money laundering being a transnational crime that rides on globalization and advancement in information technology make it a complex delinquency to be single handedly addressed by any individual state.³ Physical borders are becoming imaginary and international and domestic transactions are implemented quicker than ever before thereby diminishing effective domestic policing.⁴ Criminals make use of the fluid environment to innovate new ways, process and methods of laundering money often subjecting global authorities to trend trails.⁵The emergence of war on terrorism initiated by 9/11 US attack further messed up the already slippery intercontinental terrain of wrestling the menace culminating to more crime activities joining the domain of money laundering.⁶

In the economic aspect, the United Nations office on drug and crime (UNODC) in 2018 valued the annual laundered money at between 2% -5 % of the global GDP or USD 1.4

¹ Transparency International, (TI). "Corruption perception index." 2018.

² OECD. "Money Laundering and Terrorism Financing awareness Handbook for Tax examiners and Tax Auditors. Paris, OECD, 2019.

³ Humphrey Moshi. "Fighting money laundering: The challenges in Africa." *Institute for security studies paper 152* (2007): 1-12.

⁴ Norman Mugarura. *The global Anti- Money Laundering Regulatory Landscape in Less Developed Countries*. Burlington USA: Ashgate publishers, 2012.

⁵ Michael Arnone and Leonardo Borlini. "International Anti Money Laundering Programs. Empirical assessment and issues in criminal regulation". *Journal of money laundering control* 13, no 3. (2010). 226-271.

⁶ Ibid, p 228.

trillion to 1.6 trillion. The Basel institute (2019) puts the figure at between \$ 500 billion to \$ 1 trillion and the Global Financial integrity (2017) estimate that \$ 1.6 trillion to 2.2 trillion is lost to transnational organized crimes in developing and emerging economies.⁷ Although the available statistics points to big margins, and notwithstanding the socio- political consequences, the lowest figures are already huge enough to summon international response to deal with Money laundering.⁸

The Basel institute (2019) report mirror related scenario for African countries. Out of the ten worse ranked money laundering risk territories, five (50%); Mozambique, Liberia, Kenya, Benin and Sierra Leone are from Africa, while 40% are from Asian continent. The results depict money laundering problem as more entrenched in developing and emerging economies.

In its 2018 study on illicit financial flow, the partnership for Africa social and governance research indicated that since 2011 Kenya has been losing KES 40 billion through tax evasion. The transparency international (TI) in its 2018 corruption perception index indicated that Kenya scored 27%, which is much below the world average of 43% and the African average of 31% and was ranked position 144 out of 180 listed countries. The rating is worse than the 28% scored in 2017.⁹ The 2019 Basel institute risk assessment, rated Kenya as the seventh most risk money laundering country in the world.¹⁰ The global economic crime and fraud survey 2018 by price water coopers indicate that Kenya had a 75% corruption prevalence rate which is much higher than the world average of 49% and the African average of 62%.

⁷ United Nations Office on Drug and Crime. *2018 Report. (UNODC, 2018)*, PP. 4-146.

⁸ Transparency International. *Corruption perception index 2018*, Transparency International.

⁹ Ibid p.6.

¹⁰ Basel, A. M. L. "Index: A Country Ranking and Review of Money Laundering and Terrorist Financing Risks around the World." (2019): 2019-10.

Since 1970's, global leaders have struggled to combat money laundering by forming institutions, generate conventions, treaties and agreement, set standard and issue directives to guide the fight against money laundering.¹¹ The institutions at the forefront of the initiatives are the UN, WB, IMF, FATF, Egmont group and the Basel committee, supported by regional allied institutions.¹²In African, FATF-style bodies like the Inter-Governmental Action against Money Laundering in Africa (GIABA) and East and Southern African Anti-Money Laundering Group (ESAAMLG) were reproduces to spearhead AML initiatives at the regional stage.¹³In line with the arrangement, Kenya on its part delegitimized money laundering through the Proceed of crime and Anti money laundering Act (POCAMLA) of 2009.¹⁴

However, despite the existence of the mentioned anti-money laundering policy and enforcement structures, the number of mega corruption and other money laundering related cases are still on the hike both in Kenya, Africa and across the globe with little demonstration of successful prosecution thus escalating debates on whether there are challenges in enforcing the law.¹⁵

1.2. Statement of the Research Problem.

The economy of a country is one of the key aspects of its national interest. Underpinning a vibrant global economy is a stable normative environment where by Law and its

¹¹Michael J. Anderson and Tracy A. Anderson. "Anti-money laundering: History and current developments." *J. Int'l Banking L. & Reg.* 30 (2015): 521-523.

¹² Norman Mugarura. *The global Anti- Money Laundering Regulatory Landscape in Less Developed Countries.* Burlington USA: Ashgate publishers, 2012.

¹³ *Ibid.* p4.

¹⁴ The proceeds of crime and anti-money laundering Act, 2009.

¹⁵ Francis Afande. "Use of Regulatory policies in the Fight against Money Laundering in Kenya." *Public policy and Administration Research paper* 5, no. 3 (2015): 149-193.

enforcement strategies are effectively implemented.¹⁶

At the global domain the ineffective enforcement of AML law have been demonstrated by low rates of investigation, prosecution and seizure. Basel institute 2019 provides that only 23% of suspicious activities reported are investigated, while UNODC reinforces this observation and puts the global rate of successful seizure of moneys laundered at 0.2%.

Statistics from Institutions like the Transparency international in its 2018 corruption perception index support this reflection and indicated that Kenya scored 27%, which is below the world average of 43% and was ranked position 144 out of 180 listed countries.¹⁷

The 2019 Basel institute risk assessment on the other hand rated Kenya as the seventh most risk money laundering country in the world.¹⁸ The global economic crime and fraud survey 2018 indicate that Kenya had a 75% corruption prevalence rate which is much higher than the world average of 49% and the African average of 62%.

The observations Combined points to a problem of an ineffective enforcement of anti-money laundering law in Kenya. Furthermore, literature review on anti-money laundering reveal that more attention has been put on the effect of money laundering on specific sectors like banks and to the contrary less on the overall study on the regulation and enforcement measurers used to fight money laundering. It is on this basis that the study intent to assess the Law enforcement aspects of combating money laundering in Nairobi,

¹⁶ Adulla Ali Aljawder. "Uniform Anti money Laundering Policy and Laundering process eradication." PhD thesis, Brunel University, 2018.

¹⁷Transparency International. (2018). Corruption perception index 2018, Transparency International.

¹⁸ Basel Committee on Banking Supervision. (2019). Basel AML Index 2019: A Country ranking and review of Money Laundering and Terrorism Financing risk around the world.

Kenya so as to contribute to the existing academic knowledge and enrich policy making process.

1.3. Purpose of the Study.

The purpose of the study is to assess the law enforcement aspects of combating money laundering in Kenya.

1.4. Objectives of the Study.

1. To assess the efficacy of the law enforcement measures put in place to combat money laundering dynamics in Kenya.
2. To find out the effects of institutional capacities on combating money laundering in Kenya.
3. To establish the effects of international coordination and cooperation on combating money laundering in Kenya

1.5. Research Questions.

The study was guided by the following research questions:

1. What are the effects of the existing law enforcement measures in combating money laundering and its dynamics in Kenya?
2. What are the effects of institutional capacities in combating money laundering in Kenya?
3. What are the effects of international coordination and cooperation in combating money laundering in Kenya?

1.6. Significance of the Study.

Banking on the analysis of primary data collected and with reference to secondary data obtained from a review of literature related to the experience of Kenya and that of other countries, the paper aim at addressing regulators, enforcers and the world of academia by presenting alternative solutions and approaches in combating money laundering in Kenya. The study explored various issues in the enforcement of anti-money laundering regulation which upon testing and discussion the ideas expressed form part of the solutions to the prospective challenges in the fight against money laundering in Kenya.

In specific terms the research will benefit the following.

Policy makers: The research findings shall aid in the improvement of the already formulated policies and enforcement structures. Enable Policy makers improve on policies that address ethical issues, coordination, research, human resource training, and doctrines sufficing as challenges affecting the enforcement of AML regulation in Kenya.

Academic researcher: The study will make a significant contribution to the growing body of research knowledge on the enforcement aspects of combating money laundering in Kenya as well as will stimulate further academic research to fill knowledge gaps exposed.

1.7. Limitations of the Study.

Despite undertaking the study to a conclusive completion, various constraints were encountered during the course of the research. For instance, the participants were constrained by divided attention between filling the questionnaires and carrying out normal duties thus occasioning delays in concluding the research.

Nonetheless, the fight against money laundering and associated complex issues require the pooling of diverse competencies hosted under different complementing agencies and

disciplines some of which by nature of its operations have a strict secrecy doctrine. In this regard, clearance was sought from authorities before engaging individual participants. Good enough, data was collected from the different agencies promoted contradiction of facts crucial in understanding various perspectives of the phenomenon.

Furthermore, it was quite difficult to measure the aspirations and expectations that drive the participants to respond. As pointed out by Sharma, research has shown that individuals tend to over-rate themselves on desirable traits and under-rate themselves on undesirable traits. Participants tend to be subjective by overrating their positive competence or of their respective organizations in some areas and vice versa which could translate to poor generalization. To mitigate the participants where free to avoid questions that could compromise their impartiality principles.

1.8. Scope of the study.

The study was carried out in Nairobi city Centre to assess the Law enforcement aspects of combating money laundering in Kenya. The researcher administered questionnaires to the staff of five agencies cheaply mandated to enforce the anti- money laundering regulations in Kenya. Content analysis was also done of the existing data on anti-money laundering law (AML) enforcement and considers lessons learnt from global and domestic cases.

1.9. Literature review.

1.9.1. Introduction.

This section deals with a review of literature on money laundering from global and regional perspective applicable to Kenyan context. It covers an overview of money laundering, the definition of key terms and concepts, money laundering techniques and process, the

consequences of money laundering, an overview of anti- money laundering enforcement mechanisms and an empirical literature review alongside identification of gaps in the explored literature

1.9.2. Overview of money laundering.

According to Borlini and Arnone, money laundering is a transnational crime that acts as a bridge to other criminal activities and as such should be contextualized around the illicit activities that generate the proceeds to be laundered.¹⁹ Hopton in Davidson argue that money laundering as a prohibited act dates back to the 1920- 1930, s Al Capone’s Chicago based Mafia activities²⁰, an account that Seymour, dismiss as an urban magic of the origin of money laundering. However, Anderson and Anderson, partly agree with Hopton’s analogy of Mafia as the popular version of the origin of ML, but insist that ML has been in practice since the 17th century historically called the “decade of maritime piracy” targeting the Roman ships moving along the Mediterranean Sea.²¹

Correspondingly, Chu in Davidson maintain that money laundering defined has an organized crime originated from the 16th Century Chinese triad society attempted coup against the Qing government, a scheme that backfired leading to the murder of Monk community members.²² Although the authors ground the subject of money laundering operations on illegal proceeds, their perspectives of where, who, why, how and when money laundering (ML) did exactly originate vary.

¹⁹ Michael Arnone and Borlini Leonardo. “International Anti Money Laundering Programs. Empirical assessment and issues in criminal regulation”. *Journal of money laundering control* 13, no 3. (2010). 226-271.

²⁰ Davidsson, Hanna. "The Phenomenon “Money Laundering”: Whose money is dirty and what are the effects?" Master, thesis, HAMK University, (2014).

²¹ Ibid.p.32

²² Ibid.pp.19

In spite of the disagreements, Migarura notes that the expression money laundering came to the public limelight in 1973 Westgate newspaper reporting where president Richard Nixon re-election team was accused of using "black money".²³ Since then, the meaning of ML has been judicially embraced and shaped. The first standalone legislation being the US anti-money laundering Act of 1986.²⁴ To the contrary, Hutman et al agree and posit that the 9/11 US terror attack completely transmogrified the historical landscape of ML as it led to the introduction of additional instruments to combat money laundering.²⁵

However, in as much as it is true that traditionally Money laundering was all about dirty money and the 9/11 event introduced a new concept called reverse money laundering into the domain, money laundering is still a distinct offense different from the act of terrorism.

Borlini (2017), reinforce the offered context of money laundering but held that the landscape of threats has not, is not and may not ever cease ballooning and exemplified that since 2012 the issue of proliferation of weapons of mass destruction as joined the arena of things.²⁶ All in all the key implication is the additional number of crimes that seek to ride on money laundering (ML) processes and secondly an expanded number of instruments used to combat ML and the financing of terrorism (FT).

1.9.3. Definition of key terms and concepts.

1.9.3.1. Money laundering has been defined differently by various individuals and

²³ Norman Mugarura. *The global Anti- Money Laundering Regulatory Landscape in Less Developed Countries*. Burlington USA: Ashgate publishers, 2012.

²⁴ Ibid.p.7.

²⁵ Edward J. Krauland and Aaron R. Hutman. "Money laundering enforcement and policy." *The International Lawyer* 39, no. 2 (2004): 509-519.

²⁶ Leonardo Borlini. "Regulating Criminal Finance in the EU in the Light of the International Instruments." *Yearbook of European Law* 36 (2017): 553-598.

organizations. According to Turner, there is no common definition of money laundering, but notes that most countries incorporate the definition provided by UNODC and UNCAC which define money laundering as the process through which illegally made income is moved so as to reconstruct the source, identity and destined purpose in order to avoid detection by law enforcement agencies.²⁷

However, money laundering simply means the manipulation of both legal and illegal gained income in order to hide its existence, sources, destination or purpose with the aim of circumventing the interception of law enforcers.

1.9.3.2. Anti -money laundering means law, regulations, procedures and programs engaged to deter criminals from concealing illicit proceed as genuine income.²⁸

1.9.3.3. Transnational crime generally refers to crime that occurs across, beyond or through multiple nations and jurisdictions. Bossard defines it as those activities criminalized by the laws of more than two countries.²⁹ While Kukuk (2010) on the other hand provides for an open meaning of money laundering and describe it as; a crime committed in more than one country, a crime committed in one country but planned in another, crime committed in one country by a group operating in many different countries or a crime

²⁷ Turner Jonathan. *Money laundering prevention: Detering, Detecting and Resolving Financial Fraud.* (Hoboken, N.J, John Wiley & sons, 2011). ProQuest E-book Central.

²⁸ Michael Arnone and Borlini, Leonardo. "International Anti Money Laundering Programs," IMF, "Finance & Development," Quarterly publication, 56 no. 3, (2019):226-271.

²⁹ Bossard Andre. *Transnational Crime and Criminal Law.* Chicago: office of international criminal justice, 1990. Cited by Kukuk Leon. *Cooperation and Accountability in the Cross- border policing of South Africa.*

committed in one country but affects another country.³⁰

1.9.4. The money laundering process and techniques.

Essentially, money laundering techniques are dynamic and keeps on aligning to opportunities availed by changes in the operational environment to escape enforcement track nets. In the view of Mugarura, globalization and advancement of information technology has occasioned liberalization of trade and digitalization of money which increasingly reoriented the traditional crime environment. Mutua reinforce and demonstrate by arguing that classical money laundering ran on cash intensive businesses, real estates and trade, the contemporary trends lean towards but not limited to the use of virtual currency more so crypto currencies, offshore banks, funnel accounts, professional bodies and third-party money laundering as the preferred techniques.³¹

Giving an example of real estate as a simple laundering means that has stood the test of time, Argarwal disagree and posit that the expansion of threat windows does not necessarily invalidate the traditional methods of ML but rather serves as an alert that law enforcers need to pace with new dynamics occasioned by globalized age.³² While there are numerous ways of laundering money, financial action task force (FATF) grounds money laundering as an activity that is conducted in a three-phase process; placement, layering and integration.³³

Mugarura content and spot that money laundering is not a systematized cyclic process but

³⁰ Kukkuk Leon. Cooperation and Accountability in the Cross- border policing of South Africa. Edited by Sean Tait and Elrena Van der Spuy Cape town, African Policing Civilian Oversight Forum, 2010.

³¹ Mutua Maureen. *Mastering Anti- Money Laundering. What I Have learned About Dirty Money and what your need to Know.* (USA, Middletown: DE ,2018).

³² Aman Argarwal, Argarwal J.D. Money Laundering; The Real Estate Bubble. Quarterly referred Journal of Finance Key note Address, Indian Institute of Finance.2007. <http://www.iif.edu>

³³ Mugarura, Norman. *The global Anti- Money Laundering Regulatory Landscape.*

rather comprise of one or a combination of either stage of the model.³⁴

1.9.4.1. Placement stage of money laundering.

Turner and Mugarura both agree that Placement is the first stage of money laundering and it encompasses sourcing of illegal income and introducing them into the financial institutions and non-financial businesses locally or abroad without raising the attention of regulators.³⁵ At the micro level Money laundering operations target cash dominated businesses with little variable costs; strip clubs, car wash, car parks, hotels and studios and the proceeds from the activities are mixed with the illicit gains.³⁶ Mugarura agree with Mutua that at this stage the commonly used methods are smurfing and structuring where different people are used to deposit small amount of money below the reporting threshold into different financial systems in the same or different locations.³⁷

Another method entails the physical smuggling of cash below reporting threshold and deposited in a foreign bank but later transferring the money back to the country. Similarly, Gikonyo observe that aborted transaction can also be lodged with professional entities like accountants and lawyers in pretext of settling a proposed transaction and after a short while the money is wired back to the account of the client.³⁸ In regard to AML policy implementation, Ryder, suggest that detection and general enforcement measures are

³⁴ *Ibid*, p. 10.

³⁵ *Ibid*. pp.13.

³⁶ Nicholas Gilmour, Nick Ridley. "Everyday vulnerabilities money laundering through cash intensive businesses." *Journal of Money Laundering Control*. 18 No. 3, (2015): 293-303. DOI 10.1108/JMLC-06-2014-0019.

³⁷ Norman Mugarura. *The global Anti- Money Laundering*.

³⁸ Gikonyo Constance. "The legal profession in Kenya and its Anti-Money laundering obligation or Lack thereof". *Journal of money laundering control*, 22, no. 2, (2019): 247-256.

easily applied at this stage.³⁹

Under POCAMLA there are three preventive measures that assist in detecting ill-gotten proceeds at this stage. Cash transaction reports (CTR) and suspicious transaction reports (STR).⁴⁰ Mugarura study in 2013 contest the notion that reporting at this stage is easier and offers that high-costs associated with the reporting tend to derail the intended output.⁴¹

Although the authors make valid debates, what is critical to enforcement process is early detection so as to control money laundering crime at the earliest opportunity. Mugarura's view of cost in this scenario is short term thus ignoring the repercussion of a successfully staged money laundering saga. Since the process of money laundering is not systematized cyclic, laundering can be conducted at all levels and therefore detection and prevention efforts must focus on vulnerabilities at all stages of the process. The cost aspect of implementation can as well be mitigated through government- private partnership programs or incentives to motivate designated institutions to undertake effective detection and reporting of ML cases.

1.9.4.2. Layering stage of money laundering.

According to Seymour, layering is the most sophisticated stage and involves the movement of money through different financial institutions to various destinations to make it hard for

³⁹ Nicholas Ryder. "The financial services authority and money laundering: A game of cat and mouse." *The Cambridge Law Journal* 67, no. 3 (2008): 635-653.

⁴⁰ POCAMLA, 2012.

⁴¹ Norman Mugarura. "Has globalisation rendered the state paradigm in controlling crimes, anachronistic? The notion of borders, state and new crime typologies." *Journal of Financial Crime* 21 no. 4, (2014): 381-399. DOI 10.1108/JFC-04-2013-0026.

law enforcement agencies to trail, uncover and recover laundered resources.⁴² It entails a complex transaction to disassociate illicit money from its real source through repeated placement process, each time using different amount of money to avoid detection by law enforcers. The money can be used to acquire assets, converted into financial instruments like bonds, bankers draft and money orders and electronic fund transfer.

Mugarura (2013) postulate that though the repeated placements mean more expenses, money launders are not bothered by the shrinkage of value occasioned by costs accrued from the processing but their main concern is masking the remaining income.⁴³ The international consortium of investigation journalist identified other techniques which include use of fake employees paid in cash and provision of dividends and loan to non-existent shareholders.⁴⁴

1.9.4.3. Integration stage of money laundering.

Mutua, content that integration is the last phase of money laundering process which involves transferring laundered money back to the mainstream economy. Methods employed include the sale of property previously purchased by use of illegally obtained money and the proceeds deposited into an account as legally got money. On the other hand, front companies are formed mostly in destinations enjoying corporate secrecy.⁴⁵

⁴² Brian Seymour. "Global money laundering." *Journal of Applied Security Research* 3, no. 3-4 (2008): 373-387.

⁴³ Norman Mugarura. "Has globalisation rendered the state paradigm in controlling crimes, anachronistic? The notion of borders, state and new crime typologies." *Journal of Financial Crime* 21, no. 4, (2014): 381-399. DOI 10.1108/JFC-04-2013-0026.

⁴⁴ International Consortium of Investigation Journalist, "offshore Companies facilitate economic crimes,"

⁴⁵ Mutua Maureen. *Mastering Anti- Money Laundering. What I Have learned About Dirty Money and what your need to Know.* USA: Middletown DE.2018.

Criminals then use the institutions to loan themselves money as legitimate credit.⁴⁶ Gikonyo disagree with the argument and claim that money that enters the economy is mixed with genuine income from businesses, making detection an ant hill task, hence, a strong surveillance mechanism is necessary in order to prohibit, prevent and check the net effects of money laundering activities.⁴⁷

Trade transactions are also used to integrate laundered money back to the economy. Naheem posit that money laundering agents especially those in import and export businesses often overvalue or undervalue invoices to justify funds that are later deposited in domestic or foreign banks as money made from real trade.⁴⁸

Kamba contradict the general observation advanced by the authors and argue that none of the stages present an outright laundry loophole but it is the actors themselves that isolate weak points to exploit in the process.⁴⁹ This view is true because despite the authors attempt to bring out the various methods used to launder money, the list is not exhaustive because criminals are ever sophisticated in inventing new ways of cleansing their ill-gotten income.

1.9.5. The consequences of money laundering.

Principally, money laundering is an economic phenomenon which though it is hard to attach exact numeric values has demonstrated to be a threat to the economic stability of the

⁴⁶ ibid

⁴⁷ Constance Gikonyo. "Detection mechanisms under Kenya's anti-money laundering regime: omissions and loopholes." *Journal of Money Laundering Control* 21, no 1. (2018): 59-70.

⁴⁸ Mohammed Ahmad Naheem. "Local intelligence—the missing link in CTF regulation in the banking sector." *Journal of Money Laundering Control* 22, no. 1 (2019): 132-144.

⁴⁹ Charles, Kamba. "Cross- border trade- based Money Laundering in South Africa" In *The Money Laundering in Eastern and Southern Africa*, Edited by Goredema Charles, Pretoria: pp 151-173.

world. Arnone and Borlin, argue that the magnitude and impact of money laundering is on the increase due to interconnectivity of the world and resultant smooth flow of information, human capital, goods and money. Worse is in emerging economies confronted by the problems of inadequate resources, weak governance, lack of political will and corruption.⁵⁰

The IMF in its September 2019 quarterly publications put the amount of private owned wealth stashed in the offshore centers at \$ 7 trillion which represents 8% of the global GDP.⁵¹ In 2017 the global financial integrity (GFI) did a similar assessment and established that \$1 trillion is moved out of developing and emerging economies because of hard crime, corruption and tax evasion.⁵²

Nonetheless, Levi contested the alleged financial impact of money laundering (ML) and posits that there is lack of a specific method of generating money laundering estimates, thus, the statistics provided by the various schools of enumerators are ambiguous, distorted and with huge margins which cannot then represent an accurate context of the problem.⁵³

Borlini and Arnone, concur with the argument and notes that the inconsistency in ML statistics is because by nature the vice happen in secrecy and outside the normal statistical realm.⁵⁴

Similarly, according to Turner, the variation is rooted in the unclear definition of what

⁵⁰ Ibid.pp.17.

⁵¹ IMF, "Finance & Development," Quarterly publication, 56 no. 3, (2019).

⁵² Global Financial integrity, "Global Financial integrity report," 2017.

⁵³ Michael, Levi and Reuters, Peter, Reuters, "Money Laundering," *Journal of crime and Justice* 34, no. 1, (2006): 521-523.

⁵⁴ Ibid p16

constitute an act of money laundering and further observe that the territorial vacuum created by globalization enable launders to commit crime, move money to different locations and live in a different place making it hard to domestically assess the effects.⁵⁵

However, Goredema agrees with this notion, but disputes the overemphasis and obsession associating laundering with money only and observes that anything of value can be a laundering medium.⁵⁶ Masciandro, agrees with the argument that the estimates and consequences of money laundering are overestimated but declined the theory that the effects of money laundering are negative alone. To Masciandro, the effects are both negative and positive. For instance, positive for increasing the demand for goods and services and negative for distorting prices and eroding the reputation and development of financial sector.⁵⁷

Comparatively, UNODC in 2019 paint a case of misplace global priorities.⁵⁸ The report provided that 35 million people worldwide suffer from drug use related disorders, out of which only one in seven people receive treatment, and on a single day, about three hundred Americans die of heroin overdose.⁵⁹ The presented situation is socially alarming than the case of money laundering perceived as a prohibition but again without a “money cleaning systems” drug supply will diminish. However, despite the disagreements as to which figure

⁵⁵ Ibid.pp29

⁵⁶ Goredema Charles, Editor, *The Invisible threat: Money Laundering in Eastern and Southern Africa*, Pretoria: South Africa, ISS, pp 1-25.

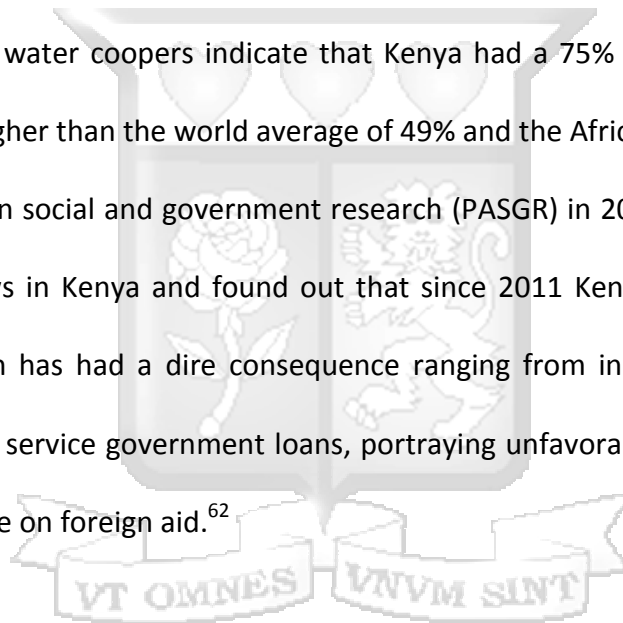
⁵⁷ David, Masciandaro, “Money laundering regulation: The macro-economics,” *Journal of money laundering control*, volume 2, Issue2, 1998.

⁵⁸ UNODC, “2018 report,”

⁵⁹ Ibid p17.

is higher than the other, the least projected estimates and consequences are enough to warrant global policy response.

The transparency international (TI) in its 2018 corruption perception index indicated that Kenya scored 27%, which is much below the world average of 43% and the African average of 31% and was ranked position 144 out of 180 listed countries. The rating is worse than the 28% scored in 2017.⁶⁰ The 2019 Basel institute risk assessment, rated Kenya as the seventh most risk money laundering country in the world.⁶¹ The global economic crime and fraud survey 2018 by price water coopers indicate that Kenya had a 75% corruption prevalence rate which is much higher than the world average of 49% and the African average of 62%. Partnership for African social and government research (PASGR) in 2018 conducted a study of illicit financial flows in Kenya and found out that since 2011 Kenya has been losing 40 billion annually which has had a dire consequence ranging from inability to domestically mobilize resources to service government loans, portraying unfavorable credit worth and a tilt to overdependence on foreign aid.⁶²



The presented data depicts a worrying trend for Kenya and the globe at large. In probing the drivers of the presented scenario, Moshi advance that the Kenya's geographical disposition makes it vulnerable to money laundering and predicate offences. Immediate neighborhood of Somalia, South Sudan and Sudan are wrestled by internal conflicts exposing the country as a darling transit route and destination for trade-based money launders and drug traffickers⁶³

⁶⁰ TI, "2018 Corruption perception index,"

⁶¹ Basel, "2019 AML Index,"

⁶² Tiberius Barasa, "Illicit Financial flows in Kenya: Mapping literature and synthesis of Evidence," *Partnership for African Social & Governance Research*, August 2018.

⁶³ Moshi Humphrey. 'Fighting money laundering.

Though the drivers are not limited to availed prescription, both arguments have a case because it is the mixture of unstable regional security environment and Kenya's porous border that makes it challenging for the law enforcers to effectively detect crime and generally enforce the law.

1.9.6. An overview of anti- money laundering enforcement mechanisms.

According to Levi, the consequences of money laundering are harsh enough to warrant a global policy respond.⁶⁴ Sham suggests a whole crime approach to AML policy to discourage criminal activities that generate the illicit proceeds that need to be "cleaned"⁶⁵ Nonetheless, while Turner approve the application of law in combating ML, he argue that its effectiveness is restrained by debates fronted around the meaning of money laundering because some jurisdictions put emphasis on the ill acquired income while other concentration on the usage.⁶⁶ Therefore, according to Turner policy response to money laundering ought to be reconciled in same manner from the international level.⁶⁷

However, Ferwerda, et al disagree and challenge that such approaches are prone to provoke resistance from states who feel rules are imposed on them and seek to preserve its sovereignty from undue influence.⁶⁸ Sharman agree with Ferwerda et al and note that the diffusion and adoption of AML policy is a superiority game, because, most of the countries have less in common.⁶⁹

Mugarura 2015 notes that politicization of international law is a normal national survival

⁶⁴ Levi, Michael. "Money Laundering and Its regulation,"

⁶⁵ Heba, Sham, "The fight against extraterritorial Corruption and the use of Money Laundering Control." Law and Business review (2001).

⁶⁶ Turner, Jonathan, "*Money laundering prevention*,"

⁶⁷ Ibid p.176.

⁶⁸ Ferwerda Jorus, Deleanus Sorina, Unger, Brigitte. "Strategies to avoid blacklisting: The case of statistics of money laundering." *PLOS ONE*, volume 14, Issue 6, 2019.

⁶⁹ Ibid.p.9.

strategy.⁷⁰ To the contrary, Levi, disagree with politicization notion and acknowledge that the establishment of AML policy was a common good problem catalyzed by the realization by states that organized crimes were negatively affecting the society.⁷¹ As such Gikonyo 2018 settles with Levi and maintains that Kenya's AML regime has to be contextualized on the very basis of resolving a common problem,⁷²an account that equally gets acceptance in the provisions of Article 2 (5) (6) of the Kenya constitution 2010.⁷³

Whichever the argument, it is imperative to appreciate that in a modern world where borders are blurred and citizenry is increasingly becoming internationalized, problems traditionally considered domestic are easily exported across neighborhoods which means handling them require consultation and cooperation among state and non-state actors.

According to Shams reconstruction, anti-money laundering regime has developed through four phases. During the 1970's it was the inception stage. The focus was preventive regulations more so record keeping and suspicious activities reporting by banks. The second phase started in 1980, s and entails the criminalization and internationalization of AML efforts. Third stage referred as the supra nationalization was in 1989. The key characteristic of this stage is the establishment of Financial Action Task Force (FATF) which is the super global AML Centre mandated to coordinate AML efforts and to promote the trail process, freezing, seizure and the confiscation of criminal resources. The fourth phase emanated from the 9/11 US twin tower terrorism attack which led to the extension of FATF mandate

⁷⁰ Turner, Jonathan, "Money laundering prevention,"

⁷¹ Levi, Michael, "Money Laundering and Its regulation,"

⁷² Gikonyo, Constance," Detection mechanism,"

⁷³ Article 2(5)(6) of the Kenyan Constitution 2010.

to include the fight against terrorism financing.⁷⁴

In addition to the temporal metamorphosis of AML regime, Windor and Getz argue that institutional premise is equally paramount. He therefore posits that international organizations like IMF and the World Bank in collaboration with FATF and FATF- style regional bodies (FSRBs) were enjoined to the war and came up with programs targeting to assess the AML frameworks for member states.

Similarly, Marcos (2018) object to the notion and argue that the introduction of these institutions to the game of global crime governance was a post-cold world war ideology to deal with and weaponize exported corruption in the pretext of projecting the development trajectory of emerging economies. At the regional level, the inter-Governmental Action against Money Laundering in Africa (GIABA) and East and Southern African Anti-Money Laundering Group (ESAAMLG) are FATF-style institutions that spearhead money laundering initiatives in Africa.⁷⁵

Undoubtedly, Casella accepts that AML regime exists and posits that the existence of laws to combat money laundering is not a contested issue but its effectiveness to discourage criminal activities is debatable.⁷⁶ Schneider fits in the same perspective and posits that the problem of money laundering has persisted despite the establishment of AML regime.⁷⁷

Figure presented by Basel in 2019 equally points to ineffective AML regime. It puts the

⁷⁴Sham, Heba, "Legal globalization: Money Laundering Law and other case." *British Institute of International and comparative Law, London, 2004.*

⁷⁵ Ibid.p.12.

⁷⁶ Cassella stefan. "Hurdling the Sovereignty wall: How Governments Can Recover the proceeds of crime that cross-national boundaries". *Journal of money laundering control*, volume22, issue 1,2019.

⁷⁷ Friedrich, Scheinder, "Money laundering and Financial means of organized crimes some preliminary empirical findings". *Journal of Global business and economic review*, 2008.

average global ML risk index at 60%, with UNODC estimating that only 0.2% of the laundered money is seized meaning 99.8% is in the hands of criminals. Basel 2019 locates that out of 80% suspicious transactions reported only 23% are investigated and effectively prosecuted,⁷⁸ which according to Schneider points to weak enforcement, secretive nature of ML activities or a case of homeless money and direct consumption.⁷⁹

More so, in as much as states have international obligations, Marcos argue that the notion of sovereignty constrains law enforcement officials from directly executing domestic laws in a foreign jurisdiction.⁸⁰ In a comparable perspective Ferwerda, notes that even intervention from a perceived neutral non state body like financial task force (FATF) through blacklisting, shaming or economic isolation is branded an interference of sovereignty by the affected states which yield resistance and numbs relationship among states.⁸¹

Equally Stefan reinforces and further claim that even where there is effective cooperation, then the process of enforcement is slowed by criminals who use domestic courts to resist extradition or seizure and forfeiture orders issued by a foreign court.⁸² Joosten holds a similar observation and advance that difference in values between states is what breeds such barriers. For instance, the objective of money laundering seen as a process of constructing secrecy wall around wealthy does not necessarily make it a vice considering in some cases launders may even be willing to pay more tax than legal businesses who under

⁷⁸ Basel, "2019 AML Index,"

⁷⁹ Scheinder, Friedrich. "Money laundering and Financial means of organized crimes"

⁸⁰ Ibid. p.9.

⁸¹ Ferwerda, Jorus, et al, "Strategies to avoid blacklisting"

⁸² Cassella, Steffan, "Hurdling the Sovereignty wall,"

report their revenue.⁸³

Nonetheless, Kenya has made good strides in delegitimized money laundering through the proceeds of crime and Anti money laundering Act (POCAMLA) of 2009 and the proceeds of crime and anti-money laundering regulation (POCAMLR) 2013 which are the main legal and regulatory framework for dealing with money laundering in Kenya.⁸⁴ Other related laws includes prevention of terrorism Act (POTA) 2012, Ethics and anti-corruption Act, the penal code CAP 63 LOK and Narcotic drug and psychotropic substance control Act CAP 245 LOK. All these initiatives are in line with the international AML regimes. Relevant institutions have also been established to oversee the implementation of the law among them the DCI, financial reporting center (FRC) and the Asset recover authority (ARA).

Nevertheless, Gikonyo content that much debate has not been the presence of the law per se but lack of effective enforcement of the laws and regulations due to inadequate political will, untidier anti-corruption efforts and loopholes in the law flamed by complications in the legal process, leakage of information to suspects who in turn transfer the ill obtained assets or close accounts.⁸⁵

1.9.7. Empirical literature review.

Teichmann Conducted a study in 2019 on global trends in money laundering and terrorism financing and found out that the enforcement mechanisms used to prevent money laundering can easily be circumvented by criminals. Suggested that to combat money laundering, mandated machineries must adequately understand the specific steps and

⁸³Joosten, Erik. "Predictors for Compliance with anti-terrorist financing standards." *Journal of Money Laundering Control*, Volume 22, Issue 2, 2019.

⁸⁴ The proceeds of crime and anti-money laundering Act.

⁸⁵ Gikonyo, Constance, "Detection mechanism under the Kenya's Anti Money laundering regime: Omissions and Loopholes. *Journal of Money Laundering Control*, 2018, 21: 59-70.

trends taken by criminals in addition to limiting the over delegation of enforcement duties to designated reporting institution.⁸⁶

In 2010 Arnone and Borlini did an empirical analysis of the international AML programs and established that ML legal response ought to increase the cost of undertaking illicit operations. The study concluded that to detect money laundering calls for the enhancement of regulatory and enforcement response.⁸⁷

Chat Le Nguyen conducted a study in 2012 on mutual legal assistance (MLA) within the association of south east Asian nations (ASEAN) in combating money laundering and found out that due to the incapacity of law enforcers across the region and the difference in domestic criminal laws, the ASEAN states face challenges in operationalizing MLA as a critical part of regional cooperation against money laundering.⁸⁸

Thompson in 2019 did research on the underground Hundi banking in Myanmar and found out that even with the enactment of AML regime in 2014, lack of well-established formal financial systems and minimal regulation of Hundi system provides a conducive environment for money laundering to thrive in the country.⁸⁹

Research done by UNODC in 2005 on crime and development in Africa associated money laundering with prevalence of organized crime and conflicts in the region. This it argues is catalyzed by a weak enforcement capacity. In addition, the emergence of globalization and

⁸⁶ Fabian, Maximilian Teichmann, "Recent trends in Money Laundering and Terrorism financing." *Journal of Financial Regulation and Compliance*, volume 27, issue 1, 2019.

⁸⁷ Arnone and Borlini. "International Anti Money Laundering Programs"

⁸⁸ Chat Le Nguyen, "Towards the effective ASEAN mutual legal assistance in combating money laundering," *Journal of money laundering control*, Volume 15, No. 4, 2012.

⁸⁹ Rhys, Thompson, "Underground banking and Myanmar's changing hundi system," *Journal of Money Laundering Control*, Vol. 22 No. 2, 2019.

subsequent ease of transportation and trade makes the region a vulnerable transit route for criminal activities such as smuggling of goods, drugs, firearm and human as well as trafficking of timber, charcoal and ivory. The income generated out of these activities is used for financing terrorism. The capacity of African states to counter the problem is further hampered by inadequate resources, weak institutional framework and competing development priorities.

Ayodeji and Bagheri in 2012 while using the case of Nigeria conducted research on the impact of money laundering in developing countries and observed that indeed ML reduces development and causes economic and political instability.⁹⁰

In the Kenyan context Murithi undertook research in 2013 on the effect of implementing money laundering regulation in Kenya and found out that reporting requirement increases operational cost. Screening and frequent reporting as well as the cost of training staff affects the operations of commercial banks.⁹¹

In 2018 Mwangi researched on factors influencing the adoption of money laundering regulations by commercial banks in Kenya and found out that law enforcement mechanisms, institution capacity, international cooperation and technological advancement in that order affect the extent to which banks implement AML regulatory.⁹²

1.9.8. Gaps in Literature

From the theoretical and empirical literature most of the studies done covers issues on; Money laundering trends and globalization. Which is evident in the work of Teichman

⁹⁰ Johnson, Adeoye Adetuiji, "Rethinking the international Mechanism of the EGMONT group in Financial Crime Control". *Journal of Money Laundering Control Volume 22, issue 2* (2019).

⁹¹ Rosalind, Murithi Rima, The effect of Anti-Money Laundering regulation implementation on the financial performance of Commercial Banks in Kenya, Master thesis, Nairobi University, 2013.

⁹² Peter, Mwirigi, Maina, Factors influencing adoption of Anti-money Laundering Regulations by Commercial Banks in Kenya, Master thesis, Nairobi University, 2018.

(2019), Turner (2011), Cassella (2019), Mugarura (2012), Arnone and Borlini (2010) and Moshi (2007).

The impact of money laundering is captured in the studies of IMF (September,2019), UNODC (2018), Basel institute (2019), GFI (2017), TI (2018), Levi (2006), Aldridge (2008), Masciandro (1998), Moshi (2007). The causes of money laundering are reflected in Moshi (2007), Barasa,Tiberius (2018), Mutua (2018), Chat Le Nguyen (2012), UNODC, (2005), Ayodeji and Bagheri, (2012). And finally anti-money laundering (AML) Policy regime is discussed in Levi, (2006), Alldridge (208), Gikonyo (2018), Arnone and Borlin(2010) Ferwerda etal (2019), Murithi, 2013, Mwirigi (2018).

Though the studies are of substantive value to the fight against money laundering and financing of terrorism, most of them focused on global dimensions which does not reflect so much on the unique realities in Kenyan context. The few assessments on domestic cases did not examine the strategic and operational context of combating money laundering.

Furthermore, despite enforcement standing out as a common aspect in the success or failure of combating money laundering, few studies sought to establish what drives the success or failure, more so in Kenya. It is therefore for these reasons that the study purposed to assess the enforcement aspect of combating money laundering Kenya.

1.10. Conceptual framework.

Anti-money laundering (AML) response seeks to discourage money laundering (ML) by rising its cost vide a two front strategy which is preventive and criminalization measures. It is the role of the mandated enforcement agencies to operationalize these strategies. Ziaul argue that in the prevention prong, the government use regulations and sanctions as incentives to

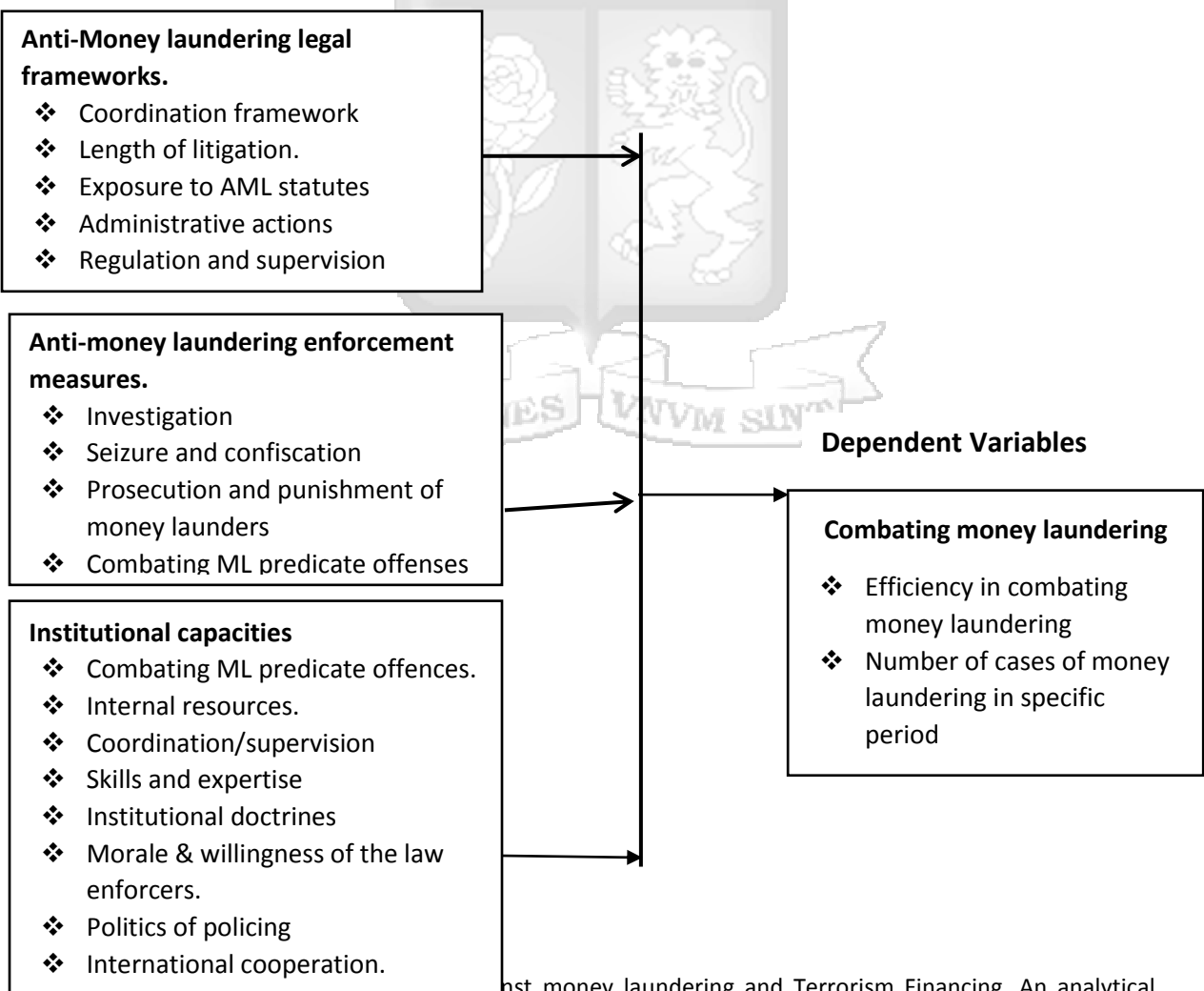
coerce reporting of suspicious transactions while criminalization frame use investigation, prosecution, punishment, and seizure and confiscation to reprimand criminal.⁹³

These strategies should and are presumably grounded on a strong institutional base. Which imply that the agencies tasked to enforce AML policy have to be equipped with the necessary competence, morale, resources and the political goodwill.

The study thus sought to establish the inverse relationship between AML policy, law enforcement response, international cooperation and institutional capacity as independent variables and Money laundering and its predicate offences as the dependent variables

Figure 1.1. Anti- money laundering law enforcement mechanism.

Independent variables.



...st money laundering and Terrorism Financing. An analytical overview of Legal aspect". *The Chittagong University Journal of Law*, VOL XI ,2009, PP 98- 130

Figure 1.1 Conceptual frameworks, borrowed and adjusted from Ziaul (2009).

1.11. Hypotheses.

The following were the research hypotheses:

1. That the existing anti-money laundering regulations and enforcement measures do not adequately combat money laundering in Kenya.
2. That Lack of institutional capacities negatively affects the mandated enforcement agencies to combat money laundering in Kenya.
3. That lack of proper international coordination poses a challenge in combating money laundering regulation in Kenya.

1.12. Methodology.

This section covers the research design, Target population, and sources of data, data collection tools and the pre- test study. The sample size and sampling procedure, criteria of determining the sample size are also highlighted. Methods of data analysis and presentation are captured at the tail end of the section.

1.12.2. Research Design.

The study adopted an exploratory research design in seeking to assess the enforcement aspects of combating money laundering in Kenya. This is because of the flexibility and low cost associated with it. In doing so, the researcher sourced both qualitative and quantitative data. Questionnaires were delivered to the target respondents at their respective work

stations. The interviewing of key informants (KIIs) was also conducted at the respondent appropriate time and place. The researcher also explored available secondary data especially literature and documents on the regulation and enforcement aspects of money laundering. This was done in order to effectively answer the laid down research questions.

1.12.3. Sources and types of data.

The study gathered both primary and secondary data. According to Creswell, Primary data are collected for firsthand use. In this case primary data was collected from the staff of anti-money laundering enforcement agencies within Nairobi city Centre.

Secondary data sources consisted of statutory documents among them the POCAMLA 2012, POCAMLR 2013 and review of literature and other relevant written sources. Though in some cases documented information may have been collected for different purpose premised on different assumptions, it provided insights into current response, challenges and possible solutions to money laundering.

1.12.4. The target population.

The target population and frame of the study was the lead anti-money laundering enforcement agencies in Nairobi city center, Kenya. Specifically, the financial reporting Centre (FRC), Ethics and anti-corruption commission (EACC), Kenya revenue authority (KRA), office of the director of public prosecution (ODPP) and the directorate of criminal investigation (DCI). The sample group was the enforcement staffs of the mentioned institutions that are exposed to the application of AML regulation and enforcement

measures.

1.12.5. Sample size and sampling procedure.

Creswell defines sampling as a procedure used to select people, places, or things for study. The aim of sampling is to choose number of targets in a way that represents the larger group from which they are selected.

Because of the nature of data required, the research used purposive sampling technique in selecting the study frame. Purposive sampling is whereby the focus group is chosen best on the judgment of the researcher. It is used where the researcher is interested in specific characteristics of the population. The advantage is that it is easier to make a generalization about your study population.

Subsequently, the study identified a sample frame of five agencies namely the EACC, FRC, custom department, ODPP, and DCI. Within the five settings, the researcher purposively selected interviewees from three cadres of staff: managerial, supervisory, and junior cadres each with average personnel strength of twenty (20). About 30% of the sample size was considered appropriate. This is according to Njenga and Kabiru who argued that for heterogeneous population a simple size of 30% is appropriate. In line with this, 30% (20) gives a number of seven (7) participants per cadre of the respective agencies translating to twenty-one (21) respondents from each agency thus a total of hundred and five (105) participants were targeted but unfortunately 87% actually participated in the study.

1.12.6. Data collection instruments and procedure.

The study engaged both qualitative and quantitative data collection techniques. The

quantitative primary data was collected using questionnaires. A questionnaire is a data collection tool that involves a series of written questions asked to the interviewee. They can be closed, or open-ended questions meant to extract specific information about the problem under investigation. Closed questions present the respondent with optional answers to select from, which reduces bias. Open ended questions are subjective in nature. The qualitative primary data was collected through key informant interview guide (KIIs) which were administered to the key informants selected from the organizations. The interview guide had open-ended questions aligned to the research questions which were then used to guide the interviewer in asking questions to the key respondents.

According to Mugenda and Mugenda, open ended questions are exploratory and avail an opportunity for the respondent to register opinions about an aspect in their own words. The researcher therefore administered hundred and five (105) questionnaires to the employees of the targeted institutions in order to collect primary data. The questionnaires were dropped and picked at the respondent's convenient time. Further, five interviews were conducted among the five agencies, each interviewee representing one organization. The interview proceedings were recorded and used for assisting in data presentation and discussion. The interviewees were picked from the already identified 105 respondents, where the five respondents filled both questionnaires, and then the researcher sought to get more of their opinions concerning money laundering.

The secondary data collection focused on content analysis, which encompass reviewing literature, reports, articles, journals cases available in open sources and documents like the proceeds of crime and anti-money laundering Act 2009 and the anti-money laundering regulation 2013 which are the core Anti money laundering regimes in Kenya.

1.12.7. Pre- testing of data collection tools.

The piloting of questionnaires and interview guide was done through the distribution of fifteen (15) questionnaires, three to each of the institutions, and two interview guides to two institutions. According to Sekaran a pilot test is necessary for affirming the validity and reliability of data collection tools. Reliability is all about the consistency and accuracy of the questions whereas on the other hand validity is the ability of the instrument to serve the intended purpose, which is to extract specific information from the respondents.

According to Cooper and Schindler (2003), a test is considered reliable if the same result is got repeatedly. Pilot study was conducted to test weakness in designed questions, sequence of questions, clarity or ambiguities and administrative issues. This facilitated necessary corrections before the actual data collection was commenced.

However, the findings from the pilot test were not included in the final results. The pre-test study actually improved the face validity of the instruments whereas content reliability of the instruments was improved through expert judgment. As such, the researcher relied on expert judgment and insights offered by his supervisor to improve content validity and reliability of the instrument.

1.12.8. Methods of data analysis and presentation.

The raw data collected was first and foremost thoroughly edited and summarized before the actual analysis. The purpose of analysis was to reduce data into interpretable form. Classification of data was by both descriptive and inferential statistics. Qualitative data was analysed by performing thematic analysis and presenting the results in summary form.

Quantitative data was analysed in order to produce descriptive statistics. Descriptive statistics indicate percentages, variance and measures of central tendencies which are vital in explaining data. Both the qualitative and quantitative data was triangulated in order to strengthen the findings of the study.

Equally, regression analysis was used to produce inferential statistics. Regression analysis essentially allows the researcher to determine the levels of relationship between variables in the study. For this study, multiple linear regressions for the variables of money laundering framework, anti-money laundering preventive measures, institutional capacity, and international cooperation was done against the dependent variable, the state of combating money laundering and its predicate offences in Kenya.

Lastly the analysed data is presented using tables, graphs and charts for ease of interpretation.

1.13. Ethical Considerations.

Research ethics are the moral rules and professional conduct expected of a researcher during the collection, analysis, reporting and publication of information. They are the principles governing the interaction between the researcher and research participants in a research process. According to American psychological association (APA), research must ascribe to a set of ethical principles which includes informed consent. In this regard, appropriate steps were taken to ensure all questionnaires are accompanied by a covering letter explaining the nature and scope of the research as well as a certificate of respondent

consent. This enabled the respondent to knowingly, voluntarily and intelligently avail or decline her or his consent.

Two, Respect for anonymity and confidentiality. Institutional and individual names or any other details that could disclose the identity of the respondent were not part of the questionnaire. The Participants were equally free to choose whether to take part in the study or not and where necessary clearance was sought from gate keepers to allow access to some information. Furthermore, the data was strictly handled by the researcher.

Respect for privacy. The research participants were free to decide on the time and circumstance under which information will be shared or withheld. The researcher always endeavoured to avoid creating an environment of anxiety, embarrassment or shame and to respect the opinions and beliefs of the participants. The researcher dropped and picked the questionnaires at the workstations of the respective participants or any other place and time as the respondent wished.

Beneficence. This is the principle of do no harm. Enforcement duties involve dealing with delegate situations and information some of which need the clearance of gate keepers. As such the researcher requested for permission where necessary to ensure the respondents are not subjected to the violation of work-related code of conduct which could jeopardise their positions. The researcher maintained a good balance between utilitarianism and deontological aspect of moral values. The respondents were also informed of any direct or indirect benefit accrued from his or her participation in the study.

Other ethical considerations observed include avoiding falsification of information and proper crediting of sources as way of appreciating the work of other authors and improving

the authenticity of the whole research product

1.14. Chapter outline.

The dissertation is structured as follows:

Chapter one: Introduction and background to the study.

The chapter will capture the abstract to the study, introduction of the research and provides the statement of the study. It additionally covers the research objectives, the generated research questions and the hypotheses. Furthermore, the chapter deals with analysis of literature from diverse sources while providing the conceptual analysis and methodology and sums up by offering the overall dissertation chapter outline.

Chapter two: The evolution and dynamics of money laundering.

The chapter looks at the evolution and dynamics of the problem of money laundering. In precise it covers the typologies of money laundering, money laundering predicate offences and the transnational aspect of money laundering. In addition, the chapter examines the anti-money laundering regimes and enforcement infrastructure at play in combating money laundering in Kenya.

Chapter three: law enforcement response to combat money laundering in Kenya.

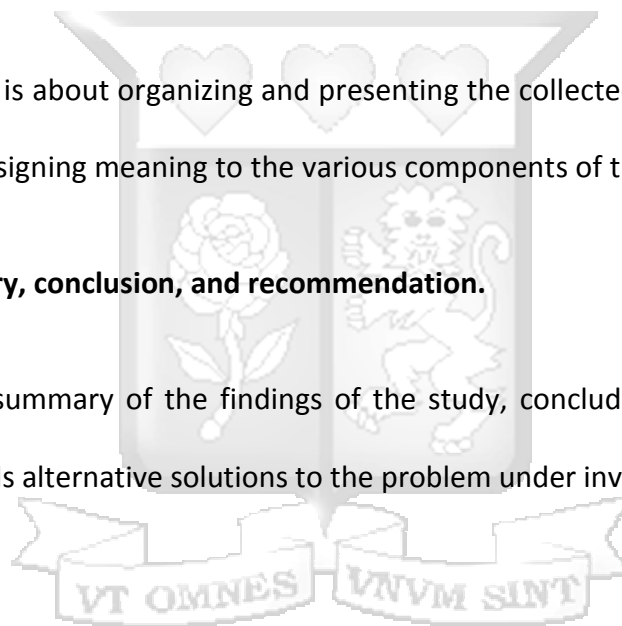
The chapter deals with Kenya as a case study. It focuses on the specific roles of law enforcers in interdicting the crime of money laundering (ML) in Kenya. In addition, assesses international cooperation as a critical aspect in the fight against ML in Kenya, with a view of establishing the challenges that deter the mandated agencies from undertaking effective law enforcement.

Chapter four: data presentation, findings, and analysis.

Basically, the chapter is about organizing and presenting the collected data. It further deals with analyzing and assigning meaning to the various components of the said data.

Chapter five: summary, conclusion, and recommendation.

The chapter gives a summary of the findings of the study, concludes the entire research work and recommends alternative solutions to the problem under investigation.



CHAPTER TWO: EVOLUTION AND DYNAMICS OF MONEY LAUNDERING.

2.1. Introduction.

This chapter presents the evolution and dynamics of money laundering and subsequent anti-money laundering (AML) enforcement mechanisms put in place to mitigate the money laundering menace.

2.2. The evolution of money laundering.

Though Hopton in Davidson postulate that money laundering has been carried out since the 17th century historically called the “decade of maritime piracy”, he accepts that the concept of Money laundering is considered to have originated from the Mafia activities of 1920’s and 1930’s where organized criminals making money from extortion, gambling, bootlegging, and prostitution needed to demonstrate that the earned dirty proceeds were genuine.⁹⁴ Sharma agree with the account but rise that the concept started becoming the discussion of common good problem in 1970’s.⁹⁵ Anderson and Anderson reinforces Hopton’s argument by positing that in fulfill their cleansing game, the Chicago based criminal empire acquired a running Laundromat business. Sales from the legal business was mixed with the illicit proceeds to avoid detection from federal government who at the time was pursuing Gabriel Alphonse alias ‘Al Capone’ the leader of the group for money laundering offences.⁹⁶ To the contrary, Seymour dismisses the account provided by both Hopton and Anderson and Anderson as an urban magic of the origin of money laundering.

⁹⁴Hopton, D., “*Money Laundering*,” in Davidson Hanna. “The phenomenon of Money Laundering, whose Money is dirty and what are the effects.” Master, thesis, HAMK University, 2014.

⁹⁵ *Sharma reconstruction*

⁹⁶Tracey, Anderson and Anderson Michael.” *Anti-Money Laundering: History and Current developments, 2015, pp 26.*

Correspondingly, Chu in Davidson maintain that money laundering defined has an organized crime originated from the 16th Century Chinese triad society attempted coup against the Qing government, a scheme that backfired leading to the murder of Monk community members.⁹⁷

Although the authors ground the subject of money laundering operations on illegal proceeds, their perspectives of where, who, why, how and when ML did exactly originate vary. On the other hand, and in spite of the disagreements, Mugarura notes that the expression money laundering came to the public limelight in 1973 Westgate newspaper reporting where president Richard Nixon re-election team was accused of using “black money”.⁹⁸ Since then, the meaning of ML has been judicially embraced and shaped. The first standalone legislation being the US anti-money laundering Act of 1986.⁹⁹

Mugarura (2014), notes that in the modern space, states have limited policing jurisprudence and to the contrary money laundering has used the same space to transmogrify both in techniques, process, methods, types and other dynamics.¹⁰⁰ Additionally, crimes that give life to money laundering have also increased in size and complexity. Predominant are organized crimes like terrorism, drug trafficking, human trafficking, illegal sale of firearms, trade in wildlife product, tax evasion, fraud and corruption. The perpetrators have equally changed faces to include government officials, is politicians, multinational companies and genuine private enterprises. In a similar

⁹⁷ Davidsson Hanna, “The phenomenon of Money Laundering,”

⁹⁸ Mugarura, Norman, “*The global Anti- Money Laundering Regulatory landscape*”,

⁹⁹ Ibid.27.

¹⁰⁰ Norman Mugarura. “Has globalization rendered the state paradigm in controlling crimes, anachronistic? The notion of borders, state and new crime typologies.” *Journal of Financial Crime*. Vol. 21 No. 4, 2014 pp. 381-399. DOI 10.1108/JFC-04-2013-0026.

observation, Kegoro supports and claim that there is long-life connection between a fluctuation in organized crimes and money laundering.¹⁰¹

Even so, Hutman et al posit that the 9/11 US terror attack completely transformed the evolution landscape of ML as it led to the introduction of new phase and additional instruments to combat money laundering.¹⁰² Borlini in 2017 while pointing out the emerging issue of proliferation of weapons of mass destruction (2012) contested the offered analogy of money laundering but acknowledged that the landscape of threats has not, is not and may not ever cease ballooning in the near future.

However, in as much as it is true that traditionally money laundering was all about dirty money and the 9/11 event introduced a new concept called reverse money laundering into the domain, money laundering is still a distinct offense different from the act of terrorism. The key implication is the additional number of crimes that seek to ride on money laundering (ML) processes and an expansion of instruments used to combat ML and the financing of terrorism.

2.3. The dynamics of money laundering.

Owing to the social, economic and political threats posed by money laundering and its predicate offences, global leaders have continued to establish and shape policies and legislations to respond to ever shifting dynamics of money laundering. Borlini 2017 notes that since 1970's the struggle to combat money laundering and its predicate offences has

¹⁰¹ George Kegoro, "The Control of Money Laundering in Kenya, Uganda and Malawi. In *The Invisible threats: Money Laundering in Eastern and Southern Africa*, Edited by Goredema Charles, Pretoria' ISS, pp. 47-64.

¹⁰² Aaron, Hutman, Matthew, Herrington and Edward Krauland, "Money Laundering Enforcement and Policy," *The International Lawyer*, Vol. 39, No. 2, 2004.

been on and replicated in a varying magnitude and commitment by different jurisdictions.¹⁰³

Basically, according to Unger the increasing adoption and entry of more actors to the game of combating money laundering ought to have resulted to a drastic reduction of money laundering incidences and posit that unfortunately the most noticeable impact is shifting trends of ML and the ever increasing cost of implementing AML responses.¹⁰⁴ Anderson and Anderson agree and opine that counter money laundering efforts are watered down by the adoptive nature of money launderers anchored in persistent capabilities to circumvent designed regulation and enforcement strategies.¹⁰⁵ Jeffrey supports and offered that money laundering is like high velocity water that always finds its way through cracks.¹⁰⁶

Similarly, Afande challenged and observed that the vulnerabilities exploited by money launderers ought to be filled through a proper understanding of the trends in money laundering techniques.¹⁰⁷ In contradiction, Fabia blame reactive policy responses grounded on the experiences of law enforcement and not the criminal's reality of money laundering practice.¹⁰⁸ To effectively interdict criminal activities therefore law enforcers ought to see beyond the horizons and assess vulnerabilities in various anti- money laundering (AML) systems and anticipate possible future money laundering dynamics.

¹⁰³ Bruce Zagaris. "Trends in International Money Laundering from a U.S. Perspective." *The International Lawyer*. Vol. 35, No. 2, International Legal Developments in Review, 2000. pp. 839-865. <https://www.jstor.org/stable/40707904> .Accessed: 26-02-2020 13:04 UTC JSTOR.

¹⁰⁴ Brigitte Unger & Johan den Hertog. "Water always finds its way: Identifying new forms of money laundering." *Crime Law Soc Change*. Vol. 57, 2012. Pp- 41-51. DOI 10.1007/s10611-011-9352.

¹⁰⁵ Tracey, Anderson and Anderson Michael." Anti-Money Laundering: History and Current Developments

¹⁰⁶ Jeffrey Simser." Money laundering: emerging threats and trends. " *Journal of Money Laundering Control*. Vol. 16 No. 1, 2013 pp. 51. DOI 10.1108/13685201311286841.

¹⁰⁷ Afande Francis. "Use of Regulatory policies in the Fight against Money Laundering in Kenya." *Public policy and Administration Research paper*. vol.5, issue 3 2015. pp.149-193.<http://www.iiste.org>.

¹⁰⁸ Fabian Maximilian Teichmann. "Recent trends in money laundering and terrorism financing. " *Journal of Financial Regulation and Compliance*. Vol. 27 No. 1, 2019 pp. 2 12. DOI [10.1108/JFRC-03-2018-0042](https://doi.org/10.1108/JFRC-03-2018-0042).

In support, Moshi argue that money laundering (ML) being a cross border crime capitalizes on an enforcement vacuum presented by globalization and resultant ability of criminals to commit crime in one jurisdiction and live in another, deposit illicit proceeds in one destination and access the proceeds in a different destination making it hard for any state to singly curb ML.¹⁰⁹ Farweda (2010), argue that varying commitment grounded on national interest curtail esteemed cooperation among stakeholders.¹¹⁰

In the policy spheres, the mitigating dynamics at play include expansion of anti- money laundering (AML) global standards and the frequent amendment of AML laws at the domestic frontier all geared towards catching up with the trends of money laundering. For instance, in the Kenyan context, POCAMLA was amended in 2013, 2015 and 2017 while the prevention of terrorism Act (POTA) was introduced into the list of instruments used to combat money laundering.

All in all, Borlini 2017 posit that the long and short of it is that the effectiveness of any country to enforce AML policy directly relies on the support provided by other countries which explains why international cooperation is very key in the whole game of combating money laundering.¹¹¹

2.3.1. Typologies of money laundering.

The financial action task force (FATF) defines typologies of money laundering to mean the variety of techniques and trends adopted by criminals in their quest to launders black

¹⁰⁹ Moshi Humphrey. "Fighting money laundering. The challenges in Africa". *Institute for security studies paper 152* .2007. pp.1-12.

¹¹⁰ Ferwerda Jorus, et al Strategies to avoid blacklisting.

¹¹¹ Borlini Leonard. *Regulating Criminal Finance in the EU*.

money and finance terrorism.

According to Turner, FATF cluster money laundering (ML) techniques into three broad categories: Laundering through the financial systems, physical movement of money, and trade-based laundering.¹¹² Likewise, Mutua note that transactional laundering makes the fourth category of ML.¹¹³ On a different basis, Mugarura disagree and claim that the typologies of ML are grouped into internal money Laundering, in flowing money Laundering and outgoing money Laundering.¹¹⁴

Although each of the categories addresses itself to the various methods and agents through which ML is carried out the later ignore how ML is done and grounds its basis on where the laundering scheme was hatched and its ultimate destination. Because of the dynamic operational environment in which money laundering happens the trends keeps on evolving and as such, the common aspect in the perspective of the categorization is that there will always be classical and contemporary techniques.

Essentially, money laundering techniques keeps on aligning to opportunities availed by changes in the operational environment to escape enforcement track nets. In the view of Mutua, globalization and advancement of information technology has occasioned liberalization of trade and digitalization of money which increasingly reoriented the traditional crime environment.¹¹⁵ Mutua reinforce and demonstrate by arguing that classical

¹¹² Jonathan, Turner, *Money laundering prevention: Deterring, Detecting and Resolving Financial Fraud*. (Hoboken, N.J, John Wiliey & sons, 2011). ProQuest E-book Central.

¹¹³ Maureen, Mutua. *Mastering Anti- Money Laundering*, ,2018 pp. 22.

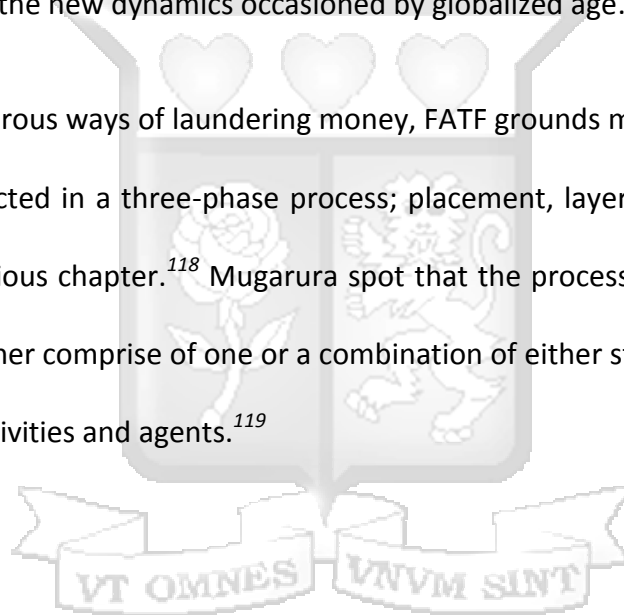
¹¹⁴ Mugarura, N. (2012). *The global Anti- Money Laundering Regulatory Landscape in Less Developed Countries*. pp 8.

¹¹⁵ Maureen, Mutua. *Mastering Anti- Money Laundering. What I Have learned About Dirty Money and what your need to Know*. (USA, Middletown: DE ,2018).

money laundering ran on cash intensive businesses, real estates and trade, the contemporary trends leans towards but not limited to the use of virtual currency more so crypto currencies, offshore banks, funnel accounts, professional bodies and third-party money laundering as the preferred techniques.¹¹⁶

Giving an example of real estate as a simple laundering technique that has stood the test of time, Argarwal disagree and posit that the expansion of threat windows does not necessarily invalidate the traditional methods of ML but rather serves as an alert that law enforcers need to pace up with the new dynamics occasioned by globalized age.¹¹⁷

While there are numerous ways of laundering money, FATF grounds money laundering as an activity that is conducted in a three-phase process; placement, layering and integration as discussed in the previous chapter.¹¹⁸ Mugarura spot that the process is not a systematized cyclic method but rather comprise of one or a combination of either stages of the model but employing various activities and agents.¹¹⁹



¹¹⁶ Mutua p.9

¹¹⁷ Aman Argarwal, Argarwal J.D. Money Laundering; The Real Estate Bubble. Quarterly referred Journal of Finance Key note Address, Indian Institute of Finance.2007. <http://www.iif.edu>

¹¹⁸ Mugarura, Norman. *The global Anti- Money Laundering Regulatory Landscape...*

¹¹⁹ Ibid, p. 10.

2.3.1.1. Money laundering through financial institutions (FIs).

Mutua argue that traditionally, money launders preferred layered transactions deposited in separate accounts by more than one agent which are then later wired to different destinations to confuse enforcement intervention.

Criminals use this approach in order to sidestep reporting threshold. In interdicting it, Sullivan, postulate that with time policy makers have come up with ways of enhancing vigilance through regulations and compliance strategies, noticeable is the use of anti-money laundering compliance software technology which aid in automatically detecting suspicious activities.¹²⁰ Furthermore, at the beginning of 1980,s especially following the end of cold world war, the effects of transnational crimes become a global concern prompting more jurisdictions to be unfriendly to money laundering practices thus pushing money launders to avoid directly dealing with financial institutions and instate embrace related methods among them.

Currency smuggling entails employees of the criminal enterprise physically moving money from the consumption points to the distributors or from the ringleader to secret banks in offshore destination.¹²¹ It is carried out in a two-prong method; bulk cash smuggling and cash couriers. Bulk cash smuggling involves hiding large amount of money in vehicles or cargo container for ease of transporting them across the borders.¹²²The cash courier

¹²⁰ Sullivan, Kelvin., "Virtual money laundering and fraud: Second Life and other online sites targeted by criminals", 3 April, 2008 available at: www.bankinfosecurity.com/articles.

¹²¹ Mugarura, Norman. *The global Anti- Money Laundering Regulatory Landscape*.pp.10.

¹²² Moshi Humphrey. "Fighting money laundering. The challenges in Africa". *Institute for security studies paper 152* .2007. pp.1-12.

methods utilize physical persons or accompanying luggage conveniently through air lines.¹²³

Weld deems that in both transactions the launderers discourage the use of small bills to reduce size and weight of consignments thus avoid exposing bills to enforcement resources like trained dogs and coin scanning machines.¹²⁴

The financial action task force (FATF) acknowledges currency smuggling as one of the commonly used technique and therefore under recommendation IX require jurisdiction to design declaration or disclosure systems to aid in combating cross border transportation of cash and other monetary instruments. In Kenya POCAMLA authorize the seizure and confiscation of false or undeclared currency being moved across the borders. Gikonyo posit that paramount in controlling money laundering is effective enforcement of the law,¹²⁵ specifically the engagement of border surveillance strategy.

The third method under this category is through **offshore financial centers**.¹²⁶ Offshore banks and companies are in jurisdictions with minimal regulations and uphold a high secrecy code with an aim of advancing enrichment interest rather than the common good of fighting money laundering which to the contrary translates to loss of revenue on the countries of deposit.¹²⁷

With **Funnel accounts**, money laundering is interested in cleaning dirt gained proceeds without rising suspicious or if any ensure that tracing in complicated. Funnel accounts refer

¹²³ *Ibid*, p. 12

¹²⁴ Maureen, Mutua. *Mastering Anti- Money Laundering*, 2018. pp.10.

¹²⁵ Gikonyo, Constance." Detection mechanism under the Kenya's Anti Money Laundering regime: Omissions and Loopholes". *Journal of Money Laundering Control*. volume 21 issue 1. 2018.pp 59-70.

¹²⁶ Boskovic, Goran.," Types of money laundering and suppression methods. MA Thesis, 2003, PoliceAcademy, Belgrade,

¹²⁷ Boskovic, G.Goran, Types of money laundering and suppression methods. Pp.31.

to single or several accounts used by criminal to deposit funds in one geographical location and withdraw them from a different geographical location.¹²⁸

2.3.1.2. Money laundering through professional bodies.

Professional bodies like accountants, lawyers and notaries are critical in the management of finances on behalf of their clients.¹²⁹ However, trends have revealed an abuse of their long-held trust especially in assisting organized criminals knowingly and unknowingly to launder proceeds of crime. Today attorneys, accountants, trust and company service providers, notaries and estate agents have gone beyond opening accounts to establishing money laundering or tax evasion structures and providing money laundering as a service. The professional's acts as a shield and conceal the involvement of their criminal clients under professional confidentiality.

Some lawyers for instance give advices on how to move money and even store the money on behalf of their client.¹³⁰ Levi bring out that it is this conspiracy theory that breed vulnerability and pushed legal professions to be considered one of the reporting institutions under AML/ CFT.¹³¹ According to Turner as well as Mugarura, the tightening of regulations over financial institutions made money launderers shift their focus to vulnerabilities in

¹²⁸ *Ibid*, p. 31.

¹²⁹ FATF (2018), *Professional Money Laundering*, FATF, Paris, France, www.fatf-gafi.org/publications/methodandtrends/documents/professional-money-laundering.html

¹³⁰ Gikonyo, Constance. "The legal profession in Kenya and its Anti-Money laundering obligation or Lack thereof". *Journal of money laundering control*. Volume 22, issue2. 2019. pp. 247-256.

¹³¹ Graham, Virgo, "Laundering Conspiracy." *The Cambridge Law Journal*. Cambridge University Press on behalf of Stable. Vol. 65, No. 3 (Nov., 2006), pp. 482-484, URL: <https://www.jstor.org/stable/4509226> Accessed: 10-12-2019 11:31 UTC JSTOR

professional bodies.¹³² FATF 2013 observes that equipped with unique skills legal practitioners can easily facilitate money laundering.

In a normal business undertaking, auditors and accountants assist in designing, management and maintenance of financial activities of its clients. They engage in wiring money from various accounts, making cash deposits and issue checks to vendors. These activities could equally be placed at the service of 'washing' money.¹³³ Fundamentally, money laundering by professional bodies breathes on conspiracy between the criminals and professional launderers. Criminals use the opportunity to literally expand time in order to have more of its time assigned to the production of illicit money while the professional launderers scheme up complex concealment structures. It is even an ant hill task to investigate professionals partaking in laundering operations due to public perception of the professions, the legitimate activities that surround its transactions and the secretive nature of its operations.¹³⁴

According to OECD 2019 criminals have shifted to the use of third-party groups to facilitate the concealment of dirty income.¹³⁵ The third-party groups are hired to establish a complex and durable means of processing illicit proceeds allowing enough time for the criminals to run their criminal empires and produce more income. Gate keepers are also increasingly

¹³² Turner, Jonathan. *Money laundering prevention: Deterring, Detecting and Resolving Financial Fraud*. Hoboken, N.J, John Wiley & sons. 2011. ProQuest E-book Central.

¹³³ OECD. *Money Laundering and Terrorism Financing awareness Handbook for Tax examiners and Tax Auditors*. Paris, OECD, 2019. www.oecd.org/tax/crime/money-laundering-and-terrorist-financing-awareness-handbook-for-tax-examiners-and-taxauditors.pdf

¹³⁴ Gikonyo, Constance." The legal profession in Kenya and its Anti Money laundering obligation or Lack thereof". *Journal of money laundering control*. Volume 22, issue2. 2019. pp. 247-256.

¹³⁵ OECD. *Money Laundering and Terrorism Financing awareness Handbook for Tax examiners and Tax Auditors*. Paris, OECD, 2019. www.oecd.org/tax/crime/money-laundering-and-terrorist-financing-awareness-handbook-for-tax-examiners-and-taxauditors.pdf

venturing in money laundering activities to disguise massive resources looted from the state. In Kenya cases of grand corruption and laundering through banking institutions have been witnessed in the recent past.

FATF considered politically exposed persons (PEPs) as gatekeepers. They have access to funds and systems to their country which they can manipulate for personal gains. Trust services companies are used to register web companies in offshore jurisdiction where establishing the true beneficial owner of the trust is difficult. The trust companies function as tax evasion and avoidance structures. The trustee's function as the actual owners creating separation between the criminals and the investments

2.3.1.3. Cyber money laundering

Cyber money laundering is principally conducted through electronic transfer and entails the movement of illicit or genuine funds by use of internet tools and stored value cards in order to hide the source and destined purpose of the funds. The crime rides on the innovation and invention of electronic money and payment systems,¹³⁶ it includes; Internet banking services also referred to as wire transfer system or electronic payment system which by design are attractive to laundering because of its anonymity, mobility and untraceable nature. Transaction opportunities ranges from electronic money transfer, direct payment, taking deposits, issuing checks, buying securities to opening and closing of accounts. The flexibility with which the account is accessed and transactions operated pose hurdle for monitoring and enforcement controls more so where large transaction is carried out.

¹³⁶ Angela S.M. Irwin and George Milad. "The use of crypto-currencies in funding violent jihad. " *Journal of Money Laundering Control*. Vol. 19 No. 4, 2016.Pp. 407-425. DOI 10.1108/JMLC-01-2016-0003

An individual can concurrently control several accounts and amount of money without attracting the attention of institution which maintains the accounts. The accounts can be accessed from any part of the world through internet. Roderic reinforce the explanation and argue that the speed of transaction and anonymity makes it even harder for law enforcers to trace illegally generated income.¹³⁷ As more and more consumers embrace the concept of e-trade, they use traditional money to buy e- cash from issuing companies like Safaricom and in turn spend in acquiring goods from merchants who also accept them.¹³⁸ The high volume of legitimate transactions using e banking services further complicate investigation as it is hard to distinguish dirty from clean money passing through the financial systems.

The expert group for financial action task force observe that money laundering crime through internet is expanding; hacker steal credit card information from the banks and equally conceal money in various online accounts. The location of the websites and the physical operation bases are unknown or are in non-co-operating jurisdictions narrowing investigation process. Smart cards a category of e- money can potentially store millions of dollars on its micro-chip. Through digital transactions money can be moved to another online card without the assistance of financial intermediaries.

According to FATF 2006, this kind of system provides esteemed anonymity, flexibility and instantaneous avenue of money laundering with fewer risks that comes along with reporting

¹³⁷ Roderic Broadhurst. "Developments in the global law enforcement of cyber-crime Policing: *An International Journal of Police Strategies & Management*. Vol. 29 No. 3, 2006 pp. 408-433 DOI 10.1108/13639510610684674.

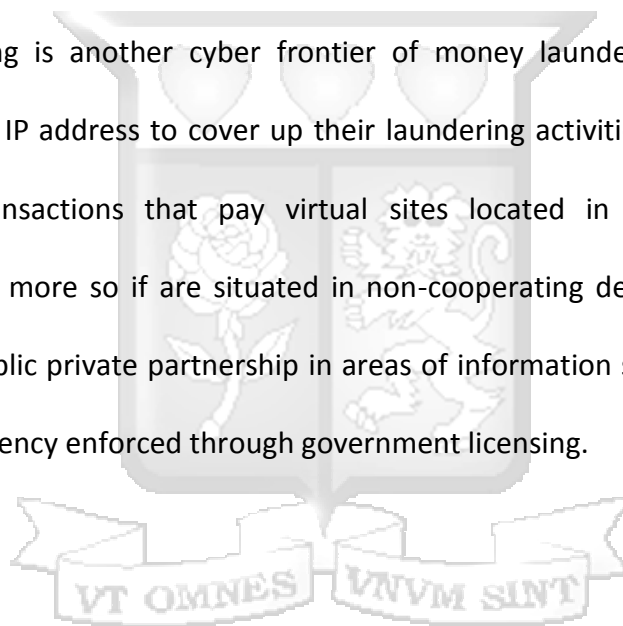
¹³⁸ Nicholas Gilmour, Nick Ridley." Everyday vulnerabilities money laundering through cash intensive businesses." *Journal of Money Laundering Control*. Vol. 18 No. 3, 2015 pp. 293-303. DOI 10.1108/JMLC-06-2014-0019.

requirement.¹³⁹

Criminals are provided with the advantage of high levels of encryption necessary to block law enforcers from accessing suspicious transactions besides not leaving audit trails.¹⁴⁰

These new techno savvy characteristics of cyber laundering pose challenge to designate reporting requirements and the audit trail necessary for establishing a case. In this regard the state is denied the monopoly of control thereby constricting investigations and consequently jeopardizing national security.¹⁴¹

The internet gambling is another cyber frontier of money laundering. Criminals utilize temporary concealed IP address to cover up their laundering activities.¹⁴² The use of credit cards allows for transactions that pay virtual sites located in offshore creating an enforcement vacuum more so if are situated in non-cooperating destinations. Addressing the issue requires public private partnership in areas of information sharing, proper record keeping, and transparency enforced through government licensing.



Crypto currencies are the most recent development in the financial instrument domain.

Crypto currencies transact faster and in an anonymous environment making it an attractive

¹³⁹FATF study of new payment methods in the 13th October 2006 report See http://www.fatfgafi.org/findDocument/0,2350,en_32250379_32237235_1_32247552_1_1_1,00.html.

¹⁴⁰ Umut Uyar and Ibrahim Korkmaz Kahraman, The risk analysis of Bitcoin and major currencies: value at risk approach *Journal of Money Laundering Control* Vol. 22 No. 1, 2019 pp. 38-52 Emerald Publishing Limited 1368-5201 DOI [10.1108/JMLC-01-2018-0005](https://doi.org/10.1108/JMLC-01-2018-0005)

¹⁴¹ Norman Mugarura. "Has globalisation rendered the state paradigm in controlling crimes, anachronistic? The notion of borders, state and new crime typologies." *Journal of Financial Crime*. Vol. 21 No. 4, 2014 pp. 381-399. DOI [10.1108/JFC-04-2013-0026](https://doi.org/10.1108/JFC-04-2013-0026).

¹⁴² Chartered Accountant of Australia and New Zealand, 'Digital Currencies: Where to From Here?' 2015 Report.

money laundering avenue.¹⁴³ Being one of the less regulated areas gives it an upper hand in hiding the identity of owners an aspect that complicate detection, prevention and the general enforcement processes. Digital currency dealers commonly allow for operation of accounts with no limited transaction value.¹⁴⁴ Technological innovation and shifting consumers' expectations has expanded means of payments, bit coin being one of the accepted options, which basically raise questions of how to regulate digital currencies and how to subsequently deal with the accompanying tax implication.¹⁴⁵

According to Fred Hutching the president of chartered accountants, the uptake of digital currency is on the raise and it is here to stay. Hutching claim that the issue is how to regulate.¹⁴⁶ The decentralization and anonymous nature of bit coins imply that it is difficult to protect the public from exploitation using the classical enforcement mechanism.

Many of the bit coin operating institutions are mysterious and not supported by traditional insurance schemes or government regulation engendering a risk environment which could see genuine consumers exploited by money launderers. Some events like the collapse of Mt.Gox exchange is a clear demonstration.¹⁴⁷

¹⁴³ Angela S.M. Irwin and George Milad. "The use of crypto-currencies infunding violent jihad." *Journal of Money Laundering Control*. Vol. 19 No. 4, 2016.Pp. 407-425. DOI 10.1108/JMLC-01-2016-0003

¹⁴⁴Jeffrey Simser." Money laundering: emerging threats and trends." *Journal of Money Laundering Control*. Vol. 16 No. 1, 2013 pp. 41-54. DOI 10.1108/13685201311286841.

¹⁴⁵Gareth W. Peters, Efstathios Panayi and Ariane Chapelle. "Trends incrypto currencies and block chain technologies: a monetary theory andregulation perspective." *The Journal of Financial Perspectives: FinTech*. Volume 3, Issue 3. 2015.

¹⁴⁶ Sullivan, Kelvin., "Virtual money laundering and fraud: Second Life and other online sites targeted by criminals", 3 April, 2008 available at: www.bankinfosecurity.com/article

¹⁴⁷Nardo, M. (2006), "Building synergies between theory and practice: countering financial crime ona systemic approach", *Journal of Financial Crime*, Vol. 13 No. 3.

Although some Jurisdictions like US, UK and Australia are increasing doing inquiries into digital currencies, most destinations are still trapped in the nation that digital currency in a future concept. Accepting that policy making is a process that scrutinize our operational environment in order to understand what the futures looks like and come with solution, means the increasing adoption of bit coins is a reality that needs to be streamlined and regulated.

2.3.1.4. Trade based money laundering.

The liberation of the international trade systems provides a wide range of weaknesses exploited by criminal organizations with relatively low costs. Moshi argue that the socio-economic policy orientation courted by African states in 1980,s paved way for an influx of counterfeit into the continent generating proceeds of crime.¹⁴⁸ Petrus and Marcs refute and posit that it is high taxation that kick started underground economies that generate the dirt money to be laundered.¹⁴⁹ Alternatively, Mutua offers a mainstream argument and points out that globalization expanded trade links and volume of goods aiding criminals to transfer value across the borders.¹⁵⁰ Windor and Getzs even offers a more interesting argument by positing that trade based money laundering was sired out of European mischievous bribe approval deals of 1980's and 1990's to enable its multinational companies influence and penetrate opportunities abroad.

Trade based money laundering (TBML) means the process of disguising the proceeds of crime and moving value using trade transactions to legitimize their illicit origin.

¹⁴⁸Moshi Humphrey, Trade based money laundering

¹⁴⁹Petrus, Vanduyne.,” Balancing Financial threats and Legal interest.

¹⁵⁰Maureen, Mutua. *Mastering Anti- Money Laundering, 2018.*

Encompasses masquerading funds made from illicit trade activities as lawfully obtained.¹⁵¹

It capitalizes international trade because of the complex sets of foreign exchange transactions and financial arrangements which makes it easy to mix unlawful gained funds with the cash flows of genuine business. Custom officials especially in developing countries are constrained by limited resources to undertake thorough inspection of all international consignments.¹⁵²

FATF in 2006 special report on TBML identified loopholes exploited by money launderers to include over and under invoicing of goods and services, multiple invoicing of goods and services, over and under shipment of goods and services and falsely described goods and services.

In over and under invoicing of goods and services, the key element is misrepresentation of prices to aid in transferring value across the borders between the exporter and importer. It is one of the oldest money laundering techniques that has survived the test of time. Basically, TBML drives in consent of parties involved and during an increase or decrease of prices than the normal market prices. The difference between the real price and the faked prices will be sent as prescribed by the receiving party.¹⁵³ The inability of custom officers to acquire data on present market prices of goods and services, precipitated by a lack of cooperation and information sharing across national borders prove to be a challenge.

¹⁵¹ Financial Action Task Force, Trade Based Money Laundering, 23rd June 2006 GAF report.

¹⁵² Moshi Humphrey. "Fighting money laundering.

¹⁵³ Mugarura, Norman, The global Anti- Money Laundering Regulatory Landscape.

The second is multiple invoicing which means issuing more than two invoices for similar trade transaction which in turn is used to prove multiple payments for the same delivery of goods and services.¹⁵⁴ Unlike over and under invoicing launderers can easily dodge enforcement nets by providing a legitimate explanation to prove genuineness of such transactions. The explanations are hanged on common errors as cause of the problem and corrective measures include amendment of the invoice and payment of fees. Over and under shipments of goods and services is done by overstating or understating the quantity of goods or services provided and in worse scenario none of the goods will be shipped at all but in essence launderers will manufacture fake documents to enable bank transactions.

Falsely described goods and services is a money Laundering technique that entails misrepresenting the quality or types of goods or services. Launderer for instance ship less expensive goods but misrepresent as highly expensive items which create a contradiction between the delivered goods and prescriptions in the custom documents.¹⁵⁵ False description is also commonly used in service industry such as financial advisory, consulting services, market research and legal services. Again, the absence of data presents difficulties in evaluating the true value of the different category of goods and services.

Due to the presented complexities in terms of huge transactions involved, the number of actors and legitimate trade environment under which TBML is conducted; this is one of the

¹⁵⁴ *ibid*, pp.8.

¹⁵⁵ Nicholas Gilmour, Nick Ridley. " Everyday vulnerabilities money laundering through cash intensive businesses." *Journal of Money Laundering Control*. Vol. 18 No. 3, 2015 pp. 293-303. DOI 10.1108/JMLC-06-2014-0019.

difficult methods for law enforcers to handle without cross border cooperation.¹⁵⁶

2.3.1.5. Money laundering through underground banking system.

After the 9/11 U.S attack FATF crafted special recommendation vi which require states to register and license all alternative remittance system, informal value transfer or also called informal funds transfer.¹⁵⁷ Underground banking operations are anchored in culture of trust with limited paper trail and suspicious transaction reports (STR) adherence. The small ones are not even aware of their anti- money laundering and combating the financing of terrorism (AML/CFT) responsibilities thus vulnerable to misuse by money Launderers. The variety of activities offered by this business, for instance, wire transmission, foreign exchange, check cashing or selling money orders and travelers' checks expand the terrain of manipulation.¹⁵⁸ In Kenya informal value transfer systems (IVTS) such as Hawala transact with less record keeping and minimal commission. Most of the Hawala enterprises are not registered with government authorities posing supervision gaps which could be misused and in addition, its international connection avail an avenue of money laundering.¹⁵⁹ Redi 2012 argue that the current legal approach to Hawala is biased and observe that judging Hawala based on western standards is values superiority game disrespectfully of cultural and

¹⁵⁶ Financial Action Task Force." Typology report: Trade-Based Money Laundering. 2006
Typologies_TBML_200606.doc

¹⁵⁷ Joanna Trautsolt, Jesper Johnson, "International anti-money laundering regulation of alternative remittance systems: Why the current approach does not work in developing countries, Journal of Money Laundering Control Vol. 15 No. 4, 2012 pp. 407-420 Emerald Group Publishing Limited 1368-5201 DOI 10.1108/13685201211265999

¹⁵⁸ Mugarura, Norman, "The global Anti- Money Laundering Regulatory Landscape. pp.9

¹⁵⁹ Joanna Trautsolt, Jesper Johnson, "International anti-money laundering regulation of alternative remittance systems.

religious differences.¹⁶⁰ All in all whichever the argument the common denominator is ensuring that the facility in question is not misused by criminals.

2.3.1.6. Money laundering through non-financial institutions.

Traditionally, money laundering was conducted through financial institutions. Over time most countries have tightened the regulation and enforcement response in the sector forcing criminals to shift their laundering activities to other less regulated non-financial field such as insurance sectors, travel agencies, real estate, gambling and casinos.¹⁶¹ Purchase of real estates is used by criminals as means of integrating illicit proceeds back to the economy.¹⁶² The non-transparent nature of real estate markets makes it easy to exaggerate prices and value of property which offer launderers an avenue to legitimize proceeds of crime through acquisition and resell of property.¹⁶³ Money laundering in this industry is conveniently undertaken with assistance of third-party professional launders like the lawyers, accountants, notaries and insurance companies. FATF identify indicators of money laundering in the real estate sectors to include purchase of property using a third party, executing payment without having physically seen the property and paying for using substantive amount of money.

Thiongo reinforces and exemplify that real estate is the next frontier of money laundering in

¹⁶⁰ Dulce M. Redi, Reyes Calderon and Ignacio Ferrero, 'The Ethical Dimension of Hawala, Journal of Business Ethics, 2014 Springer.

¹⁶¹ Mugarura, Norman. "Scoping the regulatory environment for harnessing normative anti-money laundering laws in LDCs." *Journal of Money Laundering Control*. Vol. 16 No. 4, 2013 pp. 333-352

¹⁶² Jenniffer Shasky, Kevin Bell; Lifestyle of the Rich and Infamous: Confronting Dirty Money in US Real Estate; Havard International Review, Volume 37, No. 4; 2006. Pp. 71-75. <https://www.istor.Org/stable> accessed 10-12-2019 11.02 UTC

¹⁶³ Jenniffer Shasky, Kevin Bell; Confronting Dirty Money in US Real Estate; PP73.

Kenya.¹⁶⁴ Waweru agrees and considered that individuals with questionable sources of money are safe investing in real estates than making deposits in the bank as the later leave paper trails that could fix them. The idea has yielded a skewed growth in real estate as stolen taxpayer's money is channeled to acquisition of luxurious homes in Kenya.¹⁶⁵

2.3.1.6. 1. Casino.

Financial action task force (FATF) recognize casino as a reporting entity. It is one of the highly cash intensive businesses where substantive number of activities are facilitated by use of cash.¹⁶⁶ Like other financial transaction casino activities are infiltrated for money laundering operations. The variety of instruments at the service of Casino operations such as casino chips, casino cheques, casino accounts and currency exchange broaden opportunities for money laundering. Black money is used to purchase casino chips which after minimal or no games they are redeemed for casino cheques. In some instance the casino chips are retained for illegal transactions like the purchase of drugs.

2.3.1.6.2. Insurance companies.

Money launderers (ML) are encouraged to use insurance industry to perpetuate money washing activities because of the big size of the sector and the diversity and availability of its products. Detection and prevention of ML in the sector is affected by high level of transactions and return on investment.¹⁶⁷ The two commonly used techniques are

¹⁶⁴ Irungu Thiongo, How CBK crackdown of dirty money coincides with slump in real estate. Daily standard 13th October 2019. <http://www.standardmedia.co.ke>

¹⁶⁵ Njora Waweru, Money Laundering: The Tag real estate cannot shake off, the daily standard 21st May 2015. <http://www.standardmedia.co.ke>

¹⁶⁶ FATF; APG March 2009 Report "Vulnerabilities of casinos and Gaming sector."

¹⁶⁷ Maureen, Mutua. *Mastering Anti- Money Laundering, 2018 pp. 14.*

establishing a joint venture with an insurance firm and the purchase of life insurance cover, non- life insurance, reinsurance, return pension or fraudulent claims. Other methods entail payment of premium using illicit money, borrowing against policy acquired using dirty money, one off payment for policies that are subsequently terminated before the contract period and lodging a fraudulent loss claims involving high value goods bought using illicit money.

2.3.1.6.3. Travel agencies.

Travel agencies being brokers between customers and airlines are exposed to exploitation by money launderers. They play the role of providing information link to customers. Some of the travel activities that aid laundering include purchase of expensive airline tickets and later requesting for a refund as well as structuring of outgoing money transfers to avoid reporting requirements. Again, because this is part of its normal activities lowers the threshold of suspicion by law enforcements organs.¹⁶⁸

From the arguments it is evident that non-financial institutions offer more loopholes for money laundering than the financial institutions. Its vulnerability is flared by the fact that these institutions normally have huge transactions going through their systems. The various ways available for misuse within the sector makes it difficult to zero in on a specific activity as preferred medium of ML.

To the contrary gaining surveillance on broad range of activities requires more

¹⁶⁸ Ibid pp15

resources.¹⁶⁹In as much as all the non-financial institutions are designated reporting institutions by FATF not all countries have implemented these standards which affect the principle of customer due diligence. Recommendation 8 of the FATF encourage the designated bodies to embrace technology in order to minimize the risk of money laundering,¹⁷⁰ which again comes with hefty financial costs. Unfortunately, these institutions only report and have no investigation authority that law enforcers do.

2.3.2. Money laundering predicate offences

Proactive enforcement depends on understanding the relationship between the sources of what need to be cleaned and the cleaning anatomy. In this regard, Shneider argue that it is the underground and shadow economies that produce the dirty money.¹⁷¹ Christensen observes that money cannot just appear soiled from nowhere and agree that ignoring where the dirty money come from is equivalent to treating symptoms of an underlying problem.¹⁷² Equally, Iswirn agrees to the correlation between predicate offences and money laundering techniques and suggest that to design effective enforcement measures calls for an appreciation of the link between the two.¹⁷³

The council of Europe Anti money Laundering convention of 1990 define predicate offences

¹⁶⁹Schneider, Friedrich. "Money laundering and Financial means of organized crimes some preliminary empirical findings". *Journal of Global business and economic review*.

¹⁷⁰ Mugarura, N. (2012). *The global Anti- Money Laundering Regulatory Landscape in Less Developed Countries* pp.255.

¹⁷¹Schneider, Friedrich and Enste, D.H. (2000), "Shadow economies: size, causes, and consequences" pp5

¹⁷² John Christensen. " The looting continues: tax havens and corruptioncritical perspectives on international business. " Vol. 7 No. 2, 2011pp. 177-196. DOI 10.1108/17422041111128249

¹⁷³ Angela Samantha, Maitland Irwin and Kim-Kwang Raymond Choo. "An analysis of money laundering and terrorism financing typologies. " *Journal of Money Laundering Control*, Vol. 15 No. 1, 2012 pp. 85-111. DOI 10.1108/13685201211194745.pp86

as any criminal offence that generate proceeds that are the subject of money laundering.¹⁷⁴

However, individual states as sovereign as they are at discretion to determine through respective domestic laws as to what constitute money laundering predicate offence. The meaning of predicate offence therefore varies from one jurisdiction to the other. Some jurisdiction ground its list on international Conventions while others have an exclusive domestically legislated list of what constitute a predicate offence.

Commonwealth countries Kenya included adopt a whole crime approach. In Kenya, money laundering is a stand-alone crime and under section 3 of the Act prosecution does not need to prove the existence of a predicate offence to secure a conviction in a money laundering case.¹⁷⁵ FATF Glossary mentions drug trafficking, smuggling of goods, tax evasion and corruption and bribery as major sources of laundered money.¹⁷⁶ The Centre on Global Counter Terrorism cooperation in 2012 observed that money laundering in Kenya service a number of offences among them corruption, trafficking in wildlife, counterfeit goods, human and tax evasion and posit that proceeds from these crime activities are dispersed to finance terror activities in the region.¹⁷⁷ All the mentioned activities constitute a crime in the Kenya's domestic law which could then have been easier to solicit for international cooperation.

2.3.3 The Trans national aspect of money laundering.

Generally speaking, transnational crimes are those that occur across, beyond or through

¹⁷⁴ Eleni Tsingou' Global governance and transnational crimes: Opportunities and Tensions in Global Anti Money Laundering regimes, CSGR Working paper No.161/05, May 2005.

¹⁷⁵ Prevention of crime and Anti money laundering Act 2009.

¹⁷⁶ FATF Glossary accessed <http://www.fatf.gaf.org>> Glossary

¹⁷⁷ Moshi Humphrey. "Fighting money laundering. The challenges in Africa". *Institute for security studies paper* 152 .2007. Pp.1-12.

multiple nations and jurisdictions. Those activities criminalized by the laws of more than two countries. While Pass on the other hand provides for an open meaning of transnational crimes and describe it as; a crime committed in more than one country, a crime committed in one country but planned in another, crime committed in one country by a group operating in many different countries or a crime committed in one country but affects another country.¹⁷⁸

In the regional environment, Kenya is a victim and beneficiary of its geographical disposition. Its immediate neighborhoods is wrestling insecurity dilemma. Somalia, South Sudan and Sudan are wrecked by internal conflicts. Vast Porous Somalia borderline remain a challenge to deal with. This makes it a darling transit route and destination for trade-based money launderers and drug traffickers. Money that enters the economy is mixed with genuine income from businesses rendering detection to be an ant hill task. Consequently, preventing money laundering requires a strong detection and surveillance mechanism.¹⁷⁹

With such characterization of Kenya's operational environment infers those transnational crimes inter alia money laundering easily drives. Kukkuk (2010) find solace in the observation and notes that joint police crime and peace operations encompassing more than two countries have recently grown in the African continent.¹⁸⁰

2.4. The anti-money laundering regime and institutions.

According to Shams reconstruction, anti-money laundering regime has developed through

¹⁷⁹ Gikonyo, Constance, Detection mechanism under the Kenya's Anti Money laundering regime.

¹⁸⁰ Kukkuk Leon. Cooperation and Accountability in the Cross- border policing.

four phases. 1970, s was the inception stage. The focus was preventive regulations more so record keeping and suspicious activities reporting by banks. The second phase started in 1980, s and entails the criminalization and internationalization of AML efforts. Third stage referred as the supra nationalization was in 1989. The key characteristic of this stage is the establishment of Financial Action Task Force (FATF) which is the super global AML Centre mandated to coordinate AML efforts and to promote the trail process, freezing, seizure and the confiscation of criminal resources. The fourth phase emanated from the 9/11 US twin tower terrorism attack which led to the extension of FATF mandate to include the fight against terrorism financing.¹⁸¹

Conflictingly, Marcos object to the notion and argue that the introduction of these institutions to the game of global crime governance was a post-cold world war strategy to deal with and weaponize exported corruption in the pretext of estimating development trajectory of developing countries.¹⁸² Rose 2015 in Marcos reinforces the idea and advances that the whole impression was born out of U.S.A's aspiration to level the global business environment tilted against its domestic companies by the initiation of foreign companies' protection Act, 1977, thus the internationalization of AML policy is then a case of cross pollination.¹⁸³

Whichever the position, the reality is that the four phases are summed up in policy initiatives framed in form of united nation conventions, regional conventions and sub-regional agreements, then, actualized through the creation of enforcement institutions,

¹⁸¹ Sham, Heba, "Legal globalization.

¹⁸² Marcos Tourinho. Brazil In the Global Anti- Corruption regime.

¹⁸³ Rose, Cecily. *International anti-corruption norms: In* Marcos Tourinho. Brazil In the Global Anti- Corruption regime. RBPI, 2018:e004, 2018.

which together are package as solutions to combating money laundering and predicate offences considered in this case as the “common good problem”.

Accepting that anti-money laundering is a global policy response whether by pollination, fertilization or resolution infers that the Kenya’s anti-money laundering regulation and enforcement institutions should be modeled in a global perspective, and good enough it finds acceptance under Article 2 (5) (6) of the Kenyan constitution 2010.¹⁸⁴

2.4.1. The global anti- money laundering regime and Institutions.

2.4.1.1. United Nations Convention against Corruption (UNCAC) (2003).

Huntington content that in the 21st century, corruption was dominant in international European investments and development as respective governments approved bribes as a strategy of enabling its companies gain influence abroad.¹⁸⁵ This disadvantaged the competitive ability of American companies. Rose 2015 supports and argues that the convention was a self-serving resolve resulting from the U.S. A’s aspiration to counter the negative impacts of its foreign companies’ protection Act, 1977 upon its domestic companies.¹⁸⁶ Marcos further reinforces the argument and postulate that the Marinda convention was sponsored by the United States of America National Assembly which poses questions of its motive, moral authority and acceptability.

However, in a mainstream perspective, the convention was premised on the awareness that

¹⁸⁴ Article 2(5)(6) of the Kenyan Constitution 2010.

¹⁸⁵ Huntington, Samuel. *Political order in changing Societies*. In Marcos Tourinho. Brazil In the Global Anti-Corruption regime. RBPI, 2018:e004, 2018.

¹⁸⁶ Rose, Cecily. *International anti-corruption norms: In Marcos Tourinho*. Brazil In the Global Anti- Corruption regime. RBPI, 2018:e004, 2018.

corruption is a stumbling block against international attempt to combat all sorts of crimes affecting states. That corruption dilutes the efforts to fight organized crimes, ecological issues, money laundering and other economic crimes, terrorism and human right violation culminating to political, social and economic wobbling.¹⁸⁷ Marcos agrees with the idea but offers a different explanation that the convention was initiated to combat corruption as part of encouraging democracy, development, justice and good governance which were the emerging issues of the post cold world war political environment¹⁸⁸

To implement the idea, UNODC was designated as a custodian of the Convention. To provide technical assistance including recovery of illicit asset, proper management, promoting integrity, capacity building and ensure the existence of ethical and accountable public and private sector. UNODC also recommends anti-corruption policies, code of conduct, public procurement procedures, promote public reporting mechanisms and the monitoring of political party funding. At the heart of the policy are individual states expected to establish an Ethics and Anti- corruption institutions, willfully cooperate, more so in its implementation specifically the ratification, investigations and prosecution of corruption cases. Furthermore, states were expected to support the freezing, seizure and repatriation of proceeds of corruption.¹⁸⁹

¹⁸⁷ Moh, Z. Ach, M. (2018). Fighting Against Money Laundering. BRICS Law Journal 5:3

¹⁸⁸ Marcos Tourinho. Brazil In the Global Anti- Corruption regime.

¹⁸⁹ FATF (2012), International Standards on Combating Money Laundering and the Financing Terrorism and Proliferation: The FATF Recommendations, FATF, Paris.

2.4.1.2. United Nations Convention against Illicit Trafficking of Narcotic Drugs and Psychotropic Substance (UNCAITNDPS)

Commonly referred to as the 1988 Vienna convention was grounded on the realization that drug trafficking is injurious to the national economy, health and welfare of the citizen and the political environment of states. Drug trafficking is in most cases a game of politically exposed persons who misuse their personal networks to corrupt and influence government officials. Compromising the judiciary and law enforcement agencies ultimately weaken the war on illicit drugs, money laundering and basically jeopardize the security of the state.

Though money laundering is not directly mentioned in the convention, it was the first convention to address drug trafficking as money laundering predicate offense. The convention focuses on confiscation of drug related assets, provide for measures to curb the cultivation of narcotic plants and reduce demand for narcotic and psychotropic substance. It represents a revolution from the UN Convention on Narcotic drugs (1961) and UN Convention on Psychotropic substance (1971) which seemed ineffective in combating money laundering.¹⁹⁰ Taking cognizance of the trans-border nature of drug trafficking, the protocol calls for cooperation between states. The supply and demand of illicit drugs and psychotropic substance entails spatial- temporal aspects of economic utility. The production and consumption require mobility through a geographic space. Asian countries marked as the origin, United States and Western Europe as the demand points calls for concerted efforts and commitment chiefly from the supply, transit routed and demand regions.

Marcos argued that in the enforcement platform Vienna convention laid grounds for a legal

¹⁹⁰ Abdullah, A., E. (2018). Uniform Anti Money Laundering Policy and Laundering Process Eradication.

authority and cooperation, enabling law enforcement duties including mutual assistance and seizure of assets be executed.¹⁹¹

2.4.1.3. The United Nation Convention against Transnational Organized Crimes (UNCATOC) (2000)

The Palermo convention sort to craft measures to criminalize organized criminal groups and corruption that prove an impediment to the drug trafficking and anti-money laundering efforts envisaged in the Vienna Convention of 1988, The FATF recommendations, Convention for the suppression of the Financing of Terrorism and the Basel principles. It stressed on the need for international cooperation to prevent transnational organized crimes money laundering included. Marcos argue that the Paramount feature of the convention is that it requires states to establish FIU as national intelligence collection and analysis centers and brought about a variety of enforcement techniques such as extraction of wrong doers, plea bargaining as investigative tool, mutual legal help and sharing information on money laundering and predicate offences which was a good move in mainstreaming inter states cooperation.¹⁹²

However good the convention may have rolled out tools helpful in combating money laundering, Marcs 2005 persuades that the policy on organized crime was fear driven and is not insightful therefore does not feature a balance between law enforcement interest and social costs.

¹⁹¹ Mugarura, N. (2012). The global Anti- Money Laundering Regulatory Landscape..pp. 94.pp. 69.

¹⁹² Marcos Tourinho. Brazil In the Global Anti- Corruption regime.

2.4.1.4. Financial Action Task Force (FATF).

It is the anti-money laundering policy organ founded in 1989 with the task of assessing money laundering methods and to craft countermeasures. It works closely with financial task force style regional bodies (FSRBs) to implement its recommendations.¹⁹³ Major responsibilities are setting of international standards currently 40+9 recommendations, to provide additional interpretation of the guidelines and best practice and to Monitor and encourage compliance among member states, promote universal application of FATF standards as well as to support FATF style regional bodies in studying the trends of Anti-money laundering and the financing of terrorist.¹⁹⁴

2.4.1.5. Egmont group.

It is the global Financial Asset Units (FIUs) coordinating body which is chiefly to promote cooperation among the various national FIUs. It develops and encourages sharing of expertise and intelligence in matters of anti-money laundering. To ensure hasty sharing of information the Egmont group through its respective five working groups support and encourage its members to embrace the use of technology.

2.4.1.6. Basel committee.

A key global banking regulator established in 1974 to undertake supervisory role over banks Considering that most of the money laundering activities are done through financial institutions, then Basel committee become a pivotal mechanism in the fight against money laundering and the financing of terrorists. The committee is constituted by Central Banks or

¹⁹³ Mugarura, Norman., The global Anti- Money Laundering Regulatory Landscape. .pp. 94.pp. 79.

¹⁹⁴ ibid pp.225.

an equivalent supervisory authority of the respective member states. It deals with the production and issue of supervision guidelines and best practices to be upheld by all banks and their supervisors. However, the adoption of the guidelines must be in line with the domestic jurisprudence.

To cope up with ever changing operational environment, Basel continually initiate and share new supervisory arrangements and techniques and upgrade on the minimum supervisory standards. Among the guidelines include customer due diligence (CDD) requirement which goes hand in hand with the FATF's "know your customer" (KYC) principle, supervision assessment procedure, statement that require banks to identify their customers and transactions and which discourage banks from assisting money launderers to scheme through suspicious transaction detection systems. The denominator is to combat money laundering and the financing of terrorism while insulating banks from reputation, operation and legal risks. Countries which do not embrace Basel recommendation are bound to have relaxed banking systems thus enticing money launderers and terrorist financiers to misuse their financial systems.¹⁹⁵

As good as its functions are, Marcos debates the legal character of the institution but agree that its norms have impacted AML environment as many supervisory authorities have obliged, notably the deterioration of secrecy notion that traditional characterize banking

¹⁹⁵ Arnone, M., Borlini, L. (2010). International Anti Money Laundering and the Financing of Terrorism Programs.

transactions.¹⁹⁶

2.4.1.7. International Monetary Fund and World Banks.

IMF with a membership base of 184 countries is instrumental in posturing global monetary cooperation, international trade, and sustainable economic growth and in the reduction of poverty.¹⁹⁷

After the collapse of Berlin wall, the global threat environment was reoriented from physical to human concerns among them corruption perceived to be threatening good governance and by extension basic human empowerment needs.¹⁹⁸ This prompted world power houses to enjoin WB and IMF to the game of combating corruption. The World Bank focuses on Human development, environmental protection, Agricultural and rural development as well as promoted infrastructural and governance issues.

Considering the objectives of these institutions among them economic stability more so of financial and related institutions, throve IMF and World Bank to allocate resources towards supporting the adoption of AML and combating the financing of terrorism as part of its activities. Kennedy held same argument and posit that WB and IMF activated research geared toward ensuring that the prudent management of public resources and overcome challenges in human development. This is lately seen in its collaboration with FATF in the improvement of technology especially in developing countries where alternative remittance systems are often misused by money launderers.

¹⁹⁶ Marcos Tourinho. Brazil In the Global Anti- Corruption regime.

¹⁹⁷ Mugarura, Norman, The global Anti- Money Laundering Regulatory Landscape.pp. 94.

¹⁹⁸ Marcos Tourinho. Brazil In the Global Anti- Corruption regime.

Table. 2.1. Other global actors in combating money laundering.

Functions.	AML Institution/Actors.
Agenda setting and creating issues	FATF, UNSC, U.S. A
Making rules	U.S.A, FATF and allied bodies, National legislators, Council of Europe, UN secretary council.
Implementation and Enforcement	Financial institutions, Dealers of valuable goods, FIU, INTERPOL, FATF, Wolfsburg
Evaluation and Monitoring	FATF, Egmont Group, Basel and UNODC.

Source: Modified from Marcos 2017 pp.7.

2.4.2. Regional anti -money laundering regime and institutions.

2.4.2.1. African union convention (AUC).

Inspired by United Nation Convention against Corruption (UNCAC) (2003), The African Union Convention (AUC) was established to assist in recovery and repatriation of stolen assets. For instance, in 2004 AU noted that corruption practices lead to an annual loss of US\$ 148 Billion which is equivalent to 25% of the continents GDP. The convention commits the

respective heads of states to spearhead the war on corruption and protect banking systems from exploitation. It acknowledges that perpetrators of grand corruption use offshore shell companies, private banking services and alternative remittance systems for instance Hawala to transfer proceed of crime to tax havens like the Swiss Banks.

At the Sub -regional stance, Kenya is a signatory to the East African Community's Protocol on Preventing and Combating Corruption. It is also a member of the inter-Governmental Action against Money Laundering in Africa (GIABA), the Eastern and Southern Africa Anti-Money Laundering Group (ESAAL), the two are both Financial Action Task Force (FATF) style regional body.

However, at the domestic frontier, Kenya has made good strides in delegitimizing money laundering through the proceed of crime and Anti money laundering Act (POCAMLA) of 2009 and the Proceeds of crime and antimoney laundering regulation (POCAMLR) 2013 which are the main legal and regulatory framework for dealing with money laundering in Kenya.¹⁹⁹

Other related laws includes Prevention of Terrorism Act (POTA) 2012, Ethics and Anti-corruption Act , the penal code CAP 63 LOK and Narcotic drug and psychotropic substance control Act CAP 245 LOK, all in line with the international AML regimes.

Relevant institutions have also been established to oversee the implementation of the law among them the financial reporting Centre (FRC) and the Asset recover authority (ARA). However, this revolution does not withdraw the traditional mainstream law enforcement agencies vital in the investigation and prosecution of Money laundering and its predicate offences.

¹⁹⁹ The proceeds of crime and anti-money laundering Act 2009.

Despite the existence of AML regime and law enforcement institutions, money laundering and predicate offences have continued to thrive. In the 2019 Basel institute assessment report, 60% of the 125 assessed countries have a significant Money laundering and Terrorist Financing risk. The poor rating is linked to laxity in border management which allow cross border crimes to ensue notably, drug trafficking, human trafficking, corruption, goods smuggling, cash smuggling, custom fraud and illicit trade in precious stones and metal. Illicit drug proceeds alone were valued at an annual figure of USD 750 Million.²⁰⁰

Nevertheless, according to Gikonyo, much debate has not been the presence of the law per se but lack of its effective implementation due to inadequate political will, laxer anti-corruption efforts and loopholes in the law flamed by complications in the legal justice process including but not limited to leakage of information to suspects who in turn transfer the ill obtained assets or close accounts.²⁰¹

Consequently, Policy reaction must raise the cost of money laundering by intensifying enforcement actions, improve supervision capacities, and enhance institutional collaboration and interstate cooperation.²⁰²

²⁰⁰ Basel Committee on Banking Supervision. (2019). Basel AML Index 2019: A Country ranking and review of Money Laundering and Terrorism Financing risk around the world.

²⁰¹ Mugarura, Norman. "Scoping the regulatory environment for harnessing normative anti-money laundering laws in LDCs." *Journal of Money Laundering Control*. Vol. 16 No. 4, 2013 pp. 333-352

²⁰² Arnone, M., Borlini, L. (2010). International Anti Money Laundering and the Financing of Terrorism Programs: Empirical assessment and Issues in Criminal Regulation. *Journal of Money Laundering Control*. 13: 3.

CHAPTER THREE: LAW ENFORCEMENT RESPONSE TO COMBAT MONEY LAUNDERING IN KENYA.

3.1. Introduction.

It is apparent that when managing money laundering, serious levels of global participation in law implementation is essential. As such collaboration assumes a huge part in deciding the effective arraignment of the wrongdoing. Subsequent to giving a concise depiction on global participation, this chapter breaks down worldwide collaborative law enforcement modalities including removal of suspects, shared legitimate help, and the seizure of the returns of wrongdoing.

This segment further inspects how nations endeavor to universally apply their own criminal law and how the same could be an obstacle to global participation in law implementation matters. What follows is an investigation on the structure and detail of difficulties that can be a disincentive to the viability of global participation. This will be trailed by an assessment of how states attempt to moderate and defeat these difficulties.

3.2. Overview of Law Enforcement.

Law enforcement entails maintaining and implementing laws, resolutions, or enactments that are in use in a given purview. Ethan offers that in the viewpoint of criminal law, the term law enforcement alludes to a state's activity to identify infringement, to stop them, and to keep further infringement from happening later on.²⁰³ Besides, Law enforcement concerns the utilization of legislative specialists to react, identify, explore, arraign, and give

²⁰³ Ethan A. Nadelmann, *Cops Accross Borders: The Internationalization of U.S. Criminal Law Enforcement*, 1997, p.3

an approval to culprits. From these perspectives, the idea behind law enforcement notion is grounded on two specific activities which are to distinguish criminal leads and forcing sanctions on the offenders.

Comprehensively talking, law enforcement indicates the obligations of cops. Wilson, Q (1978) explicitly characterized three styles of police obligations; legalistic, guardian, and services.²⁰⁴ However, law authorization can likewise make reference to the expansive idea of a criminal equity framework, which includes the police, investigator, prosecutors, and the courts. Additional, law enforcement alludes to the practice of capturing, researching and indicting lawbreakers, and gathering proof, directing a preliminary investigation, and doing correctional service.

Marcos argues that effecting global AML measures require a duality approach in order to have all actors on board.²⁰⁵ Borlini agrees and offers that the effectiveness of one country to enforce AML policy is directly reliant on the support from other countries as well as the private sector.²⁰⁶ Relatively, this should further be isolated and replicated in the coordination of domestic AML enforcement institutions like police, courts, and jails. Every one of these groups has unique resources, competencies, undertakings and duties that combined play an efficient methodology to combat crime; money laundering included.²⁰⁷

In this regard, both private- public, and domestic- international networks contribute to combating ML either through deliberate consistence or enforcing punitive measures.

²⁰⁴ Wilson, James Q. *Varieties of police behavior: The management of Law and Order in Eight Communities, With a New Preface by the Author.* CAMBRIDGE MASSACHUSETTS; LONDON, ENGLAND: Harvard University Press, 1978. Accessed July 22, 2021. doi:10.2307/j.ctvjnrszw.

²⁰⁵ Marcos Tourinho. *Brazil In the Global Anti- Corruption regime.*

²⁰⁶ Borlini Leonard. *Regulating Criminal Finance in the EU.*

²⁰⁷ Ethan A. Nadelmann, *Cops Accross Borders.*

Deliberate consistence point to purposeful guidelines or standards initiated by and directed on private institutions like banks, non-bank monetary foundations, and professions which by merit of how they are formulated and coordinated find acceptability in the target institutions. De Vido agrees and records that Wolfsburg group is a good example of private to private network that self-regulate its members.²⁰⁸ Borlini fits in the observation and suggest that measures to combat money laundering by nature of its operations should not over emphasize of the traditional bilateral and multilateral arrangements dominating state relations and their sovereignty of things, but rather exploit private networks in order to access rich resource base, intelligence and competencies harbored by the institutions.

Despite of its mixed reception, discipline as a strategy to punish wrongdoers who abused laws cannot be ignored either. It is among the work of law enforcers to force discipline measurers on culprits of money laundering and its predicate offenses. The measures include jail term, fines, sanctions, seizure, forfeiture and confiscation. All geared toward eradicating the motivation to carry out the wrongdoing of sourcing illicit cash and relinquishing benefits accrued from crime activities.

3.3. The role of Law enforcement in combating money laundering in Kenya.

Traditionally, the idea of wrongdoing was perceived as a neighborhood or domestic public issue because law breakers were regional subjects. Criminal law under these conditions just considered the domain where the wrongdoing has happened. John Blum remarked that our criminal equity framework depends on an area. In the event that something occurs in my

²⁰⁸ Devido, Sara. Network Regulation of Cross- Border Economic Crime, Kobe University Law Review, Kobe Seminars on International Law 2014.

region, I have purview. In the event that it doesn't, I need to manage other country states to recover data.²⁰⁹

In view of the regional idea of wrongdoing, criminal law can adjust the manner by which law implementation is pursued. Law enforcement at the domestic level alludes to the use of criminal law inside the boundaries of a country.²¹⁰ For this situation, law implementation follows a regional purview. This model shows us that the examination of a wrongdoing centers on a particular topographical territory encompassing the site where the wrongdoing occurred.²¹¹

Indeed, Brenner argue that the notion of delimiting crime especially transnational crimes like money laundering within the physical territories have been rendered obsolete by globalization thus offenses perpetrated abroad should worry law enforcement practitioners than ever before because engaging the support of other states depends on convergence of aspiration, failure of which some states may be hesitant assist another in dealing with the guilty parties.

Concerning capacity of homegrown law implementation officials in directing international participation, Richardson offers that there are two obstructing factors: the need to regard

²⁰⁹ See <http://financial-dictionary.thefreedictionary.com/Voluntary+Compliance>.

²¹⁰ Lesley M. Bain, "Money Laundering: Hide and Seek; An Exploration of International Cooperation between Law Enforcement Agencies", PhD Thesis. Simon Fraser University, August 2004, p.9.

²¹⁰ Susan W. Brenner, "Toward a Criminal Law for Cyberspace: A New Model of Law Enforcement?", Rutgers Computer & Technology Law Journal, Vol.30, 2004, p.15.

²¹¹ Susan W. Brenner, "Toward a Criminal Law for Cyberspace, p.15.

power and the trouble in orchestrating distinctive lawful systems.²¹² The need to regard the sway of another state implies that the ambiance of homegrown law authorization cannot reach out past its territorial limits. In the event that there is no arrangement between the states then gathering data of evidential value found abroad becomes troubling. Subsequently, Kukuk examined the capability of African police institutions to combat cross border crimes and observe that the institutions lack resources, doctrines and competences key in handling such kind of crimes.²¹³ Marcos 2018 while assessing mega corruption in Brazil reinforce the idea and observe that the saga was found out to entail 44 states and Brazil institutions were able to domestically check the crime and make agreement with most states because of its institutional resource muscle and esteemed political will.²¹⁴

3.4. The aspect of international cooperation in combating money laundering.

As demonstrated before, in upholding criminal law inside the lines of a state, law implementation generally centers solely on a homegrown capacity. With regards to Money laundering which has progressively gotten transnational in scope, governments have battled to facilitate law enforcement specialists to acquire help from different nations. This drives nations to extend the application and authorization of homegrown criminal laws, which can build the need of global participation through a few modalities like removal of suspects, shared lawful help, and seizure of the returns of wrongdoing as provided for in the international conventions.

²¹² Song Richardson, "Convicting the Innocent in Transnational Criminal Cases: A Comparative Institutional Analysis Approach to the Problem", Berkeley Journal of International Law, Vol.26, No.1, 2008, p.80.

²¹³ Kukuk Leon. Cooperation and Accountability in the Cross- border policing of South Africa.

²¹⁴ Marcos Tourinho. Brazil In the Global Anti- Corruption regime.

In this setting, Tuerkheimer argue that the attributes of law requirement have developed from a homegrown to a globalized scope.²¹⁵ The globalization of law authorization suggests the use of homegrown law to crimes happening past the regional furthest reaches of the state concerned. The globalization of law enforcement takes into account that public laws should be applied on crimes happening past its regional limits.

The Vienna Convention of 1988, the Strasbourg Convention of 1990, and the Palermo Convention of 2000 have endeavored to address money laundering and predicate offences through the internationalization of law implementation activities and come up with arrangements that oversee global modalities of collaboration. Marcos 2017 offers that the modalities unveiled by the conventions incorporate removal, common legitimate help, and seizure of the returns of wrongdoing.²¹⁶ Robert Keohane, argue that interstate coordination and collaboration is paramount in interdicting money laundering menace but similarly acknowledge that states will still have varied strategy preference which in some situations are contradicting.²¹⁷ Milner, for instance, brings up that participation can be accomplished by direct arrangement where two nations have a limited or a multilateral understanding but posit that Ideally such collaboration should be willful and objective both separately and collectively.²¹⁸

²¹⁵ Frank Tuerkheimer, "Globalization of U.S. Law Enforcement: Does the Constitution Come Along?". *Houston Law Review*, Vol.39, 2002-2003, p.309.

²¹⁵ Helen Milner, "International Theories among Nations: Strengths and Weaknesses", *World Politics*, Vol.44, 1992, p.467.

²¹⁶ Marcos Tourinho. *Brazil in the Global Anti- Corruption regime*.

²¹⁷ Helen Milner, "International Theories among Nations: Strengths and Weaknesses", *World Politics*, Vol.44, 1992, p.467.

²¹⁸ Helen Milner, *Ibid*, p.469.

Concerning collaboration, the strategies include inter alia, removal of suspects, shared lawful help, and move of procedures, seizure and relinquishment, data trade, memoranda of comprehension, and manner of criminal processing. Borlini maintain that these strategies have become generally accepted standard criminal justice tools at the domestic level.²¹⁹ To the contrary Milner disagree on the acceptability part of the standards and argue that there are four primary factors that can impact on the climate of global participation in criminal issues; these components are governmental interests, law, culture, and limitations.²²⁰

Kukkuk notes that global collaboration in law authorization matters doesn't exist without the political help of any state. Nations through homegrown institutions will receive and customize global norms but with varied commitments.²²¹ In this specific situation, laws play out as a system of collaboration and execution at the domestic level.²²²

Much more in this way, culture can impact the assessment of a general public in forestalling and reacting to the arising patterns of any crime, as an outcome, hierarchical and the broad culture of a state may influence the adequacy of worldwide participation in law implementation matters. At last, the achievement of worldwide participation in law requirement matters can be anticipated by estimating the capacity of all components that help a legal, prosecutorial, or law implementation segment of the mentioned country.

²¹⁹ Borlini Leonard. *Regulating Criminal Finance in the EU*. Helen Milner, *Ibid*, p.469.

²²⁰ Helen Milner, *Ibid*, p.469

²²¹ Kukkuk Leon. Cooperation and Accountability in the Cross- border policing of South Africa.

²²² See http://www.uwec.edu/bonstemj/Intro/Spring04/Culture.Structure_files/v3_document.

In same sense, Heymann distinguished three abilities that should exist in completing worldwide collaboration in law authorization matters; these are the ability to secure data in unfamiliar states, the ability to take it back to the gathering state as usable proof, and the ability to carry the litigant and observers to the discussion state.²²³

3.4.1. Modes of International Cooperation in Fight against Money Laundering.

Money laundering just like any other transnational crime follows that it is committed in more than one jurisdiction, can be planned in one country but committed in another, can be committed in one country by a group operating in many different countries or committed in one country but affects another country.²²⁴ While noting that joint police crime and peace operations encompassing more than two countries have recently grown in African as a result of cross border crimes; money laundering included, Kukuk suggest that combating these vices demand for a well-coordinated response and cooperation between law enforcers across nations.²²⁵ Marcos(2017) provide that cooperation has birthed new concepts in the enforcement environment like joint investigations teams and formal prosecution attaches which assist in evidence gathering, asset freezing, and recovery of assets and extraditions of corruption cases.

Varieties of modalities have been utilized in responding and directing worldwide participation in countering money laundering offenses. Those modalities incorporate seeking after the suspect, seeking after the proof, and seeking after the benefits. Seeking

²²³ Philip B. Heymann, "Two Models of National Attitudes towards International Cooperation in Law Enforcement", Harvard International Law Journal, Vol.31, 1990, p.99.

²²⁴ United Nations Office on Drug and Crime. "2014 Report" <https://www.unodc/en/organized-crime/index.html>

²²⁵ Kukuk Leon. The invisible threats.

after the suspect is the cycle where any nation is approached to find and return an individual who is blamed for or has been indicted for a wrongdoing perpetrated in the mentioning country. Seeking after the proof is the way toward acquiring proof or data in an outside country where the proof is found. Seeking after the benefits, at long last, is the interaction in acquiring criminal proceeds found abroad in which the gathering state requests that a far-off country relinquish or to take the illicit proceeds that purportedly got from crimes.²²⁶

3.4.1.1. Extradition –Pursing the Suspect.

Removal alludes to the exchange of wrongdoers to another state for indictment. Removal in this setting is pointed toward keeping the hoodlums from tracking down a place of refuge and getting away from discipline. Kimberly posits that before the 1800s, removal was constricted to criminals looked for political or international offences.²²⁷ Here in this age, removal was seen as a way of servicing the political request of states. Notwithstanding, in present day times, the focal point of removal has changed generously to cover basic general cross border crimes. Throughout its reality, clearly removal has a significant part in battling illegal money laundering that has global measurements. Removal can be coordinated through reciprocal or multilateral settlements. The European Convention on Extradition of 1957 is one such multilateral settlement that worries nations

²²⁶ Marcos Tourinho. Brazil in the Global Anti- Corruption regime.

²²⁷ Kimberly Prost, “International Cooperation in Combating Transnational Crime”, Paper, Senior Counsel, Department of Justice, Canada, 1988, p.4.

within Europe. Its principal objective is to accomplish a more noteworthy join between its individuals by having them go along to a similar arrangement of removal rules.

In doing removal, there are a few fundamental rules that work as rules of removal. These standards are intended to ensure the privileges of suspects and litigants are safeguarded. The presence of these standards may be disincentives for the achievement of global cooperation. The main guideline is the rule of double guiltiness. This guideline requires a demonstration that the act in question is culpable in the two nations.

The rule of double guiltiness for removal was referenced in Article 2 of the European Convention on Extradition of 1957, wherein removal is conceded when offenses are culpable under both the laws of the mentioning and mentioned parties.

It is perceived that the guideline of double culpability is essential to shield the outlaw from crooked discipline. The difficult issue in building up dual culpability for removal streams from specialized contrasts in how states characterize, name, and demonstrate criminal offences.²²⁸ Regarding this issue, it is hard to decide if an act constitutes a wrongdoing in an unfamiliar purview. In conquering this trouble, there are two techniques in applying the double guiltiness prerequisite.²²⁹ Under the main strategy, the court applies an exacting investigation of its components to the equal law of the mentioning state. On the off chance that the components match, the court applies homegrown law to the activity of the removal.

²²⁸ Jonathan O Hafen, "International Extradition: Issues Arising under the Dual Criminality Requirement", Brigham Young University Law Review, 1992, p.199-200.

²²⁹ Kimberly Prost (1988), *Supra* note 34, p.4

Paradoxically, in the subsequent technique, a court audits the criminal lead paying little mind to the mark and components of the wrongdoing. For this situation, it isn't required for the phrasing of the offense to be indistinguishable. The enforcer just thinks about the wrongdoing under the laws of the two purviews. The removal could flop because of the unmistakable idea in applying the double culpability prerequisite.²³⁰ Legal troubles may emerge if the mentioned state has different expectations of the arrangements. In the interim, commonsense challenges may emerge when the mentioning state tries to learn how the offense is characterized in the mentioned state. Because of the transnational idea of money laundering offence, it is fundamental for courts to consider not being too rigid in applying the double guiltiness prerequisite.²³¹ This standard mirrors the standard that once an individual is removed, that individual can be arraigned distinctly for the charges on which he was removed. Here in this unique situation, the guideline of strength specifies that the mentioning state may not, without the assent of the mentioned state, attempt or rebuff the suspect for an offense not alluded to in the removal request.²³² Subsequently, as per the rule of claim to fame, the materials got through worldwide participation in criminal issue may not be utilized for different purposes and procedures other than those for which the collaboration was mentioned.

The third rule is the guideline is to remove or to arraign. Under this guideline, where a mentioned state rejects removal based on identity, the case ought to be alluded to its skilled experts for indictment. This guideline is proposed to guarantee that the hoodlums won't get away from equity and discover place of refuge based on ethnicity. In numerous states,

²³⁰ Matti Joutsen, *Supra* note 23, p.260.

²³¹ Jonathan O Hafen, *Supra* note 37, p.200. *See also* Matti Joutsen, *Supra* note 24, p.260.

²³² Marcos Tourinho. Brazil in the Global Anti- Corruption regime.

especially of common law custom, the removal of nationals is prohibited. In many examples, nations that don't remove nationals will have homegrown setting to indict for offenses submitted in the region of an unfamiliar state.

With regards to money laundering, global instruments like the 1988 Vienna Convention, the 1990 Strasbourg Convention, and the 2000 Palermo Convention follow the guideline to remove or to arraign. Notwithstanding, it is progressively apparent that a homegrown arraignment of offenses submitted outside the nation is a cycle packed with issues. The accessible global shows permit nations to deny removal in an assortment of conditions. These incorporate if there is no reciprocal removal with the mentioning country; if there is a doubt that the individual will be indicted for reasons of sex, identity, ethnicity, race, religion or political assessment; or if homegrown laws restrict the removal of their own nationals. Removal can additionally be rejected without double culpability. Then again, the mentioned nation can give up the individual under the condition that individual will get back to carry out the punishment. Besides, removal might be denied if the mentioned country thinks about the offense 'political' or 'military', or on the off chance that it doesn't consider the supposed offense adequately genuine to warrant removal and extreme punishments.

3.4.1.2. Mutual Legal Assistance.

Considering the upsides of globalization, criminal behaviors have been progressively crossing state physical borders. In this setting, it is increasingly clear that there is no single country with the ability to forestall and control this sort of wrongdoing in a one-sided strategy. Marcos 2017 argue that just as criminal exploit technology, states have to similarly use the same to establish mutual networks in the fields of investigation and

implementation of judicial decisions far away from the traditional bureaucratic prescriptions of the Hague service convention of 1965.²³³

The majority of them every now and again need interstate participation in dynamic spheres like the trading of data, narrative proof, or witnesses.²³⁴ In the legitimate viewpoint, the methodology alludes to a legitimate help where one state gets help from another state to arraign a criminal case. It is likewise an intricate measure where one state uses its public administrations of legal bodies in another state for researching the case, court assessments, or for authorizing the court choices.

The idea of lawful help can be separated into two gatherings, in particular, data sharing and criminal procedure.²³⁵ The first is coordinated against guiltiness all in all by giving applicable data important to fighting the wrongdoing.

The second is coordinated to the interaction of criminal equity concerning a specific guilty party. In law enforcement parameters legitimate help between or among nations might be characterized as an interaction in giving and getting help in dealing with a criminal issue.

This condition empowers law implementation specialists to get proof found abroad. Consequently, the motivation behind common lawful help is to help each other in acquiring data and get-together proof that need to help in criminal preliminaries. An expansive scope of shared lawful help covers the giving of data and records, the finding or distinguishing of

²³³ Marcos Tourinho. Brazil In the Global Anti- Corruption regime.

²³⁴ UN Convention on the Prevention and Punishment of the Crime of Genocide, 9 December, 1948 78 U N T S 277.

²³⁵ Philip B. Heymann (1990), *Supra* note 32, p.130.

people or things, and the taking of proof, declaration or proclamations of people. Too, common lawful help can likewise be delivered at any state to look and hold onto archives, relinquish criminal continues, move the individual, and return the returns of wrongdoing to the cause's state. Under multilateral arrangements, each state party is obliged to help each other in the fields of examination, arraignment, and criminal procedures. The distinction with removal is that MLA normally accommodates help regardless of whether the issue being scrutinized would be a wrongdoing in the two nations which is of mutual benefit to both states more so in dealing with transnational crimes.

With regards to money laundering predicate offences legitimate help is structured in the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Article 7 gives an expansive scope of shared legitimate help with managing the criminal behaviors of medication dealing and tax evasion. The show necessitates that every part bears the cost of the massive proportion of common legitimate help with the examination, arraignment, and legal procedures. Common lawful help with this setting is distinct into three general classes: analytical help to personality and follow property to get reports; temporary measures to freeze or hold onto property situated in the domain of the mentioned party; and authorization of another state's seizure orders.

For common lawful help to be completed easily, article 7(5) obliges parties not to decay it on the ground of bank mystery. Moreover, article 18 of the Palermo Convention of 2000 and article 46 of the Convention against Corruption of 2003 are worldwide legitimate instruments that list a wide scope of shared lawful help with the examination, indictment, and legal continuing. These helps include, entomb alia, gathering narrative proof,

articulations of an individual, impact administration of legal records, execute searches, seizures and freezing of resources, and acquire master assessments.

The report should consistently recognize the power making the solicitation, the idea of the examination, a short synopsis of the relative multitude of important realities, subtleties of help, thus on.²³⁶ Both shows additionally settled the need to make a focal position to handle all the shared lawful help got from state parties.

Despite the fact that there are finished guidelines in regards to shared lawful help and nations announce their obligation to help out one another in handling illegal money laundering offenses, in operational reality, there are a ton of difficulties looked by law requirement experts in directing common legitimate help.²³⁷

3.4.1.3. Forfeiture and Confiscation of Criminal Proceeds- Pursing the Profit.

The term 'seizure' represents taking private property for public use without compensation.²³⁸ This is done through the courts as punishment or measure after the culmination of procedures. As a thing, seizure is like the term of seizure, assignment, appropriating, relinquishment, confiscation, sequestration, and takeover which might be viewed as being seized by an administration or by claiming something through the legitimate process.²³⁹

²³⁶ *Ibid*, p.83-84.

²³⁷ Lesley M. Bain (2004), *Supra* note 17, p.10.

²³⁸ See <http://definitions.uslegal.com/c/confiscation/>

²³⁹ See <http://www.thefreedictionary.com/confiscation>

The FATF in its Guide Document clarifies that seizure or relinquishment orders are connected to a criminal conviction or a court decision.²⁴⁰ In this unique circumstance, the seized or relinquished property is resolved to have been gotten from or proposed for use in an infringement of the law. The inquiry to be posed is the reason seizure or relinquishment is fundamental in diminishing the motivator to perpetrate a wrongdoing. From an ethical viewpoint, there is a philosophical presumption that nobody ought to be permitted to benefit from a wrongdoing. All in all, no individual will be permitted to unjustifiably advance oneself in the cost of one more individual or a general public on the loose.

With regards to money laundering, seizure is a significant piece of a compelling surrender of ill-gotten income. A center component of Recommendation 3 of the FATF (2003) is that there ought to be gauges set up to recognize, follow and assess property that is dependent upon seizure. In like manner, Recommendation 38 requires that there be specialists to make a quick move because of solicitations by far off nations to distinguish property that might be dependent upon seizure. Moreover, Article 5 of the Vienna Convention gives subtleties of the term seizure at both public and global levels. Right off the bat, the show necessitates that state parties order laws considering the seizure of all types of property utilized in or got from offenses recorded in article 3(1) and continues of these offenses. Measures to distinguish follow, and freeze forfeitable resources should likewise be received by the gatherings. Besides, the Convention necessitates that each help the others in recognizing, freezing, or seizing property inside its domain that was utilized in or is the returns of an offense that happened in the region of the mentioning state.

²⁴⁰ FATF, Confiscation: Best Practice, FATF Guide Document, 19 February 2010.

3.5. Challenge of international cooperation in the fight against money laundering.

Several endeavors have been taken at the homegrown just as in the global arena in reacting to the money laundering menace. Nonetheless, a few snags that block the viability in leading worldwide collaboration are inevitable. Three factors that influence the viability of global collaboration in managing money laundering offenses include customary perspective on power, the variety of overall domestic sets of laws, and the capacity to perform worldwide participation.

3.5.1. State Sovereignty.

Sovereignty can be a hitch to the worldwide implementation of criminal law.²⁴¹ The manner in which any state comprehends the idea of power can influence the adequacy of highway participation. Some states are delicate with their sovereign right while others are most certainly not. The previous follows the customary idea of power while the last concerns soft type of supremacy.²⁴² With respect to the customary perspective on power, a state is exclusively answerable for the creation and execution of global law. It is the most significant level of expert for the state and no other state is permitted to meddle in the manner the state treats its inhabitants.²⁴³ These judgments incapacitate states in leading global

²⁴¹ Ethan A. Nadelmann, "The Role of the United States in the International Enforcement of Criminal Law". Harvard International Law Journal, Vol.31, 1990, p.41.

²⁴² Ivan Simonovic, "State Sovereignty and Globalization: Are Some States More Equal?", Georgia Journal of International and Comparative Law, Vol.28, No.3, 2000, p.384.

²⁴³ Ivan Simonovic, "State Sovereignty and Globalization, pp.41.

participation. The absence of respective just as multilateral arrangements is one justification the delay of country states to help out one another.²⁴⁴

The way states comprehend the thought of power can energize or debilitate in leading highway collaboration. This is because of the way that the state is viewed as including a fractional part inside an organization of nations that help address worldwide and territorial problems.²⁴⁵ Pursuing global collaboration really is an indication of present-day states which consider influence as a cycle to help each other in fighting violations.²⁴⁶

However, sovereignty should not have been a post-cold world war issue because in the modern era subjects are international citizens and actors involve in the game of international relations are no longer limited to states alone. Ferwerda found solace in this statement and posit that although AML campaigns are spearheaded by international and domestic institutions most of the intelligence is from the private sectors; banks, notaries, lawyers and investors.²⁴⁷

3.5.2. Difference of Legal System.

According to Nadelmann, a significant hurdle that hinders interstate collaboration in global law enforcement is the discrepancies in domestic laws among countries.²⁴⁸ Ronderes add that the need for control outweighs any conceivable homogenization of worldwide law

²⁴⁴ Joel P. Trachtman, "Reflections on the Nature of State: Sovereignty, Power, and Responsibility", Canada–United States Law Journal, Vol.20, 1994, p.405.

²⁴⁵ Abram Chayes & Antonio Handes Chayes, *The New Sovereignty: Compliance with International Regulatory Agreement*, (Cambridge: Harvard University Press, 1995). Cited in Anne-Marie Slaughter, "Sovereignty and Power in a Network World order", *Stanford Journal of International Law*, Vol.40, 2004, p.286

²⁴⁶ Ibid pp.285

²⁴⁷ Ferwerda et al. "Strategies to avoid blacklisting

²⁴⁸ Juan G. Ronderes, "Transnational Drugs Law Enforcement: The Problem of Jurisdiction and Criminal Law", *Journal of Contemporary Criminal Justice*, Vol.14, Vol.4, 1998, p.384.

implementation, which brings about contrasts between lawful customs, methodology, proof components, organizations, legitimate social standards, and techniques utilized in criminal investigations.²⁴⁹ These conditions lead to limitations in directing mainstream participation.

To counter the issues of variety in public general sets of laws, Eser proposed one of two options that can be considered; the primary elective concerns a country's capacity to make its own meaningful criminal law for its own region. For this situation, the states should help the indicting specialists of the country where the offense was submitted by giving much needed lawful help as could be expected at the procedural level, including the removal of their own nationals. The other option is for a nation to acknowledge and endure the meaningful criminal law of different nations through prohibitive courses of action to deflect any attack of power.

Kukkuk observe that cross border police cooperation is affected by diversity among the police agencies and it's under resourced nature which birth accountability problems. Considering the coercive duties that police engage in, it becomes inescapable that they not only owe an explanation for its actions to its structures but also to concerned oversight bodies as well as political institutions.²⁵⁰

²⁴⁹ Albin Eser, "Basic Issues Concerning Transnational Cooperation in Criminal Cases: A Problem in Outline", Paper presented on the Prevention of Crime and Treatment of Offender, 8th United Nations Congress in Havana – Cuba, 27 Aug – 7 Sept 1990, p.17.

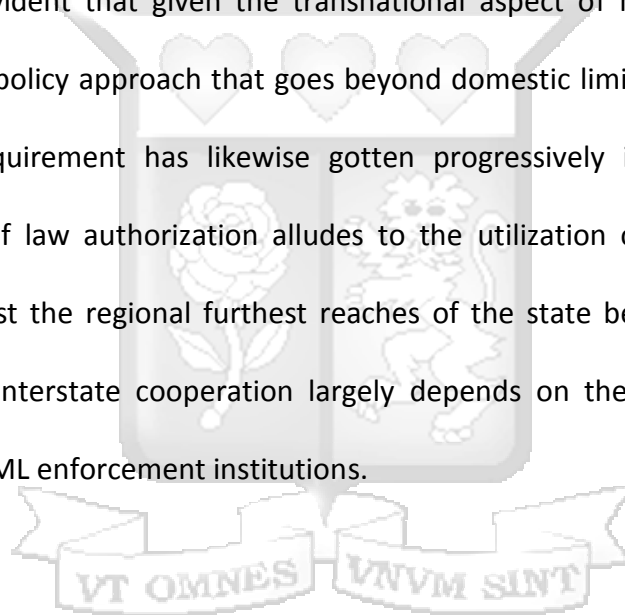
²⁵⁰ Kukkuk Leon. Cooperation and Accountability in the Cross- border policing of South Africa.

3.5.3. Capability to Perform Cooperation.

Another obstruction that is available in coordinating universally law enforcement is the failure of the mentioned state to perform solicitations of the mentioning state.

This is especially valid for a few expresses that absence of monetary and specialized assets, regulatory and language obstructions, absence of fundamental skill, and absence of rationality on the nature and significance of the data that is mentioned.

As explained, it is evident that given the transnational aspect of money laundering the situation demands a policy approach that goes beyond domestic limits of sovereign states. As a result, law requirement has likewise gotten progressively internationalized. The internationalization of law authorization alludes to the utilization of homegrown law to crimes happening past the regional furthest reaches of the state being referred implying that the success of interstate cooperation largely depends on the capacity of national, regional and global AML enforcement institutions.



CHAPTER FOUR: DATA ANALYSIS, PRESENTATION AND INTERPRETATION.

4.1 Introduction.

This chapter deals with presentation of research finding and interpretation.

4.2. Response rate

A total of 105 questionnaires were circulated to the respondents and a total 88 of the questionnaires were received back and used for the analysis. This was a response rate of 83.8% which is accepted as appropriate for the study since according to Mugenda (2008) a response rate of 60% is considered appropriate for analysis.²⁵¹ Similarly, Babie (2003) noted that a response rate of 70% of the sample was appropriate for use in a descriptive study. These results are presented in table 4.1.

Table 4.1: Response rate.

Category of respondents	Returned questionnaire	Percentage response (%)
Response	88	83.8
Non-response	17	16.2
Total	105	100

Source: Researcher (2021)

4.3. Findings of the study.

The study wished to generate opinions from the respondents on the enforcement aspects of combating money laundering in Kenya. Using a closed and open-ended questionnaire and

²⁵¹ Mugenda, A. "Social science research: Conception, methodology and analysis." *Nairobi: Kenya Applied Research and Training Services* (2008).

supported by Key informant interviews, the opinions of the respondents were collected and analyzed.

4.3.1. Demographic factors.

Responses on the demographic factors were presented on the basis of gender, age, and work experience, working section, position, level of education and level of efficiency in enforcing money laundering regulations.

4.3.1.1 Gender of the respondents.

The study considered gender in order to obtain the opinions and views of both male and female employees of the institutions. Data from it also reveals the gender disparities within the targeted law enforcement agencies and resultant impact on job performance. This was seen to be paramount since different people differ in their opinion, motivation and performance based on respective gender.

The results of the gender grouping are presented in figure 4.2.

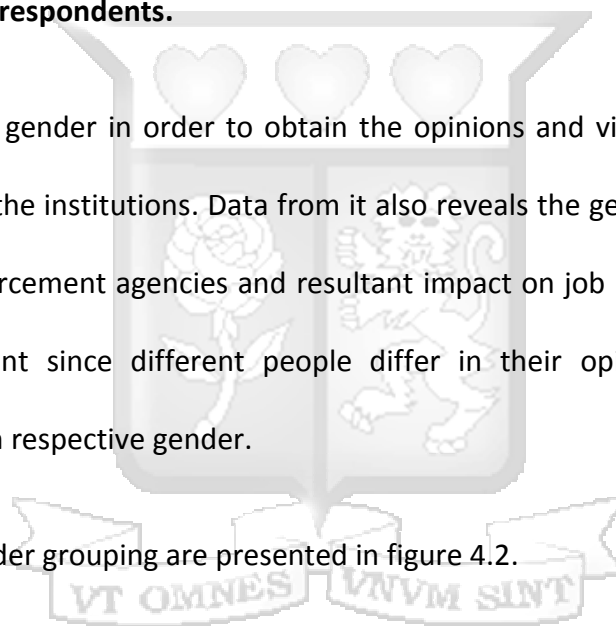
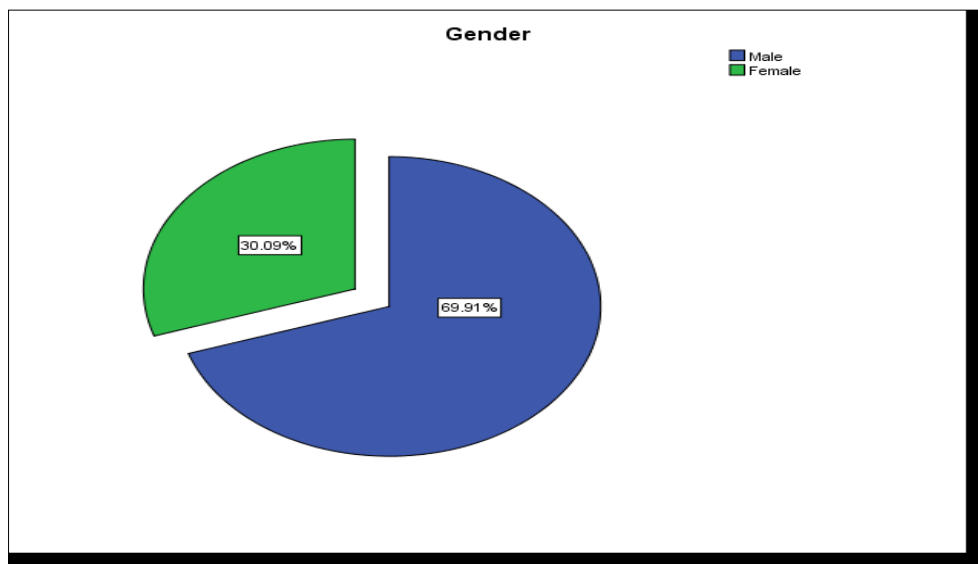


Figure 4.2: Gender of the respondents.



Source: Researcher (2021).

The results shows that majority of the respondents 69.91% were male while the rest 30.09% of the respondents were female. This is an indication that most of the respondents are male which in general sense portray law enforcement duties as male oriented and does not therefore fully benefit from the competencies, skills and attitude associated with the female gender. The finding and interpretation agree with Fritsvold Erik in an article who argues that there is an increasing need for more women to join law enforcement duties more so in developing countries. The author posits that women are verbally skilled, none threatening, dedicated to ethical conduct and compassionate in serving which law enforcement is essentially about. To the contrary Salt house (1997) observes that women take too long in adopting technology. However, in as much as the arguments of the two authors are true a mixed team function better.

4.3.1.2. Age of the respondents.

Age of the respondents was taken to be vital in that different age groups have different opinions guided by accumulated experiences, skills, training, networks and ethical inclination. This study sought to establish the opinion of different employees in relation to the various enforcement aspects of combating money laundering in Kenya.

The outcome of the age categorization is presented in the table 4.3.

Table 4.3: Age of the respondents.

Responses	Frequency	Percentage
20-30 years	38	43.3
31-40 years	24	27.0
41-50 years	26	29.7
Total	88	100.0

Source: Researcher (2021).

Majority of the respondents 38 which represents 43.3% were in the age bracket of between 20-30 years, whereas 26 of the respondents which represents 29.7% of the respondents were in the age bracket of between 41-50 years and 24 which represents 27.0% of the respondents were in the age bracket of 31-40 years.

This shows that the employees in these organizations are young and were able to respond to the questionnaire appropriately.

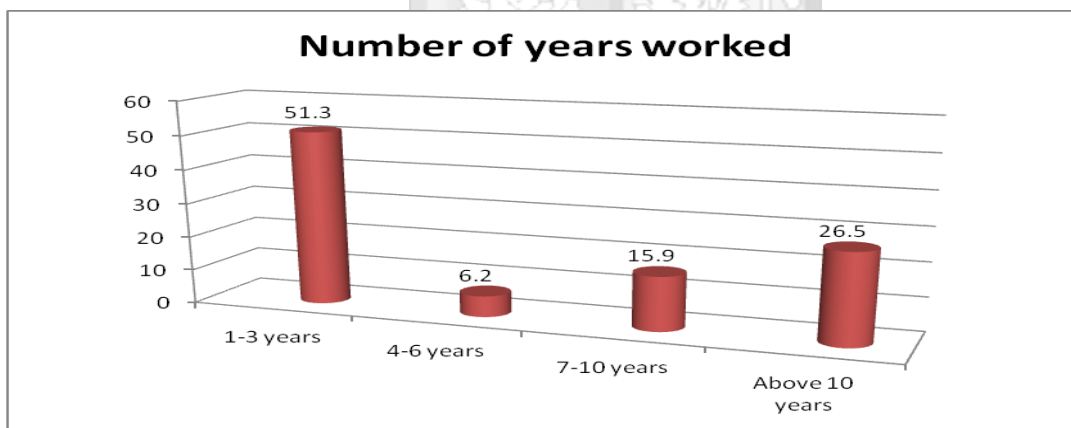
However, in linking age and job performance, Salthouse (1997) postulates that older workers are more desirable because they tend to have strong work ethics, are trainers of next generation of staff, more skilled and experienced as well as retain institutional

knowledge and networks. The target enforcement institutions enjoy less of this but on the other hand benefit from the energy and technological adaptability that comes with dominant male youthful labour.

4.3.1.3 For how long have you been in this organization?

It was important to establish the number of years they have been in the organization as work experience has an effect on the opinion and views of the respondents on the organization. Lengths of service blend with age further speak to the retention capacities of the target agencies. The study results were presented on figure 4.4.

Figure 4.4: For how long have you been in this organization.



Source: Researcher (2021).

From the figure it shows that the majority of the respondents 51.3% have been in the organization between 1-3 years, followed by 26.5% of the respondents who have been in the organization for above 10 years. 15.9% of the respondents indicated that they have been in the organization for 7-10 years while 6.2% of the respondents have been in the organization for 4-6 years. This indicates that most of the respondents are young or do not stay in a given organization for a long time.

4.3.1.4 Section of Work.

The study sought to establish the section of work for the respondents. The findings were as shown in table 4.5.

Table 4.5: Section of Work.

Category	Frequency (F)	Percentage (%)
Operation	9	10
Investigation	48	54
Intelligence production	21	24
Legal and asset recovery	10	12
Total	88	100

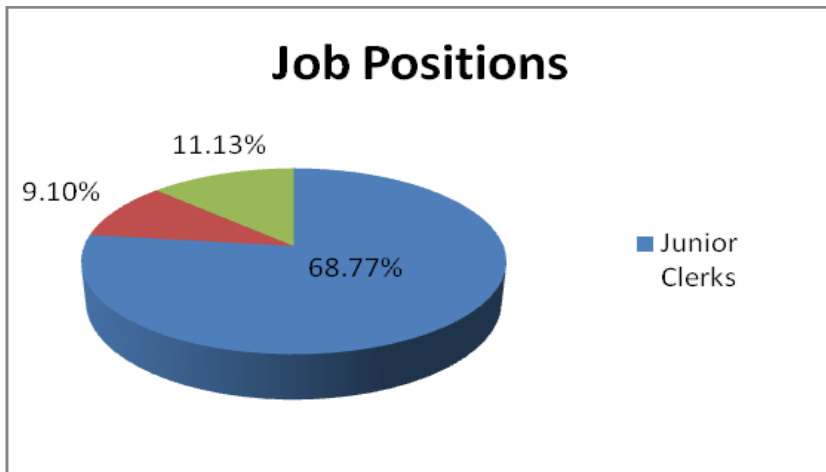
Source: Research data, (2021).

The distributions of age of respondents shown in table 4.3 revealed that majority 54% of the respondents work in investigation, 24% work in intelligence production, 12% work in legal and asset recovery while 10% work in operations. This indicated that majority of the respondent are working in investigations department.

4.3.1.5. Current Position.

The study sought to find out which current position the respondent held in the organization. The figure 4.6 below shows the results.

Figure 4.6: Job Position Held.



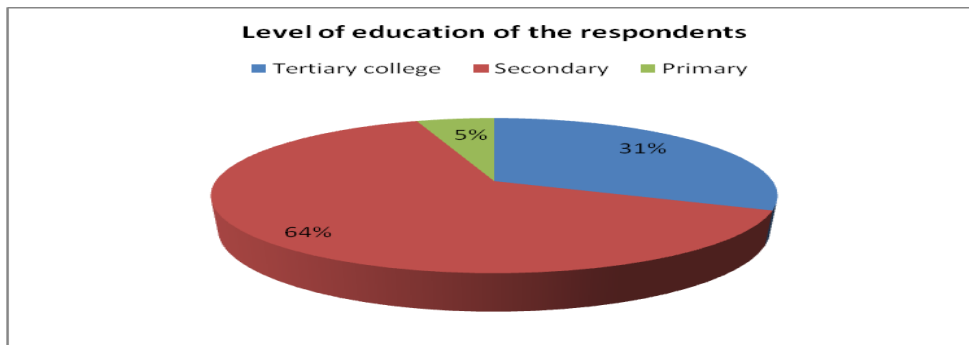
Source: Research, (2021).

Majority of the respondents were staff (68.77%), followed by supervisors who were 11.14% and managers who were 9.10% of the respondents. The manager's response can be attributed to the busy work schedule having limited time for data filling. The staffs were readily available because of the limited duties they have at work while others were flexible enough to meet after office hours for data filling exercise.

4.3.1.6. Level of education of the respondents.

The study considered the level of education of the respondents so as to establish whether the opinion and views of the employees depends on the education level. The results were presented in figure 4.7.

Figure 4.7: Level of education of the respondents.



Source: Researcher (2021).

Majority of the respondents 64% were undergraduates, while 31% were diploma holders while 5% Master’s holders. This shows that the sample selected included all the levels of education and the institution has a generally educated workforce.

4.3.2. Level of Efficiency in enforcing anti- money Laundering Regulations.

The study sought to establish the level of efficiency in enforcing anti-money laundering regulations. Table 4.8 shows the distribution of the respondents’ opinion.

Table 4.8: Level of Efficiency in Enforcing Anti-Money Laundering Regulations.

Category	Frequency (F)	Percentage (%)
Very high	6	7
High	22	25
Moderate	33	38
Low	27	30
Total	88	100

Source: Research data, (2021)

From the study findings in table 4.4, majority 38% of the respondents indicated that the level of efficiency in enforcing anti- money laundering regulations is moderate, 30% of the

respondents indicated low, 25% of the respondents indicated high while 7% of the respondents indicated very high. The quantitative data was supported by information from interviewees, where a majority of them (n=3 out of five) indicated that the efficiency was moderate. For instance, one respondent noted, “The level of efficiency in implementing anti-money laundering regulations can be considered average”. This is because there are not many cases brought to book or court cases determined. Also, you cannot say that the agencies are not working as they keep unearthing ML schemes often.” This indicated that according to the majority of the respondents, the level of efficiency in enforcing anti-money laundering regulations in Kenya is moderate.

4.3.3. Money Laundering Legal Framework.

The respondents were required to rate their agreement with statements regarding anti-money laundering legal framework and its effect on the enforcement of anti-money laundering regulations using a scale of 1 to 5; 5= Strongly Agree; 4= Agree; 3=not sure 2= Disagree 1= Strongly Disagree.

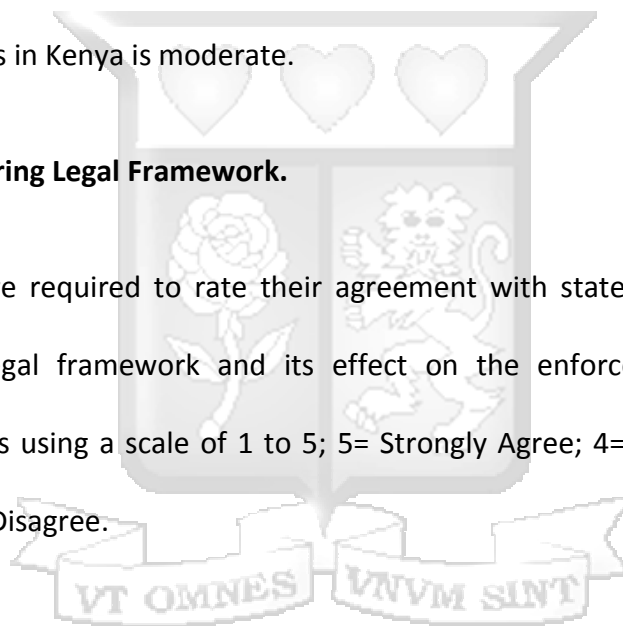


Table 4.9: Money Laundering Legal Framework.

Statements	SD %	D %	NS%	A %	SA %	Total %
Kenya uses a whole crime approach in the fight against money laundering (ML).	0	0	0	43.4	56.6	100
The formulation of anti-money laundering policy in Kenya is reactive and unrealistic of the evolving money laundering dynamics.	0	0	1.8	38.1	60.2	100
Prevention of crime and antimoney launders Act (POCAML) 2012 has got inherent weakness.	0	0	0	33.6	66.4	100
Lack of harsh sentence in POCAML affect containment of money laundering in Kenya	0	0	0.9	48.7	50.4	100
There are effective structures to report money laundering suspicious transactions (STR) and suspicious activities (SAR) in Kenya	0	4.4	8.0	24.8	62.8	100
Globalization presents an enforcement vacuum in the fight against money laundering	0	0	20	40	40	100
Prevalence of economic crimes in Kenya is responsible for cases of ML in the country	0.9	0	0.9	52.2	46.0	100
Transnational organized crimes are sources laundered money in Kenya	0	4.4	8.0	24.8	62.8	100
There are delays in the detection and investigation of money laundering in Kenya.	0	10	10	80	0	100
The number of cases recommended to ODPP for prosecution is high.	50	20	0	30	0	100
Recommendations of prosecution to ODPP delay the processing of ML in Kenya.	0	10	0	90	0	100
Most of the cases recommended to ODPP for prosecution are referred back for further investigation.	0	0	0	36	64	100
Most of the cases recommended to ODPP for prosecution are closed.	55	23	6	0	16	100
Most cases forwarded to ODPP are approved for prosecution.	0	0	0	100	0	100
Most suspected money laundering and corruption are convicted by Kenyan courts.	0	0	6	94	0	100
The outcomes of most prosecuted cases are acquittal.	8	2	10	60	20	100
The litigation process in respect of ML cases takes long time to be concluded.	0	0	5	80	15	100
There is lack of coordination between the various anti- money laundering government	0	0	0	94	6	100

agencies in Kenya.						
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Source: Researcher (2021).

The results in table 4.5 show the responses from various statements that were used to measure money laundering legal framework. The respondents were required to indicate whether Kenya uses a whole crime approach in the fight against money laundering (ML). From the responses it was noted that majority of the respondents which represents 56.6% strongly agreed while 43.6% of the respondents agreed with the statement, meaning that Kenya uses a whole crime approach in the fight against money laundering (ML). On whether the formulation of anti-money laundering policy in Kenya is reactive and unrealistic of the evolving money laundering dynamics, the study noted that majority of the respondents which represents 60.2% strongly agreed, 38.1% of the respondents agreed, and 1.8% of the respondents were not sure. Though the findings reveal that Kenya uses a whole crime approach in combating money laundering, it as well points that the formulation of anti-money laundering policy in Kenya is reactive and unrealistic of the evolving money laundering dynamics and therefore cannot effectively control the menace of money laundering.

The findings settled with statistics from various AML actors which demonstrate a widespread money laundering scenario in Kenya. In its 2018 study on illicit financial flow, the partnership for Africa social and governance research indicated that since 2011 Kenya has been losing KES 40 billion through tax evasion. The transparency international (TI) in its 2018 corruption perception index indicated that Kenya scored 27%, which is much below

the world average of 43% and the African average of 31% and was ranked position 144 out of 180 listed countries. The rating is worse than the 28% scored in 2017.²⁵² The 2019 Basel institute risk assessment, rated Kenya as the seventh most risk money laundering country in the world.²⁵³ The global economic crime and fraud survey 2018 by price water coopers indicate that Kenya had a 75% corruption prevalence rate which is much higher than the world average of 49% and the African average of 62%.

It was also important to establish whether prevention of crime and anti-money launders Act (POCAMLA) 2012 has got inherent weakness. Majority of the respondents which represents 66.4% strongly agreed, while 33.6% of the respondents agreed. This indicates that prevention of crime and antimony launders Act (POCAMLA) 2012 has got inherent weakness. On average majority of the respondents which represents 50.4% strongly agreed on the statements lack of harsh sentence in POCAML affect containment of ML. The study also noted that on average 48.7% agreed with the statements, 0.9% of the respondents were not sure. It was noted that lack of harsh sentence in POCAML affect containment of ML. This information was also sought from qualitative data, where one of the respondents (n=1) noted, "Prevention of crime and antimony launders Act (POCAMLA) 2012 has a weakness in that there is no deterrent harsh terms or sentences that can scare away potential ML criminals. This further encourages criminals to perform money laundering."

The study agrees with Gikonyo (2018) the challenge combating money laundering is not the presence of the law per se but the existing loopholes in the law flamed by complications in the legal justice process including but not limited to leakage of information to suspects who

²⁵² The transparency international (TI), Corruption Perception Index, 2018.

²⁵³ Basel Committee on Banking Supervision. "Anti-money laundering Index, 2019.

in turn transfer the ill obtained assets or close suspicious accounts.²⁵⁴

On whether there are effective structures to report money laundering suspicious transactions (STR) and suspicious activities (SAR) in Kenya. The results show that majority of the respondents which represents 62.8% strongly agreed, while 24.8% of the respondents agreed. Only 8.0% of the respondents were not sure and 4.4% of the respondents disagreed. This indicates that there are effective structures to report money laundering suspicious transactions (STR) and suspicious activities (SAR) in Kenya. Majority 40% of the respondents strongly agreed that globalization presents an enforcement vacuum in the fight against money laundering, 40% of the respondents agreed while 20% of the respondents neither agreed. This indicated that Globalization presents an enforcement vacuum in the fight against money laundering. This opinion was also shared by three key informants (n=3) who observed, "The of globalization has further escalated the issue of money laundering. This is associated with the global networks of criminals who operate as groups making ML a global scale crime."

This resonates with studies conducted by Moshi (2007), Borlini and Arnone (2010), Turner (2011), Mutua (2017), and Stefan (2019), which generally revealed that globalization has created a policing ambiguity for states while allowing criminals to commit crimes in one destination, hide in another and live elsewhere thus constricting states from combating transnational crimes money laundering included single handedly.

²⁵⁴ Gikonyo, Constance. "Detection mechanisms under Kenya's anti-money laundering regime: omissions and loopholes." *Journal of Money Laundering Control* 21, no 1. (2018): 59-70.

On whether prevalence of economic crimes is responsible for cases of ML in Kenya? The results show that majority of the respondents which represents 52.2% agreed, while 46.0% of the respondents strongly agreed. Only 0.9% of the respondents were not sure and 0.9% of the respondents strongly disagreed. This indicates that prevalence of economic crimes is responsible for cases of ML in the country.

The results shows that majority of the respondents which represents 62.8% strongly agreed, while 24.8% of the respondents agreed, 8.0% of the respondents were not sure while 4.4% of the respondents disagreed. This indicates that transnational organized crimes are sources laundered money.

Studies done by Arnone and Borlini (2010), Chu in Davidson (2014), and Borlini (2017) similarly affirms the same and reveal that the nerve vein of Money laundering is the offences that produce the soiled money in need of washing. Hutmann et al also held that the usage of clean sourced money in financing organized crime like terrorism forms part of the interconnection. Equally, the global financial integrity (2017) assessed that \$1 trillion is moved out of developing and emerging economies because of crime, corruption and tax evasion.

From the findings, majority 80% of the respondents agreed that there are delays in the detection and investigation of money laundering in Kenya, 10% of the respondents neither agreed while 10% of the respondents disagreed. This indicated that there are delays in the detection and investigation of money laundering in Kenya. Majority 50% of the respondents strongly disagreed that the number of cases recommended to ODPP for prosecution is high, 30% of the respondents agreed while 20% of the respondents disagreed. This indicated that

the number of cases recommended to ODPP for prosecution is not high. From the findings, majority 90% of the respondents agreed that recommendation of prosecution to ODPP reduces effectiveness in combating ML while 10% disagreed with the statement. This indicated that recommendation of prosecution to ODPP increase bureaucratic networks that ultimately lengthen litigation process thus reduces the effectiveness in combating ML. Similarly, an observation from a key informant was that, “Bureaucracy between and within the law enforcement agencies is a drawback to fighting money laundering as it takes long for one agency to clear and the other to take action.”

Majority 64% of the respondents strongly agreed that most of the cases recommended to ODPP for prosecution are referred back for further investigation while 36% agreed. From these findings, the researcher noted that most of the cases recommended to ODPP for prosecution are referred back for further investigation. Majority 55% of the respondents strongly disagreed that most of the cases recommended to ODPP for prosecution are closed, 23% disagreed, 6% neither agreed while 16% agreed. From these findings, the researcher generally noted that most of the cases recommended to ODPP for prosecution are not closed but are brought back to investigators for further investigation.

Majority 60% of the respondents agreed that outcome of most prosecuted cases is acquittal, 20% strongly agreed, 10% neither agreed, 4% strongly disagreed while 2% disagreed. From these findings, the researcher noted that outcome of most prosecuted cases is acquittal. From the findings, majority 94% of the respondents agreed that the litigation process in respect of ML cases takes long time to be concluded while 10% disagreed with the statement. This indicated that the litigation process in respect of ML cases takes long time to be concluded.

In nutshell the study isolates the problem as an issue of poor investigation and lack of proper coordination occasioned by bureaucratic inconveniences. Which tally with the Basel (2019) report which established that in the 80% Suspicious reports (SR) availed to law enforcers; only 23% are effectively investigated and prosecuted. It is furthermore explained in Argarwal, Saymour, Mutua, Borlini and Arnone, who established that the increasing upsurge of money laundering dynamics sired by exploitation of advanced technology and the secrecy with which ML is done subject law enforcement to investigation trails thus cases are not sufficiently proofed.

Finally, the respondents were required to indicate a Yes or No answer on the following questions:

- Is the legal framework sufficient to effectively combat money laundering?
- Does lack of prosecutorial powers affect the effectiveness of investigation?
- Are there delays in prosecuting money laundering cases in Kenya?

To which all the respondents indicate yes. Therefore, the researcher noted that: the legal framework is sufficient to effectively combat money laundering; lack of prosecutorial powers affects the effectiveness of investigation; there are delays in prosecuting money laundering cases in Kenya and that investigations cause delay in the prosecution of money laundering cases.

The study settles with Gikonyo (2019) who found out that the presence of Law and enforcement measures is not in question but the big deal is effective implementation. Which also concur with a study by Arnone and Borlini (2010) that linked ineffectiveness to enforce AML law on lack of resources and lack of political will

4.3.4. Anti-Money Laundering Preventive aspects.

This study sought to establish anti- money laundering preventive measures. The respondents were asked to provide their views and opinions on various statements that helped to establish anti- money laundering preventive measures. The respondents were asked to respond with YES or NO.

Table 4.10: Anti Money Laundering Preventive Measures.

Statements	YES %	NO %
Are there institutional written policies, procedure or guideline designed to assist reporting?	100	0
Does your organization have mechanism to monitor the designated reporting institutions?	100	0
Does the money laundering reporting requirement cover any of the following?	[v]	[]
➤ Casinos	[v]	[]
➤ Internet banks/Online accounts	[v]	[]
➤ Internet gambling sites	[v]	[]
➤ Money service business- Telecommunication companies	[v]	[]
➤ Money transfers e.g Hawala	[v]	[]
➤ Offshore banks	[v]	[]
➤ Shall banks	[v]	[]
➤ Foreign government entities	[v]	[]
➤ Senior foreign political officials/Associates, family members	[v]	[]

➤ Legal professional bodies	[✓]	[]
➤ Accounts professional bodies	[✓]	[]
➤ PEP entities	[]	[]
➤ Mainstream government institutions	[✓]	[]
➤ Trust companies	[✓]	[]
➤ Crypto currency and use of Bit coins (Digital currency)	[]	[]
➤ Non- governmental organizations (NGO'S)	[]	[]
Do the designated reporting institutions demonstrate willingness in submitting suspicious transaction reports (STR) and suspicious activities reports (SAR)?	100	0
Does your organization have mechanism(s) to monitor the transaction and activities of designated reporting institutions?	100	0
Are there any independent audits conducted on the reporting institutions to establish compliance?	100	0
Has your institution taken any legal or and administrative action against persons violating AML statutes in the last one year?	100	0

Source: Researcher (2021).

From the findings in table 4.6, all the respondents 88 which represented 100% response indicated YES to all the questions asked. Meaning most of the sectors apart from the mainstream government organs are covered by the reporting obligations. Similarly, key informants also agreed that there were written policies to guide on handling money laundering. One respondent noted, “We can authoritatively say that in Kenya we have

institutional written policies, procedure or guideline designed to assist reporting of ML practices. These are supported by regular independent audits, with some key administrative actions taken on some suspected criminals”

In the same range the study sought to find out how often does the designation institutions deliver reports.

Table 4.11: How Often Does the Designation Institutions Deliver Reports.

Category	Frequency (F)	Percentage (%)
Annually	6	7
Biannual	22	25
Monthly	33	38
As situation demand	27	30
Total	88	100

Source: Research data (2021).

From the study findings, majority 38% of the respondents indicated that the reports are delivered monthly, 30% of the respondents indicated as situation demand, 25% of the respondents indicated biannual while 7% of the respondents indicated annually. This indicated that the designation institutions deliver reports monthly.

De Vido in his (2014) study come with similar observations and notes that enforcement organs do not initiate enough public- private or private- private networks and therefore bar themselves from accessing rich intelligence base harbored by the private sectors.

4.3.5. Institutional Capacity.

The respondents were required to rate their agreement with statements regarding institutional capacity to enforcement anti-money laundering regulation using Likert scale of 1 to 5; 5= Strongly Agree; 4= Agree; 3=not sure 2= Disagree 1= Strongly Disagree.

Table 4.12: Institutional Capacity.

Statement	1	2	3	4	5	Total
Anti-Money Laundering (AML) enforcement agencies in Kenya have adequate financial resources to enforce anti-money laundering (AML) statutes.	0	0	4.4	54.0	41.6	100
AML investigators are not adequately trained to handle technological aspects of money laundering.	0	1.8	0	42.5	55.8	100
Shortage of forensic investigators slow prosecution of Money laundering cases in Kenya.	0.9	0	0	46.9	52.2	100
The AML enforcement agencies have adequate staffs trained in various core competencies.	1.8	0	5.3	53.1	39.8	100
There is effective coordination among the AML enforcement agencies.	0	4.4	4.4	45.1	46.0	100

Source: Researcher (2021).

The study sought first to establish whether the AML enforcement agencies have adequate resources to enforce AML statutes. Majority of the respondents which represented 54.0% agreed, 41.6% of the respondents strongly agreed with the statement and 4.4% of the respondents were not sure. This indicates that the AML enforcement agencies have adequate resources to enforce AML statutes. This indicates that there are other causes of ineffective enforcement beyond the specific normal financial resources.

Majority of the respondents which represents 55.8% strongly agreed and 42.5% of the respondents agreed that enforcement agencies have shortage of AML forensic investigators. Only 1.8% of the respondents disagreed. This means that according to the opinions and

views of the respondent's enforcement agencies have shortage of AML forensic investigators.

On whether AML investigators are not adequately trained to handle technological aspects of ML, majority of the respondents which represents 52.2% strongly agreed and 46.9% of the respondent agreed with the statement. Only 0.9% of the respondents strongly disagreed. This indicates that according to the respondents AML investigators are not adequately trained to handle technological aspects of ML.

Majority of the respondents 53.1% agreed that shortage of forensic investigators slow prosecution of cases, 39.8% of the respondents strongly agreed, 5.3% of the respondents were not sure while 1.8% of the respondents strongly disagreed. This shows that according to the views of the respondents it is indicated that shortage of forensic investigators slow prosecution of cases. The study sought to find out from the respondents whether human resource capacity affects the investigation and prosecution of money laundering cases. The findings were as shown in table 4.9.

The research in table 4.2 revealed that majority 43% of the respondents are below 30yrs of age and another majority of 53% has only served for 3years which points to an institution with low rates of retention explaining the gaps in necessary skills and competences experienced by the enforcement institutions.

Table 4.13: Effect of human resource capacity on the investigation and prosecution.

Category	Frequency (F)	Percentage (%)
Yes	84	95
No	4	5
Total	88	100

Source: Research (2021).

From the study findings in table 4.9, majority 95% of the respondents indicated Yes while 5% of the respondents indicated No. From the analysis it was noted that human resource capacity affects the investigation and prosecution of money laundering cases.

The study thus offers comparable outcome with a study by Kukkuk (2010) who examined the capability of South African police institutions to combat cross border crimes and observe that the institutions lack resources, doctrines and competences key in handling such kind of crimes.²⁵⁵

The study sought to know from the respondents whether the financial resources deployed to the organization sufficient to facilitate enforcement activities. Table 4.9 shows how they responded.

²⁵⁵ Kukkuk Leon. Cooperation and Accountability in the Cross- border policing.

Table 4.14: Sufficiency of financial resources deployed to the organization

Category	Frequency (F)	Percentage (%)
Yes	59	67
No	29	33
Total	88	100

Source: Research (2021) .

From the study findings in table, majority 67% of the respondents indicated Yes while 33% of the respondents indicated No. From the analysis the researcher noted that the financial resources deployed to the organization sufficient to facilitate enforcement activities.

4.3.6. International Cooperation.

The study sought to find out from the respondents to what extent is international cooperation is a challenge to the enforcement of AML regulation.

Table 4.10 shows the response from the respondents.

Table 4.15: International Cooperation.

Category	Frequency (F)	Percentage (%)
To very great extent	44	50
To moderate extent	37	42
To low extent	7	8
Total	88	100

Source: Research (2021).

From the study findings in table 4.10, majority 50% of the respondents indicated that international cooperation is a challenge to the enforcement of AML regulation to a very great extent, 42% of the respondents indicated moderate extent while 8% of the respondents indicated low extent. From the qualitative information, all the respondents (n=5) noted that there was a great extent of international cooperation between Kenya's law

enforcement agencies and the international counterparts. “The link with Interpol, US’s FBI and CIA among other international recognized agencies has helped Kenya in playing a key role in arresting cases of money laundering.”

The respondents were required to indicate the extent to which aspects of international cooperation affects the enforcement of anti-money laundering regulation using a scale of 1 to 5; 5= to a very great extent, 4 = to a great extent, 3 = a moderate extent, 2 = low extent and 1 = to no extent at all.

Table 4.16: Aspects of global cooperation affecting enforcement of AML regulation.

Statements	NE	LE	ME	GE	VGE
Lack of international cooperation	0	4.4	4.4	45.1	46.0
Lack of cross border correspondence	2.7	0	9.7	48.7	38.9
Incompatible national values	0	0	16.0	39.9	44.2
Incompatibility of approaches	0	8.0	8.0	29.2	54.9

Source: Researcher (2021).

The respondents were asked to indicate whether lack of international cooperation affect the fight against ML. The results shows that majority of the respondents which represents 46.0% indicated to a very great extent, 45.1% of the respondents indicated great extent, 4.4% of the respondents indicated moderate extent and another 4.4% of the respondents indicated low extent. This shows that according to the respondents’ lack of international cooperation affect the fight against ML to a very great extent.

On cross border correspondence, majority of the respondents which represents 48.7% indicated very great extent while 38.9% of the respondents indicated great extent. Only 9.7% of the respondents’ moderate extent while 2.7% of the respondents indicated no

extent at all. This means that cross border correspondence affects enforcement of anti-money laundering regulation to a very great extent.

On compatibility of approaches, 44.2% of the respondents indicated very great extent, 39.9% of the respondents indicated great extent, 16.0% of the respondents indicated moderate extent. This shows that compatibility of approaches affects enforcement of anti-money laundering regulation to a very great extent. Majority of the respondents which represents 54.9% indicated very great extent, 29.2% of the respondents indicated great extent, 8.0% of the indicated moderate extent while another 8.0% of the respondents indicate a low extent. This means that understanding of proceeds of crime affect enforcement of anti-money laundering regulation to a very great extent. The study sought to find out from the respondents whether there are cooperation difficulties in investigating money laundering outside Kenya. Figure 4.16. Shows the response.

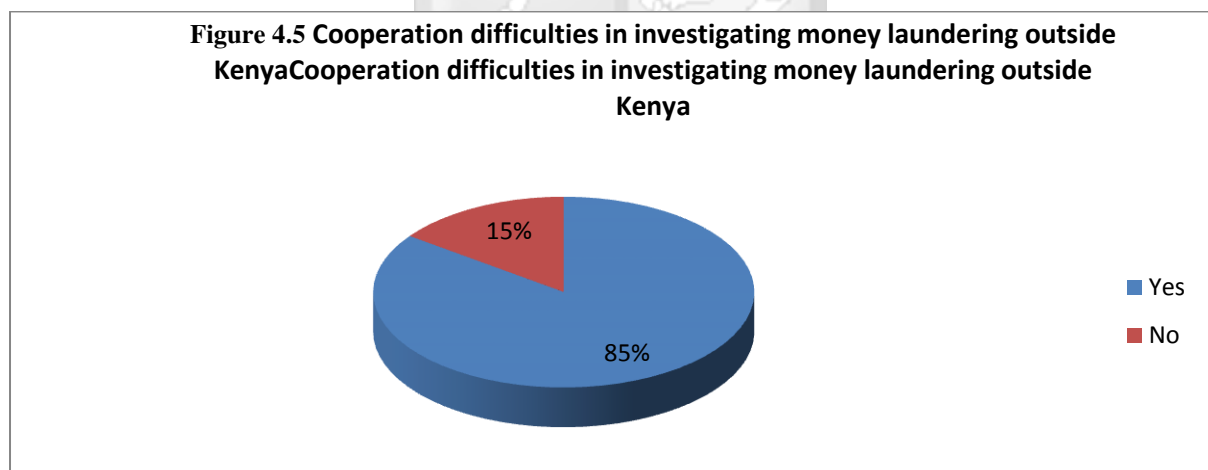


Figure 4.16: Cooperation difficulties in investigating money laundering outside Kenya.

Source: Research (2021).

From the study findings in figure 4.5, majority 85% of the respondents indicated that there are cooperation difficulties in investigating money laundering outside Kenya while 15% of

the respondents indicated that there are no cooperation difficulties in investigating money laundering outside Kenya. From the findings it was noted that there are cooperation difficulties in investigating money laundering outside Kenya due to adequate resources, difference in domestic laws and sovereignty issues.

Compatibly Marcos (2018) while assessing mega corruption in Brazil observe that Brazilian law enforcement institutions were able to domestically check the crime and make agreement with most states because of its institutional resource muscle and esteemed political will.

4.4. Inferential Analysis (Regression Analysis).

Multiple linear regressions were used to establish the significance of association between the independent variables of money laundering framework, anti-money laundering enforcement measures, institutional capacity and international cooperation and the dependent variable, the state of combating money laundering. The multivariate analysis was to check how the overall model, involving all the independent variables, was influencing the dependent variable, the state of combating money laundering.

4.4.1. Model Summary.

Table 4. 17: Model Summary.

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.770a	0.593	0.58	0.639

a Predictors: (Constant), Money laundering framework, Anti-money laundering enforcement measures, Institutional capacity, and international cooperation

The model and the four variables of Money laundering framework, Anti-money laundering

enforcement measures, institutional capacity, and international cooperation were associated with a 58.0% change in the state of combating money laundering.

The inferred findings echo a similar study by Mwangi (2018) who sought to establish factors influencing the adoption of anti-money laundering regulations by commercial banks in Kenya and found out that law enforcement measures, institution capacity, international cooperation and technological advancement in that order affect the extent to which banks implement AML regulatory.²⁵⁶

4.4.2. ANOVA.

Analysis of variance (ANOVA) was conducted to show the goodness of fit of the model, showing whether any independent variables had significant association with state of combating money laundering.

Table 4. 18: ANOVA.

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	57.21	4	19.07	46.658	.000b
	Residual	39.237	84	0.409		
	Total	96.448	88			

a Dependent Variable: state of combating money laundering

b Predictors: (Constant), Money laundering framework, Anti-money laundering preventive measures, Institutional capacity, and international cooperation

The model was significant, owing to the fact that the significance value of 0.000 was below the alpha value of 0.05. The independent variables therefore had significant influence on

²⁵⁶ Peter, Mwirigi, Maina, Factors influencing adoption of Anti-money Laundering Regulations by Commercial Banks in Kenya, Master thesis, Nairobi University, 2018.

the state of combating money laundering in Kenya. The F value was 46.7, being significantly higher than absolute 2, thus the model was considered fit, and the variables were considered as significant predictors of combating money laundering.

4.4.3. Regression coefficients.

These were used to show how individual variable reacted to the state of combating money laundering.

Table 4. 19: Regression Coefficients.

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	0.228	0.152		1.501	0.137
	Money laundering framework	0.262	0.122	0.268	2.148	0.034
	Anti-money laundering enforcement measures	0.283	0.113	0.29	2.511	0.014
	Institutional capacity	0.461	0.131	0.4	3.521	0.001
	International cooperation	0.408	0.055	0.455	7.37	0.000

a Dependent Variable: the state of combating money laundering

The four variables were significant predictor variables of state of combating money laundering. Changes in Money laundering framework (p-value of 0.034), Anti-money laundering enforcement measures (p-value of 0.014), Institutional capacity (p-value of 0.001) and, international cooperation (p-value of 0.00) were significant predictors of the state of combating money laundering in Kenya as their p-values were below the alpha value of 0.05.

The multilinear regression results were presented in the following formula;

$Y = a + B_1 X_1 + B_2 X_2 + B_3 X_3 + B_4 X_4 + e$; where Y is the state of combating money laundering in Kenya, and a is the y intercept when x is zero. The B are the regression coefficients drawn from the and the X coefficients is the independent variables. The e is the error term. The X_1 to X_2 are as follows; X_1 = Money laundering framework; X_2 =Anti-money laundering enforcement measures; X_3 =Institutional capacity; and X_4 =International cooperation.

The following regression result was obtained:

$$Y = 0.228 + 0.262 * X_1 + 0.283 * X_2 + 0.461 * X_3 + 0.408 X_4 + 0.152$$

From the model, when other factors (the four independent variables) are at zero, the state of combating money laundering is 0.228. Holding other factors constant, a unit increase in the level adhering to Money laundering framework would lead to 0.262 (p=.034) times increase in combating money laundering in Kenya. Similarly, holding other factors constant, a unit increase in Anti-money laundering enforcement measures would lead to 0.283 (p-value of 0.014) times increase in combating money laundering in Kenya. Further, holding other factors constant, a unit increase in enhancing institutional capacity would lead to 0.461 (p-value of 0.001) times increase in combating money laundering. Further, while holding other factors constant, a unit increase in international cooperation would lead to 0.408 (p-value of 0.001) times increase in combating money laundering.

CHAPTER FIVE: FINDINGS, CONCLUSION AND RECOMMENDATIONS.

5.1. Introduction.

The chapter provides the discussion of findings, gives the conclusions and recommendations of the study based on the objectives of the study.

5.2. Summary of the Findings.

The study found that there are regulations and enforcement measures to combat money laundering in Kenya but its actualization is faced with challenges.

5.2.1. Money Laundering Legal Framework.

The study found that anti-money laundering legal framework is marred with loopholes which curtail its effective enforcement. This resonates with Gikonyo (2018) who established that it is not the absence of the law per se but its inherent loopholes coupled with lack of willingness by enforcers, length of the litigation process and delay in prosecution that lay-back efforts to combat money laundering in Kenya.

As such, policymakers ought to enact strict legislation that can capacitate law enforcement agencies and relevant institutions to fight money laundering activities in Kenya. The study further brings out a burning need to train, sustainably and equipped law enforcers with divergent competencies more so technological aspects key to the monitoring and investigation of money laundering and predicate crimes. This concurs with a study by Chat Le Nguyen (2012) on mutual assistance within ASEAN region and found out that lack of enough training by law enforcers affects the effective implement of the law.

From the regression analysis, it was established that having anti-money laundering legal framework was a significant predictor in combating money laundering in Kenya.

These results coincide with the findings by Mwangi (2018) and Johnson (2012) who established that lack of effective legal enforcement mechanisms derails the implementation of AML regulations.

5.2.2. Anti-Money Laundering Enforcement Measures.

The study revealed that there are anti-money laundering enforcement measures in Kenya to a great extent. From the results, AML policy is enforced through varied of measures which include investigation, prosecution, punishment, extradition, legal mutual assistance seizure and confiscation. It was further established that having anti-money laundering enforcement measures in place was a significant predictor in combating money laundering in Kenya.

The study resonates with Gikonyo (2019) who established that the presence of Law and enforcement measures is not in question but the deal is effective implementation. A study by Arnone and Borlini (2010) blame ineffectiveness on lack of resources and political capita. Mutua (2017) and Hopton (2016) also indicate that traditional enforcement practices in its ideal meaning have been ineffective in combating ML and therefore the existing anti-Money Laundering structures should co- evolve with technology.

5.2.3. Institutional Capacity.

The study found that institutional capacity affects the adoption of anti-money laundering regulations in Kenya to a great extent. In addition, the study established that internal resources and exposure to money laundering positively affects the adoption of anti-money

laundering regulations in an organization. A study by Arnone and Borlini (2010) affirms that the enforcement of money laundering in emerging economies is confronted by inadequate resources, lack of political will and corruption that circumvent government systems. As such, the organizational management should offer staff training on anti-money laundering issues and emphasize on the need for honest and of integrity among the employees. Further, from the regression analysis, it was established that strengthening institutional capacity was a significant predictor of combating money laundering in Kenya.

These results are in agreement with Mei and Zhou (2015) who pointed that one of the strategic approaches through which to resolve the challenges of institutional capacity was through creating the employee's required personality as well as inspiring honest and of integrity.

Subbotina (2014) found that lack of skills, training, and resources often hinders the capacity to establish and prevents competent supervisory authorities from conducting adequate oversight of AML. In the same view, Turner (2011) indicated that an effective implementation of AML regulations requires that institutional elements be in place, including good regulatory framework, appropriate measures to prevent corruption, rule of law, government effectiveness, culture of compliance and an effective judicial system.

5.2.4. International Cooperation.

The study established that international cooperation affects the adoption of anti-money laundering regulations in a moderate extent. From the study, cross border correspondence and international regulation governing proceeds of crime affect the adoption of AML regulations to a great extent. In addition, from the regression analysis, it was established

that having strong international cooperation was a significant predictor of combating money laundering in Kenya.

These results concur with Joosten (2018), Mugarura (2017), Ferwerda (2019) who reported that relationships between economies are based on mutual noninterference in one other's domestic affairs which render international cooperation and mutual assistance arrangements in the adoption of AML regulations more challenging and time consuming. Chat Le Nguyen (2012) while conducting a study on ASEAN states found out that regional cooperation is jeopardized by debates around what constitutes money laundering among jurisdictions. Farwerda (2010), Joosten (2018), Borlini (2017) supports and offers that varying commitment grounded on competing interests generally curtails esteemed cooperation in combating money laundering.

To deal with cross boarder correspondence, compatibility of approaches and regulation of proceeds from crime Ping (2010) established that organizations should limit the types of permitted online services or the amount of such transactions, prohibit financial institutions not licensed in a particular jurisdiction from offering their online services in that jurisdiction, develop new information technology capabilities that will permit both the detection of suspicious online transactions and verification of the customer, establish new procedures that will facilitate the ability of financial institutions to truly know their customers over the life of the business relationship.

5.3. Conclusions of the Study.

The crime of money laundering being a sanitizer to predicate offences has enabled criminal activities to continue thriving, consequently dehydrating the government of the much-needed capacity to attend to human security concerns like the provision of current COVID-19 medical amenities, among other social needs. It has sufficed out from the study that money laundering is an escape bridge for robbers of public resources. Basically, without dirty money, then no money laundry system will stand the cost and test of time. Evidently, money laundering activities service because of the inability of law enforcers to bring down the bridge connecting the proceeds of underground economy to the mainstream production.

The study thus fixes the inability to deal with money laundering argument in the purview of law enforcement but accept that other aspects within both the control of the mandated institutions as well as foreign externalities are partly to blame. In the mix of the failure bag are lack of coordination, poor training and retention strategy, bureaucratic competitions, inadequate resources, politicization of policing, Lack of synergy between theory and practice and sovereignty issues which water down international cooperation.

The war on money laundering as evolved a long way culminating to global initiatives key being the initiation of FATF supported by IMF and WB. The institutions have since been pursuing and strengthening the implementation of anti- money laundering regimes across the global domain. The study observes that despite demonstrated efforts everything is no bed of roses in the AML circles as technological aspects mutates the operational environment siring new trends and dynamics exposing enforcement agencies to be reactive

rather than being proactive. For instance, while money launders are already utilizing cyber currency and encryption software the same remain a hard puzzle for the enforcement fraternity to crack.

The study further summons money laundering as a value instigated game, an observation that is in agreement with Buchanan who points out that vice and crime go hand in hand just as a horse and carriage do.²⁵⁷ The study found that international cooperation affects the adoption of anti- money laundering regulations by the various actors. Cross boarder correspondence, compatibility of approaches and regulation of proceeds of crime, differently affect the adoption of AML regulations in different destinations. Furthermore, technological advancements prove to be essential in the adoption of AML regulations especially in the modern era where most operations and transactions are carried out on virtual platforms.

Legitimization of virtual currency, electronic payment systems and digitized information pose challenge to the enforcement capabilities of the mandated institutions in Kenya. Equally, inferential analysis ranks law enforcement as a pivotal factor in the implementation of AML regulations followed by dating technological solutions, then international cooperation while institutional capacity contributes the least to the adoption of AML regulations in Kenya. Cross boarder correspondence, compatibility of approaches and regulation of what constitute proceeds of crime as similar bearing on the enforcement of AML regime.

²⁵⁷ June Buchanan (2017), money laundering through gambling devices, society and Business Review, Emerald publishing limited. vol.13, No.2, 2018 pp 217-237. DOI 10.1108/SRBR-08-2017-0057.

In addition, the study concludes that staff training and institutional doctrines have an impact in socializing and imposing certain values to the employees of the various institutions meant to enforce the adoption of AML regulations in Kenya. In most cases the imparted values and experiences don't promote inter institutional coordination, harmony and sharing of competencies, information and resources deemed paramount in solving some of the enforcement challenges

5.4. Recommendations from the Study.

The study recommends that there is need to strengthen the regulation and enforcement mechanism of combating money laundering in Kenya. This would target strengthening sanctions, fines and other punitive strategies available in order to ensure that the cost of engaging in money laundering surpasses its benefits.

It is also imperative to craft a clear coordination framework free of bureaucratic inconveniences to enable harmonious working relationship among the government bodies responsible for the implementation of the AML policy in Kenya.

The relevant policymakers should enact a policy that provide for some specific incentive that can cheer up FI and the DNFIB to effectively make STRs and SARs as envisaged.

The reporting requirement should as well be expanded to include government institutions previously considered as saint zones in order to nab money laundering transactions perpetuated by corrupt government gate keepers and their agencies. This ought to be packed by the adoption of Artificial Intelligence technology (AI) to help in analyzing massive data generated by the reporting institutions and by extension diminish the crying wolf

tension characterizing the reporting.

All in all, money laundering being a volatile affair is ever swift to adapt to new opportunities presented by dynamic operational environment. As such the importance of constant research should be emphasized. There has to be a synergy between theory and practice so as to ensure a comprehensive understanding of the issue of ML. Subsequent evaluation of AML policy and strategies is also paramount with a view to up scaled them to effectively address upcoming challenges.

In addition, and specific to the domestic level, the study recommends that staff training and doctrines ought to socialize and impose values of honesty, patriotism and integrity among the employees of the institutions meant to enforce the adoption of AML regulations in Kenya. The research notes that ethical issues are societally generated and transmitted. As such they are not confined to a particular institution(s). In view of this, policymakers ought to utilize the new window of opportunity presented by CBC education system and the decentralized governance to have the concept of ethical culture entrenched and practiced by young Kenyan citizen.

The researcher further allude that Kenya is rich in diverse traditional solutions to the menace of institutional graft battling Kenya. Traditional oaths can be administered upon appointment of county officials by community elders in order to get their morality back to mainstream. In the bog of Bloomfield dated 8th September 2014 quoted by Professor Gichure in her lecture notes on the question of moral philosophy in regard to happiness; postulate that some people could be better off being immoral so long as they can get away with it. Which imply that law alone in its contemporary ideals cannot uphold justice more so

in regard to political corruption in a capitalist society. This does not imply that there is no a superior being above all other beings but the researcher asks a pertinent question of what really happened to the African superior being “the gods” who used to reside in the forests, mountains and rivers perfectly similar to the ‘God’ of Moses. The gods that when appealed to instantly gave justice, rain, exposed the corrupt and resolved boundary disputes? Above all our African gods sustained good morals and conserved our environment, the environment that today has degenerated and is dominated by pollution and unique diseases. How then did we found ourselves only believing in a documented scripture that we don’t see where the God resides? The study proposes reinstatement of African value system as an interesting research area in quest to deal with modern challenges money laundering and predicate offences like corruption included.

Last but not least, owing to lack of an overall global government to whip the rest, coupled with the survival interests that characterize states, international cooperation and coordination necessary to enforce AML laws has proved futile. The laxity is demonstrated by lack of seriousness in intercepting proceeds of crime and arresting culprits. Discouraging non cooperating jurisdictions using sanctions does not bear expected fruits as it is not universally applied. As a core interest, Kenya should as it does wholesomely but in a more serious way apply domestic laws in dealing with money laundering. Of essence is cleansing its systems from corrupt dealings, tax evasion activities and trafficking of drugs, goods, human and wildlife products. Containing the mentioned activities will choke the black economy of the money needed to be laundered. This makes sense because an international effort to combat money laundering is as strong as its weakest point. This achieved, Kenya will then have the moral authority to raise the level of AML campaigns across its

neighborhoods.



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APPENDICES.

1. APPENDIX I: QUESTIONNAIRE.

This part comprises of questionnaires to be used to collect data from research participants who are officers assigned to perform enforcement responsibilities in the anti-money laundering Law enforcement agencies in Nairobi, Kenya.

This questionnaire is specifically used to collect data on “The Enforcement Aspects of Combating Money Laundering in Kenya”.

The participants are kindly requested to respond to the questions by putting a tick [] in the box matching the answer of choice or write answer(s) in the space provided if it is not included in the offered choices. The information given here will only be used for the purpose of this study and shall be treated with utmost confidentiality. The interviewees are advised to avoid indicating personal details or those of the organization they serve anywhere in this questionnaire as well as disregard answering questions that for whatever reason she or he cannot comfortably handle.

SECTION I. GENERAL INFORMATION.

1. Please indicate your gender.

Male []

Female []

Others []

2. What is your age bracket?

20-24[], 25-29[], 30-34[], 35-39[], 40-44 [], 45-49[] 50 and above [].

3. How long have you worked in this organization?

Below 5 years []

6-10 yrs []

11-15 yrs []

16-20yrs []

21-25years []

26-30yrs and above []

31years and Above []

4. Which section do you work in?

Operations. []

Investigations. []

Intelligence production. []

Legal and Asset recovery. []

Which other sections have you previously worked in.....

5. What is your current position in the organization?

Management []

Supervisory []

Staff []

6. What is your highest level of education?

KCSE []

Diploma []

Undergraduate []

Master []

PhD []

Please specify other areas of specialization.....

7. In your own judgment, what is the level of law enforcement efficacy in the fight against money laundering (ML) in Kenya?

Very High []

High []

Moderate []

Low []

Very Low []

SECTION II: ANTI -MONEY LAUNDERING REGULATORY AND ENFORCEMENT FRAMEWORK.

8. Kindly rate your agreement with the following statements regarding Anti-money Laundering legal framework and its effect on the enforcement aspects of combating money laundering in Kenya.

Use Likert scale of 1-5 where 5 is strongly agree, 4 is agree, 3 neither agree or disagree, 2 disagree and 1 strongly disagree.

Statements	1	2	3	4	5
Kenya uses a whole crime approach in the fight against money laundering (ML).					
The formulation of anti-Money laundering policy in Kenya is reactive and unrealistic of the evolving money laundering dynamics.					
Prevention of crime and anti-money laundering Act (POCAMLA) 2012 has got inherent weakness.					
Lack of harsh sentence in POCAMLA, 2012 affects the containment of money laundering in Kenya.					
There are effective structures to report money laundering suspicious transactions (STR) and suspicious activities (SAR) in Kenya.					
Globalization presents an enforcement vacuum in the fight against money laundering.					
Prevalence of economic crimes in Kenya is responsible for money laundering (ML) cases in the country.					
Transnational organized crimes are main sources of laundered money in Kenya					
There are delays in the detection and investigation of money laundering in Kenya.					
The number of cases recommended to ODPP for prosecution is high.					
Recommendations of prosecution to ODPP delay the processing of ML cases in Kenya.					
Most of the cases recommended to ODPP for prosecution are referred back for further investigation.					
Most of the cases recommended to ODPP for prosecution are closed.					

Most cases forwarded to ODPP are approved for prosecution.					
Most suspects of money laundering and corruption are convicted by Kenyan courts.					
The Outcome of most prosecuted cases is acquittal.					
The litigation process in respect of ML cases takes long time to be concluded.					
There is lack of coordination between the various anti-money laundering government agencies in Kenya.					

9. Is the existing legal framework sufficient to effectively combat money laundering in Kenya?

Yes [] No []

If No, list down its inherent weaknesses.....

.....

10. Does lack of prosecutorial powers affect the work of money laundering investigators in Kenya?

Yes [] No []

Please explain your answer.....

11. In your own assessment, are there delays in processing money laundering cases in Kenya?

Yes [] No [], If the answer to the above question is Yes, Why?

.....

SECTION III: MONEY LAUNDERING PREVENTIVE MEASURES.

12. Please respond with YES or NO to the following statements.

Statements.	Yes	No
Does the Money laundering reporting requirement cover any of the following?	[]	[]
➤ Casinos	[]	[]
➤ Internet banks/ Online accounts	[]	[]
➤ Internet gambling sites	[]	[]
➤ Money service business- Telecommunication companies.	[]	[]

➤ Money transfers e.g Hawala	[]	[]
➤ Offshore banks	[]	[]
➤ Shell banks	[]	[]
➤ Foreign government entities	[]	[]
➤ Senior foreign political officials/Associates, family members	[]	[]
➤ Legal professional bodies	[]	[]
➤ Accounts professional bodies	[]	[]
➤ PEP and entities	[]	[]
➤ Trust companies	[]	[]
➤ Crypto currency and use of Bit coins (Digital currency)	[]	[]
Do the designated reporting institutions demonstrate willingness in submitting suspicious transaction reports (STR) and suspicious activities reports (SAR)?		
Does your organization have mechanism(s) to monitor the transaction and activities of designated reporting institutions?		
Are there any independent audits conducted on the reporting institutions to establish compliance?		
Has your institution taken any legal or and administrative action against persons violating AML statutes in the last one year?		

13. In your assessment are the administrative actions provided by the law sufficient to counter money laundering (ML) in Kenya?

Yes [], No []

If the answer to this question in No, what other administrative actions can be introduced?

.....

14. How often do the designated institutions deliver Suspicious transactions and suspicious activities reports?

Annually []

Biannual []

Monthly []

Weekly []

Daily []

As situation the demand []

15. Are currency detection machines and other disclosure systems applied at the Kenya's border points in order to curb Money laundering incidences?

Yes [] No []

16. Does your institution have a compliance software technology as one of the strategies to assist in automatic detection of suspicious transactions?

Yes [] No []

17. Other than the compliance software and currency detection machines, which other disclosure strategies are used to curb Money laundering across the Kenya's porous borders?

.....

18. Briefly describe the suspicious transaction reporting (STR) and the suspicious activities reporting (SAR) procedure in Kenya?

.....

19. Are there any intelligence-based methods used to monitor ML activities in Kenya?

Yes [] No []

If the answer to the above question is **yes**, please list down

.....

SECTION IV. INSTITUTIONAL CAPACITY.

20. Please rate your agreement with the following statements regarding institutional capacity to enforcement anti-money laundering regulation. **Use Likert scale of 1-5. where 5 is strongly agree, 4 is agree, 3 neither agree or disagree, 2 disagree and 1 strongly disagree.**

Statements	1	2	3	4	5
Anti-Money Laundering (AML) enforcement agencies in Kenya have adequate financial resources to enforce anti-money laundering (AML) statutes.					
AML investigators are not adequately trained to handle technological aspects of money laundering.					
Shortage of forensic investigators slow prosecution of Money laundering cases in Kenya.					
The AML enforcement agencies have adequate staffs trained in various core competencies.					
There is effective coordination among the AML enforcement agencies					

21. In your own assessment, are the law enforcement apparatus effective in combating money laundering in Kenya?

Yes [] No []

22. In your own assessment what can be done to make the enforcement of AML regulation more effective in Kenya?

.....
.....

23. If your institution was to train its staff in the enforcement of AML statute, which area(s) of training would you recommend?

.....

24. In your own assessment, are the AML law enforcers motivated and willing to combat ML?

Yes [] No []

If your answer to the above question is **No** suggest what can be done to motivate them.

.....

SECTION V: INTERNATIONAL COOPERATION AND INTER AGENCY CORDINATION.

25. To what extend is the lack of international and inter agency cooperation a challenge to the enforcement of AML regulations in Kenya?

To very great extent [] To a great extent [] To a moderate extent [] To a low extent [] To no extent at all [].

26. Kindly rate on a scale of **1-5** the extent to which the following aspects of international and inter agency cooperation affect the enforcement of anti-money laundering regulation in Kenya?

In the scale, 5 mean -To a very great extent, 4 Means -To a great extent, 3 Means-To a moderate extent, 2 Means-To a low extent and 1 Means-To no extent at all.

Aspects	1	2	3	4	5
Lack of international cooperation.					
Lack of cross border correspondence.					
Incompatible national values					
Incompatibility of approaches.					
Lack of common understanding of what constitute proceeds of crime.					
Existence of ungovernable spaces and actors.					
Inadequate private-public partnership					
State sovereignty and the politics of international law					
Lack of proper interagency coordination.					
Unhealthy competition for resources control among the enforcement agencies in Kenya					
Lack of unity of purpose among the domestic enforcement institutions in Kenya					
Difference in institutional culture and SOPs					
Institutional bureaucracies					
Secrecy impeding proper sharing of information (Gate keeping)					
Supremacy battles among the AML enforcement agencies in Kenya.					

27. How does lack of cooperation limit the attainment of your organization's objectives?.....

28. How can international cooperation be strengthened to enhance the enforcement of AML statutes in Kenya?

29. Does your organization have Standard Operating Procedures (SOPs)?

Yes [] No []

30. How does SOPs enhance your relationship with other organizations in the enforcement of Anti-Money Laundering Laws in Kenya?

31. Do you see any duplication of roles among the AML enforcement agencies in Kenya?
Yes [] No [].

What is the impact of this?.....

32. Do you understand the concept of a multiagency approach?
Yes [], No [].

33. Do the Anti-Money Laundering Enforcement agencies undertake a multiagency approach in the fight against Money Laundering in Kenya?
Yes [], No [].

34. If the answer to the above question is NO, Do you recommend this approach in the fight against ML in Kenya?
Yes [], No [].

Why?.....

35. If a government is to formulate an Anti-Money Laundering policy, what do you consider the most critical thing(s) that it needs to address?

SECTION VI. EFFECTS OF MONEY LAUNDERING TO KENYA’S NATIONAL ASPIRATIONS.

36. Please rate your agreement with the following statements regarding the effects of Money laundering to the Kenya’s national interest?

Use Likert scale of 1-5. Where 5 is strongly agree, 4 is agree, 3 neither agree or disagree, 2 disagree and 1 strongly disagree.

Aspects	1	2	3	4	5
Money laundering (ML) Deters foreign investment					
Money laundering (ML) agonizes diplomatic relations					
ML erodes the financial sector					

ML reduces government revenue					
ML distorts a legitimate economy					
ML Slows economic and social growth					
ML Fuel criminal activities					
ML promotes the manipulation of government systems through corruption.					
ML taint institutional image					
ML degrades national image					
ML constrains the state ability to provide essential services to the public					
ML reduces states borrowing capacity					
ML leads to an increase in public debt					
ML leads to unemployment					
ML distorts the allocation of resources					
ML leads to unfair distribution of wealth					
ML increase the cost of doing business in Kenya					

37. In your own assessment are the Kenya’s national values promoted?

Yes [] **No** []

If your answer to the above question is **No**, which of the national values has been deeply eroded?

.....

38. In your own assessment is the erosion of the above stated national values responsible for ML and corruption cases in Kenya? **Yes** [] **No** []

- END-



2. APPENDIX II: KEY INFORMANT INTERVIEW GUIDE

This part comprises a set of questionnaires to be used to collect qualitative data from research participants who are officers assigned to perform enforcement responsibilities in the anti-money laundering Law enforcement agencies in Nairobi, Kenya. The data is set to answer research objectives of a study titled, “The Enforcement Aspects of Combating Money Laundering in Kenya”. The participants are kindly requested to respond to the questions by expounding on what they know or perceive in relation to enforcement aspects of combating money laundering in Kenya.

1. Explain your role in the agency and how you assist in combating money laundering.
2. In your own judgment, what is the level of law enforcement efficacy in the fight against money laundering (ML) in Kenya? Expound.
3. Comment on the formulation of anti-Money laundering policy/framework in Kenya and its effectiveness in controlling ML?
4. What are the strengths and weaknesses of the Prevention of crime and anti-money laundering Act (POCAMLA) 2012?
5. Comment on the current preventing measures for money laundering in Kenya. Comment on digital currency platforms, suspicious transaction reports (STR) and suspicious activities reports (SAR).
6. Comment on the institutional capacity (training, resources, and human resources) of Anti-Money Laundering (AML) enforcement agencies in Kenya.
7. Comment on the international cooperation and inter-agency coordination success/failures in Anti-Money Laundering (AML) success.
8. Finally, comment on the effects of money laundering to Kenya’s national aspirations.

ii.

3. APPENDIX III: RESEARCH BUDGET.

EQUIPMENTS ACTIVITY	DESCRIPTION	UNIT COST	NO. OF UNITS	AMOUNT (Kshs)
Proposal	Typing and printing 80 pages @50 per page	50	80	4,000
	Photocopying of proposals	10	4 copies x80 x10	3,200
	Laptop	70,000	1	70,000
	Modem	3,000	1	3,000
	Library and other sources	20,000	1	20,000
	Transport	5,000	10	50,000
Pilot survey	Transport to and from the field	1000	2	2,000
	Photocopying of tools for piloting	10	50	500
	Lunch.	500	2	1,000
SPSS computer package	Data analysis	15,000	1	15,000
Thesis typing and printing	Typing and printing approximately 250 pages	50	250	12,500
Thesis printing of copies	250 pages	10	5 copies	12,500
Project binding	Binding of thesis at University price	500	5	2,500
Contingencies	10% of the total			19,200
Total				215,820.

Source: GOK and Self-Funded.

4. APPENDIX IV: WORK PLAN.

ACTIVITY DATE	Jun 2019-Feb 2020	Mar2020	Apr - July 2020	Oct 2020	Nov 2020	Dec 2020	Feb 2021	Mar c 2021	Apr 2021	Ma y 2021
Proposal writing										
Proposal defence										
Proposal correction and review										
Data collection										
Data analysis and Dissertation writing										
Final Dissertation Defence										
Dissertation correction and Binding										

5. APPENDIX V: INFORMED CONSENT LETTER.

TITLE OF STUDY.

“The enforcement Aspects of Combating Money Laundering in Kenya”

PRINCIPAL INVESTIGATOR

Fredrick Suter Chelimo.

PURPOSE OF STUDY.

You are being kindly asked to take part in a research study. In deciding to participate in this study, it is important that you understand what the research entails and why the research is being done. Please read the offered information carefully and be free to ask the researcher for any clarification or additional information as you may deem necessary.

The purpose of this research is to understand the implementation of existing regulations in the fight against money laundering in Kenya and establish the kind of challenges that curtail an effective enforcement of the policy.

STUDY PROCEDURES.

- ☐ You will be contacted and requested to participate in the study.
- ☐ The study is being conducted through questionnaires.
- ☐ The questionnaires will be delivered at a time and place that is convenient to you.
- ☐ In this regard, you will be required to provide answer to the interview questions.
- ☐ Each interview will last about 30 minutes.
- ☐ You may decline to answer any or all questions and you may terminate your involvement at any time if you choose.
- ☐ The Information collected will be summarized, analysed and used to respond to the study objectives.
- ☐ By participating in this study, you will contribute to the body of knowledge on combating money laundering in Kenya.
- ☐ It is hoped that the study findings shall be vital in the improvement of the anti-money laundering enforcement response, thus discouraging the perpetration of economic crimes in Kenya.

CONFIDENTIALITY.

- ☐ Your personal information will be anonymous. However, your response will not be anonymous.
- ☐ Every effort will be made by the researcher to preserve your confidentiality including the following:
 - ☐ Assigning code names/numbers for participants that will be used on all research notes and documents.
 - ☐ Keeping interview questionnaires and any other participant information in a locked file cabinet in the personal possession of the researcher.
 - ☐ Collected data will be kept confidential except in cases where the researcher is legally obligated to report specific incidents.

COMPENSATION.

Participation in the research is purely voluntarily and does not offer any compensation in any form to any study participants.

CONTACT INFORMATION.

If you have questions at any time about this study, or you experience adverse effects as the result of participating in this study, you may contact the researcher whose contact information is provided on the first page.

My contact details are as follows:

Institutional Affiliation: Strathmore University

Phone: 0722593326.

Email: fredrick.chelimo@strathmore.edu

If you have questions regarding your rights as a research participant, or if problems arise, which you do not feel you can discuss with the researcher be free to contact my supervisor whose contact information is availed below.

Institutional Affiliation: Strathmore University

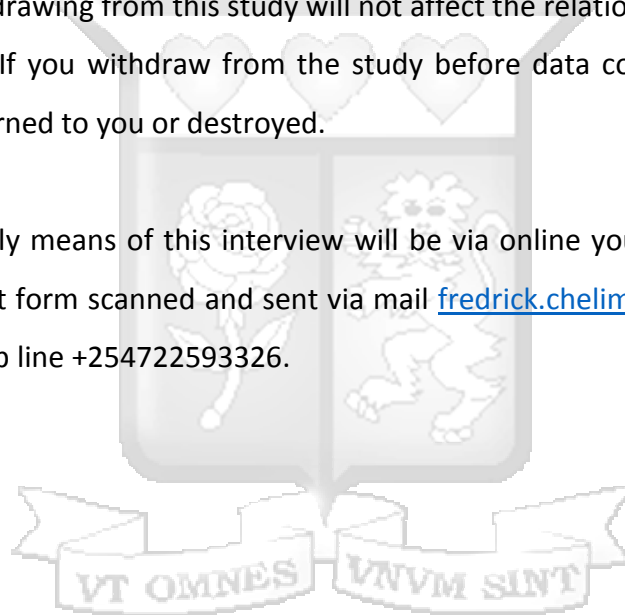
Phone: 0722764227

Email: mudida@strathmore.edu

VOLUNTARY PARTICIPATION.

Your participation in this study is voluntary. It is up to you to decide whether or not to take part in this study. If you decide to take part in this study, you will be asked to sign a consent form. After you sign the consent form, you are still free to withdraw at any time and without giving a reason. Withdrawing from this study will not affect the relationship you have, if any, with the researcher. If you withdraw from the study before data collection is completed, your data will be returned to you or destroyed.

In case where the only means of this interview will be via online you will be requested to have a signed consent form scanned and sent via mail fredrick.chelimo@strathmore.edu or through my WhatsApp line +254722593326.



6. APPENDIX VI: RESPONDENTS' CONSENT FORM

I have read and I understand the provided information and have had the opportunity to ask questions. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving a reason and without cost. I understand that I will be given a copy of this consent form. I voluntarily agree to take part in this study.

Participant's signature _____ Date _____

Researcher/Assistant signature _____ Date _____



7. APPENDIX VII: ETHICAL CLEARANCE CERTIFICATE.



26th July 2021

Mr Suter Fredrick,
fredrick.chelimo@strathmore.edu

Dear Mr Suter,

RE: An Assessment of Enforcement Aspects of Combating Money Laundering in Kenya.


This is to inform you that SU-IERC has reviewed and approved your above SU masters research proposal. Your application reference number is SU-IERC0990/21. The approval period is 26th July 2021 to 25th July 2022.

This approval is subject to compliance with the following requirements:

- i. Only approved documents including (informed consents, study instruments, MTA) will be used
- ii. All changes including (amendments, deviations, and violations) are submitted for review and approval by SU-IERC.
- iii. Death and life-threatening problems and serious adverse events or unexpected adverse events whether related or unrelated to the study must be reported to SU-IERC within 48 hours of notification
- iv. Any changes, anticipated or otherwise that may increase the risks or affected safety or welfare of study participants and others or affect the integrity of the research must be reported to SU-IERC within 48 hours
- v. Clearance for export of biological specimens must be obtained from relevant institutions.
- vi. Submission of a request for renewal of approval at least 60 days prior to expiry of the approval period. Attach a comprehensive progress report to support the renewal.
- vii. Submission of an executive summary report within 90 days upon completion of the study to SU-IERC.

Prior to commencing your study, you will be expected to obtain a research license from National Commission for Science, Technology and Innovation (NACOSTI) <https://research-portal.nacosti.go.ke/> and also obtain other clearances needed

Yours sincerely,



for: Dr Virginia Gichuru,
Secretary, SU-IERC

Cc: Prof Fred Were,
Chairperson; SU-IERC




Ole Sanzile Rd, Madrasia Estate, PO Box 59857-00200, Nairobi, Kenya. Tel +254 (0)703 034000
Email admissions@strathmore.edu www.strathmore.edu

8. APPENDIX VIII: NACOSTI RESEARCH PERMIT.



REPUBLIC OF KENYA


National Commission for Science, Technology and Innovation



NATIONAL COMMISSION FOR SCIENCE, TECHNOLOGY & INNOVATION

Ref No: **104953** Date of Issue: **22/July/2022**


RESEARCH LICENSE



This is to Certify that Mr.. fredrick chelimo *son of Strathmore University, has been licensed to conduct research in Nairobi on the topic: The Enforcement Aspects Of Combating Money Laundering in Kenya. for the period ending : 22/July/2022.*


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Director General
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9. APPENDIX IX: TURNITIN REPORT.



Document Information

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SA	Research Proposal_Peter Mwirigi 16_03445 Printed.doc Document Research Proposal_Peter Mwirigi 16_03445 Printed.doc (D40644600)		7
SA	Anti Money laundering deficiencies 1.doc Document Anti Money laundering deficiencies 1.doc (D109685438)		3





THESIS CORRECTION FORM

Name of Candidate: <i>CHELIMO FREDRICK SUTER</i>	Student Number: <i>MDIS 119121</i>
Faculty/School/Institute: <i>HUMANITIES AND SOCIAL SCIENCES</i>	Degree: <i>MASTER OF ARTS IN DIPLOMACY, INTELLIGENCE AND SECURITY</i>
Title of Thesis: <i>THE ENFORCEMENT ASPECTS OF COMBATING MONEY LAUNDERING IN KENYA.</i>	

Summarise the types of corrections done in your thesis (Attach a detailed report).

- (1) Structural issues (Numbering, table of content, spelling, repetition and foot notes.)*
- (2) Objective one and two collapsed into one and Research question Varied*
- (3) Strengthening of Literature Review.*
- (4) Triangulation of Qualitative and Quantitative data*
- (5) Providing Evidence of Qualitative data collection through key informant interviews (KIIS).*

Committee Members:

Principal Supervisor <i>PROF. ROBERT MUDIDA</i>	Signature: <i>R. Mudida</i>	Date: <i>17/10/2021</i>
Co-Supervisor	Signature:	Date:
Internal Examiner	Signature:	Date:
Director of Graduate Studies	Signature:	Date:

FRERDICK C. SUTER

MDIS 119121.

Final Thesis corrections report.

Title of the Thesis: The Enforcement Aspects of Combating Money Laundering in Kenya.

Following final defense done on the 10th of September 2021 via zoom to consider an oral defense of the above dissertation by Fredrick Suter for the award of the degree of Master of Arts in Diplomacy Intelligence and Security (MDIS) of Strathmore university, the panel under the chair of Dr. Maureen Syallow recommended that the candidate be awarded a pass with minor corrections as specified by the internal and external examiners.

The reports from the external and the internal examiners who are both members of the defense panel each pointed out areas in the dissertation that need to be corrected. The external examiner prof. Aparajita Biswas noted that there were repetitions in some paragraphs in the dissertation which are not desirable. On the other hand, the internal examiner Dr.Ochieng Kamudhaiyi pointed out nine structural issues and eleven substantive issues to be improved.

The candidate here in confirms to have done the proposed corrections.

In regard to the structural issues, the candidate ensured that there was uniformity and consistence in the numbering of the table of content as well as in the length and details of the

respective sub titles. Spelling mistakes, grammatical errors, repetition, foot notes, use of abbreviations and the general referencing were rectified and organized in a better way as recommended.

In the substantive issues realm, the objective one and two of the study was collapsed into one and respective research question varied to reflect the adjustment. Literature review was equally strengthened by adding contending perspectives in some areas found to be lacking. The processing of qualitative data collected by means of key informants interviews (KIIs) was visibly brought out and triangulated with the processed quantitative data in the analysis part. Evidence of the said KII,s interviews is provided and capture as appendix ii in the list of appendices.

The issue raised in respect to the chapter outline was fixed by rewriting it in continuous pros as recommended. Chapter two and three on the other hand were also fine-tuned, such that chapter two covers the evolution of money laundering and its mitigating factors whereas chapter three focuses on the response in combating money laundering a case of Kenya. Academic justification of the study was also refined as raised by the internal examiner. Lastly the usefulness of demographic data specifically age and gender factors in relation to law enforcement functions was demonstrated in the analysis section as pointed out.

Approval

Candidate...  17TH OCTOBER 2021.

Supervisor... PROF. ROBERT MUDIDA  17/10/2021