

**Countering Money Laundering in the Financial  
Services Sector in Kenya**

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## **Abstract**

Considering that there is limited research and literature on preventing money laundering in the financial services sector in Kenya, this study sought to endeavour to identify the anti-money laundering (AML) strategies and tools for combating the crime. Second goal was to evaluate the effectiveness of these AML measures or tools and explore remedial action for reducing this financial crime. The third objective was to undertake an investigation to identify the main sources and methods used to facilitate laundering of illicit funds in the financial sector. In addressing these objectives, mixed method research approach was utilised and 64 responses were received and analysed using descriptive statistics. Additionally, 20 face-to face-interviews were conducted and themes, which are the key findings of the study were identified through thematic analysis approach. All data gathered in the research is from AML experts in Kenya.

In this study, evidence gathered from these AML experts and literature reviewed has indicated that money laundering is rife in Kenya. Accordingly, the study found that, if enforced appropriately, most of these AML measures and tools such as “Know Your Customer” (KYC), timely reporting of suspicious transactions, information sharing, political will and asset recovery can regulate money laundering in the sector. Conversely, the study revealed that among the main AML preventative challenges are lack of information sharing and domestic cooperation by the key stakeholders mandated to fight the practice of money laundering. In addition, the study discovered that corruption is the main source of illicit funds that are laundered in the financial sector. Likewise, the most popular method of laundering such funds in Kenya is through purchase of real estate. In conclusion, in the research study, one of the key recommendations is the creation of a specialised and dedicated hybrid AML policing unit to mitigate money laundering risks in the sector.

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## **Declaration**

Whilst registered as a candidate for the above degree, I have not been registered for any other research award. The results and conclusions embodied in this thesis are the work of the named candidate and have not been submitted for any other academic award.

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## **Abbreviations**

AML	Anti-Money Laundering
AMLAB	Anti-Money Laundering Advisory Board
ARA	Assets Recovery Agency
BCLB	Betting Control and Licensing Board
BFIU	Banking Fraud Investigations Unit
CBK	Central Bank of Kenya
CBK/PG	Central Bank of Kenya, Prudential Guidelines
CDD	Customer Due Diligence
CTRs	Cash Transaction Reports
DCI	Directorate of Criminal Investigations
DNFBPs	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions
EACC	Ethics and Anti-Corruption Commission, Kenya
EARB	Estate Agents Registration Board
ESAAMLG	Eastern and Southern Anti-Money Laundering Group
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FRC	Financial Reporting Centre
ICPAK	Certified Public Accountants of Kenya
IFIU	Insurance Fraud Investigations Unit
IRA	Insurance Regulatory Authority
KBA	Kenya Bankers Association
KRA	Kenya Revenue Authority
KYC	Know Your Customer
LSK	Law Society of Kenya
MER	Mutual Evaluation Report, ESAAMLG
MLRO	Money Laundering Reporting Officer
NGOCB	NGOs Coordination Board
NPS	National Police Service

NRA	National Risk Assessment Report
NYS	National Youth Service
PEP	Politically Exposed Person
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act, 2009
POCAMLR	Proceeds of Crime and Anti-Money Laundering Regulations, 2013
STRs	Suspicious Transaction Reports
TI	Transparency International

## Chapter 1: Introduction

### 1.1 Background

As will be illustrated throughout this research study, money laundering is a major financial crime in Kenya. Indeed, the United States (US) government recently listed Kenya as a “major money laundering jurisdiction,” citing numerous domestic and foreign criminal activities (Rudich, 2021). This is attributed to Kenya being a key regional business and travel hub and gateway to the neighbouring East African economies with well-developed trade links to the rest of the world. The economy of Kenya, particularly the financial sector, is more developed compared to other Eastern Africa countries. In addition, the country is also well connected with strong internet penetration which has promoted innovation, adoption of new technologies and growth of fintech. Other factors increasing Kenya’s susceptibility to money laundering include the rampant corruption, culture of impunity and lack of political will to deal with major economic crimes (US Department of State, 2017 cited by Gikonyo, 2019, pp.248-249).

In view of its geographical position and economic development as a regional hub, Kenya is also a transit route for international drug traffickers, trade-based money laundering and illegal wildlife trafficking. As such, being a comparatively developed financial centre and economy increases the vulnerability of laundering of illicit proceeds through the country. It increases the country’s exposure in terms of abuse of the financial system for money laundering activities by both local and transnational criminal networks. Cumulatively, these factors enable money laundering activities to advance in the country. Therefore, Kenya is vulnerable to money laundering. This susceptibility elevates the need for having various viable anti-money laundering (AML) preventative mechanisms (Gikonyo, 2018, p.60, 2019, pp.248-249; Kenya National Risk Assessment (NRA) report, 2021, p.10 & Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Mutual Evaluation Report (MER), 2022, p.11) which informs this study. Illustrated below are two typical cases on how money laundering takes place in Kenya.

In May 2022, the Ethics and Anti-Corruption Commission, Kenya (EACC) conducted an investigation in relation to a case of unexplained wealth. In the matter, EACC advanced that a former governor colluded with officials of the county government to embezzle public funds through fictitious and fraudulent procurement contracts. Consequently, EACC filed a case in court to recover unexplained wealth amounting to Ksh.2 billion (US\$20m.) from him and his wife. According to EACC, during the period in question, the former governor’s income from

salary and legitimate sources of income was less than Ksh.100 million (US\$1 m.). EACC stated that he multiplied his wealth 17 times within five years, from 2015 to 2017 when he was a member of parliament (MP) and when he served as governor from 2017 to 2020. EACC indicated that he amassed wealth that is not commensurate to his known and legitimate sources of income. When asked to explain the disparity between their assets and known legitimate sources of income, EACC stated that the former governor and his wife failed to do so.

In this case, the government seeks to recover 15 properties, 5 luxurious motor vehicles and money transacted through bank accounts owned by the former governor and his wife and their 3 trading companies. EACC established that he operated 8 bank accounts and one loan account under his name during the period. Pending determination of the forfeiture suit, EACC requested the court to bar the couple and its agents from dealing with the assets. In addition, EACC has made an application for forfeiture of Ksh.800 million (US\$8m.) in the former governor's 7 bank accounts and nearly Ksh.300 million (US\$3 m.) in his wife's 3 bank accounts (Wangui, 2022, May 28. Nation Media).

Again, in July 2019, another public servant, suspected to be involved in corruption, money laundering and economic crime was ordered by court to forfeit or pay the government Ksh300 million (US\$3m.) for being in possession of unexplained assets which were the proceeds of crime. His only justifiable legitimate source of income net salary during the period of interest, August 2009 to February 2015 was Ksh.6 million (US\$60,000). On a balance of probability, the court established that the cash deposits which he tried to explain through his businesses (wheat, maize, cattle, transport and quarry) revenue collection, constituted unexplained assets and was forfeited to the state. In short, the court found that he was in possession of assets whose value was disproportionate to his known sources of income and were proceeds of crime. This matter was filed by EACC in 2016 seeking the forfeiture of assets worth Ksh.575 million (US\$5.75 m.) (Muhindi, 2019, July 25. The Star).

## **1.2 Research Aims and Objectives**

The aim of this research study is threefold. First is to identify the AML strategies and tools for combating money laundering in the financial services sector in Kenya. Second is to evaluate and critique the effectiveness of these AML initiatives and explore remedial measures to be taken for reducing the crime in the financial sector. Third is to investigate the main sources

and methods used to launder the proceeds of illegal funds. Accordingly, with a view to accomplish the research aims and objectives, in the study, there is need to address the following three broad research questions:

- What are the current strategies for countering money laundering in the financial services sector in Kenya?
- To what extent are anti-money laundering (AML) strategies effective in combating money laundering in the financial services sector in Kenya?
- What are the main sources of funds and methods used to launder the proceeds of crime in the financial services sector in Kenya?

In the study, the first research question was addressed in the literature review (Chapter 2). In this chapter, key strategies and tools for countering money laundering in the financial services sector in Kenya were identified. This included highlighting the pros and cons relating to each strategy. In brief, these measures are customer due diligence (CDD), financial reporting requirements, asset recovery, training, record keeping, internal control procedures and international cooperation. Additionally, interviews were conducted with AML professionals in Kenya and survey questionnaire was administered and as is illustrated in Chapter 6 of the study, participants and respondents also identified the above strategies and tools for reducing money laundering in the financial sector.

Furthermore, in addressing the first research question, other AML preventative measures that were identified by the participants and respondents were domestic cooperation, political will, civic education and public awareness and sanctions screening. Moreover, policing institutions responsible for preventing money laundering in the financial services sector in Kenya were also considered in Chapter 5. These are state police bodies, state public policing bodies (non-police), specialised police bodies (public), NGOs policing bodies, voluntary policing bodies and private policing bodies. With a view of providing deeper insight of the AML strategies that were identified, it was also considered important to explore the nature, scope and extent of the practice of money laundering in Kenya which is covered in Chapter 4 of this thesis.

Regarding effectiveness of AML strategies (research question 2) in reducing money laundering in the financial sector, interviews with AML experts in Kenya were conducted and survey questionnaire responses were received. Consequently, an evaluation in relation to the AML

measures noted above was conducted and results of the participants and respondents' knowledge/perception and views on the effectiveness of these strategies and tools were presented in Chapter 6 of the study.

Also, in relation to where the main sources of illicit funds originate from and methods used to launder the same in the financial services sector in Kenya, to address this third research question, it was largely through the use of literature review, interviews, survey questionnaire and corruption and money laundering matters reported mostly in the mass media in Kenya as demonstrated in Chapter 4 of the study.

In connection with effectiveness of the AML strategies, the researcher acknowledges that some of the key findings in the study relate to strategies and tools that are commonly applicable in preventing money laundering in developed countries like UK or USA. However, given that there is little research conducted in the AML field in a developing country like Kenya, this research study is offering a much deeper insight and new broad findings in relation to combating the practice of money laundering in the financial services sector. For instance, these findings relate to information sharing, domestic cooperation, cash intensive businesses and money laundering enablers amongst others. It is important to note that the term "effectiveness" in the context of money laundering policing is difficult to determine. However, in Chapter 6 (Evaluating AML strategies), an attempt is made to explain this key concept that features in the research study.

### **1.3 Justification for the Research**

It is to be noted that very few researchers have conducted studies in the field of combating money laundering in the financial services sector in Kenya. The few that have conducted research in this area are Gikonyo, (2018, 2019 & 2020 ) - detection mechanisms under Kenya's AML regime, the legal profession in Kenya and its AML obligations or lack thereof and the Kenyan civil forfeiture regime: nature, challenges and possible solutions respectively; Afande (2015) - use of regulatory policies in the fight against money laundering in Kenya; Musau (2020) – AML and compliance strategies of Kenya; Warutere (2006) - detecting and investigating money laundering in Kenya and Mathuva, Kiragu & Barako (2020) - the determinants of corporate disclosures of AML initiatives by Kenyan commercial banks and

compliance strategies of Kenya. Significantly, as demonstrated by these research studies, it is clear that there is inadequate research that comprehensively or holistically identifies and critically evaluates the main AML measures and tools for countering money laundering in the financial services sector in Kenya.

Though money laundering is increasingly currently being reported in the mass media - daily newspapers, local and international TV stations and social media platforms, it has been a neglected topic and limited academic research has been conducted. The literature too in this field in the country is limited. Additionally, the main AML legislation is borrowed from developed countries – the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009 of Kenya. This legislation was enacted mainly because of external pressure from Financial Action Task Force (FATF). Thus, it is this gap in knowledge and literature which will be addressed by undertaking the research study and the researcher therefore consider the study an appropriate and deserving topic to study now. In addition, this research study will contribute to a body of literature in the field of economic crime, financial crime and economic criminology of a developing country like Kenya.

#### **1.4 Significance of the Research**

Due to increased corruption in the country, money laundering, as indicated above, is currently a major problem in Kenya since this is the vehicle through which these illicit funds are being concealed or hidden. Hence, the results from this research study will be useful to decision and policymakers, particularly legislators and regulatory authorities whose mandate is to formulate AML policies necessary for regulating money laundering in the financial services sector in Kenya. Significantly, the financial sector will find the study helpful as a source of knowledge and shall be able to gain a deeper understanding of the nature of money laundering activities in the sector and adopt appropriate mitigating measures to reduce the practice. Information derived from the study will also be beneficial to government policing agencies involved with prevention, detection, investigation, prosecution and punishment of offenders convicted of money laundering activities. In conclusion, the research study will be useful and beneficial to other stakeholders such as financial institutions customers, scholars, researchers, professionals and students undertaking studies on money laundering. Limitations of the study and an overview of the financial services sector in Kenya are presented below.

### **1.5 Limitations of the Study**

In the study, the researcher had planned to conduct interviews in a comfortable office setting environment with no distraction. This is because, as was noted by Smith et al. (2018, p.191), location of the interview and the setting in which the interview takes place can also be important. Good locations are those which are easy for both parties to access, are comfortable (e.g. furniture and temperature) and are characterised by low levels of noise and distractions (without lots of people coming and going, and with no loud music or TV in the background). However, due to Covid – 19 pandemic, this did not happen because offices were closed and most participants were working from home. Hence, most of the interviews were conducted in public places.

Likewise, in both qualitative and quantitative research, it would have been beneficial if the researcher had been granted access to interview staff and administer self-completion questionnaires to institutions which are involved in the investigation and prosecution of money laundering matters. As will be indicated in the methodology chapter of the study, staff of some of these institutions were uncooperative. Another sector which is prone to money laundering is Kenya's e-mobile money payment system. It would have been useful if the researcher had obtained access to interview participants in some of those organisations.

In connection with survey questionnaire, the researcher acknowledges that there were two questions that could have been designed in a better way. One question was about the sector where a participant worked and the response was either public, private or third sector. In the third sector, there were only two choices, NGOs or professional bodies. Some participants complained to the researcher that they could not fit into either of these sectors. A short open-ended question such as "*Other sector*" would have been appropriate in this case. The second question related to annual turnover or budget of an organisation, which according to feedback the researcher received was considered by some participants to be sensitive and therefore a few participants did not indicate any values.

In the study, interviews were conducted with 20 AML experts and survey responses received from 64 respondents who had the relevant knowledge, expertise and experience of fighting money laundering in Kenya. These experts shared their views, knowledge and perception on how to control money laundering in the financial sector. As shown in this thesis, these are the views that the researcher relied on to answer the three research questions, evaluate AML strategies and formulate the key findings of the research. However, when interviewed,

different participants held different and varied views on the effectiveness of AML strategies and tools in combating money laundering in financial institutions depending on their AML experiences and the sector they worked for.

To sum up, interviews and survey questionnaires took longer to complete than was anticipated by the researcher due to inaccessibility of participants as result of Covid-19 pandemic challenges highlighted in this chapter. It was also disappointing that over 100 potential participants provided their email addresses, but the survey questionnaire was completed and submitted by only 64 respondents.

## **1.6 Overview - Financial Services Sector, Kenya**

### **1.6.1 What is a Financial Institution?**

A financial institution is an organization whose main business is to deal with monetary and financial transactions such as acceptance of deposits, lending of money, exchanging currency and investment. Kenya's financial services sector is made up of a wide variety of financial institutions. These include the Central Bank of Kenya (CBK) which is the most important financial institution as it regulates and supervises the operations of all other financial institutions. It has an oversight role and is also responsible for licensing the institutions. Other financial institutions are the commercial banks, microfinance lending institutions, insurance companies, savings and credits cooperative societies (SACCOS), Capital Markets Authority (securities sector), investment firms and informal financial services sector (Nzoka, 2020, July 1. Urban Kenyans).

### **1.6.2 Structure of the Banking Sector in Kenya - 2020**

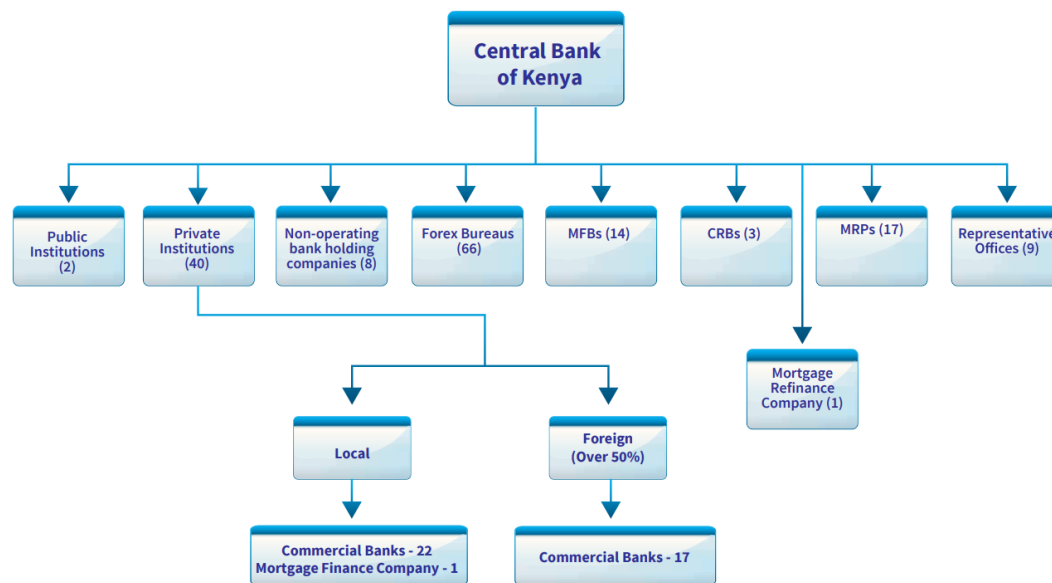
In Kenya, the main financial services sector is the banking sector. This sector comprises of the CBK, as the regulatory authority, 42 banking institutions, 14 Microfinance Banks (MFBs), 3 Credit Reference Bureaus (CRBs), 17 Money Remittance Providers (MRPs), 1 Mortgage Refinance Company and 66 foreign exchange (forex) bureaus. Out of the 42 banking institutions, 40 are privately owned while the Kenya government has majority ownership in 2 institutions. Of the 40 privately owned banks, 23 are locally owned while 17 are foreign-owned. The 23 locally owned institutions comprised 22 commercial banks and 1 mortgage finance company. Of the 17 foreign-owned institutions, all are commercial banks with 14 being local subsidiaries of foreign banks and 3 are branches of foreign banks (CBK Supervision

Annual Report 2020, p.2). Figure 1 below illustrates the structure of the banking sector in Kenya as of December 2020.

**Figure 1**

*Structure of the Banking Sector, Kenya*

(CBK Supervision Annual Report 2020, p.2)



According to section 2, NRA report, the money laundering threat in the banking sector in Kenya was assessed high with a likelihood of increasing. This is because banks are the most likely institutions to be abused for money laundering. During the assessment it was established that most of the corruption cases in the country have been facilitated through the banking sector. Furthermore, data from the Financial Reporting Centre (FRC) indicated that the majority of all the suspicious transaction reports (STRs) filed in the country over the last 5 years were filed by banks. FRC is Kenya’s Financial Intelligence Unit (FIU). As noted above, exposure to Kenya’s banking system to the international business also increases the risk of money laundering within the banking sector. The banking sector too is also attractive to money laundering using technology such as online banking and e-mobile money transfers. The next section will consider the definition of money laundering, the money laundering cycle or phases and highlight a brief profile of Kenya.

## **1.7 What is Money Laundering?**

Money laundering has been defined as the illegal process or act by which offenders attempt to disguise, conceal, hide, or distance themselves from funds obtained from illegal activities (Ryder, 2012, p.1). Similarly, Madinger (2012, p.10) describes money laundering as a process or cycle of making dirty money appear to be clean money. By the same token, Unger (2013, p. 659) argued that money laundering is the process of disguising the unlawful source of criminally derived proceeds to make them appear legal. It is the act of hiding or disguising the source of illicit funds obtained from criminal activity i.e., predicate crime. Serving to empower criminals, money laundering provides the necessary option through which to preserve illicitly gained funds (Ridley & Gilmour, 2015, p.293). In short, money laundering is the conversion of criminal incomes into assets that cannot be traced back to the underlying crime (Reuter & Truman, 2004, p.1)

According to Chaikin (2008, p. 274), anyone who hides the existence of money for improper or illegal reasons is engaged in money laundering; for example, drug trafficker who hides illicit income in an off-shore bank, the tax evader who hides earnings in a secret investment, and the corrupt employee who conceals bribes in a property transaction. Likewise, Blunden (2001, p.18) typified money laundering as a procedure to conceal the origins of criminal proceeds so that they appear to have originated from legitimate sources. Blunden states that it is a process of concealing true ownership and origin of criminal proceeds. Additionally, section 3 of the CBK, Prudential Guidelines (CBK/PG) of 2013 define money laundering as the process by which criminals attempt to conceal the illegal origin and illegitimate ownership of property and assets that are the fruits or proceeds of their criminal activities.

In Kenya, money laundering is a criminal offence under sections 3, 4 and 7 of the POCAMLA. Further, section 16, POCAMLA, provide that a person who commits such an offence is on conviction liable to imprisonment of 14 years, or a fine of Ksh. 5 million (US\$50,000) or the amount of the value of the property involved in the offence. In the case of companies, they are liable to a fine of Ksh.25 million (US\$250,000), or the amount of the value of the property involved in the offence. As will be explained later in the study, in the chapter on the nature of money laundering in Kenya, several banks were sanctioned by the CBK, regulator for violating POCAMLA – they handled large sums of money that was stolen from a government institution, the National Youth Service (NYS).

### **1.7.1 Three Phases of Money Laundering**

Again, Mandinger (2012, p. 5) describes money laundering as a process or cycle, the objective of which is to have access to “clean” appearing money at the end of the process. Generally, there are three main phases or cycle of money laundering, namely, placement, layering and integration.

### **1.7.2 Placement**

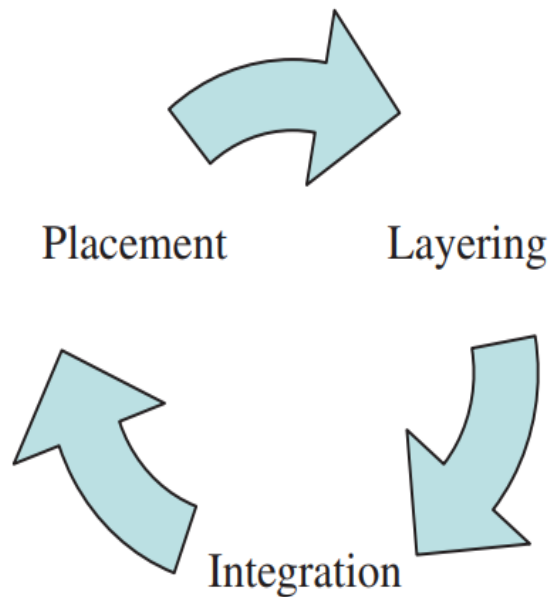
Placement is the first phase of money laundering where the proceeds of crime are introduced into the financial sector and it is the stage at which the launderer is most vulnerable (Mandinger, 2012, p. 259). Similarly, Ryder (2012, p.1) observed that placement is a stage where the money launderer seeks to position the proceeds of the illegal activity in the financial system. During this phase, the money launderer attempts to break up the profit into smaller amounts so as to avoid any cash or currency transaction reporting obligations (below US\$10,000). Ryder referred to this technique as *smurfing* or structured payments. Ryder added that it is at this stage that financial institutions, estate agents, accountants and lawyers are susceptible to money laundering. Likewise, Afande (2015, p. 157) advanced that the aim of the placement stage is to insert the “black money” into the financial system without anyone getting suspicious about it.

As illustrated in Figure 2 below, Cox (2014, pp. 7-8, 15-16) explained that money laundering is essentially a three-stage process which starts with the criminal activity that gives rise to the illegal funds which the criminal will seek to disguise. Source of illicit funds include drug-trafficking, tax evasion, bribery and corruption which need first to be received and then introduced into the financial system (placement). Cox explained that it is often at this first introduction phase that the detection authorities have their best chance of identifying the funds as being inappropriate, leading to potential criminal prosecution. This stage is then followed by the layering and integration phases.

**Figure 2**

*The three-stage money-laundering process*

(Adapted from (Cox, 2014, p.15)



In this cycle, Cox stated that the initial proceeds enter the banking system at a perceived point of weakness (the placement phase) and then the funds are moved around such that the initial source of the funds is disguised (the layering phase). The funds are eventually reintegrated into the mainstream banking system as clean funds (the integration phase). Also, (Chaikin (2008, p. 275) emphasized that placement is the initial entry of illicit monies into the financial system, for example, where cash from a drug deal or bribe is deposited in a financial institution. Secondly, in the layering phase, illicit monies are separated from their source by creating complex layers of financial transactions, for example, the transfer of funds through numerous jurisdictions, and deposit in multiple investment vehicles. Additionally, Mandinger (2012, pp. 5&259) advanced that placement of illicit funds relies on businesses that deal heavily in cash and financial institutions of all types. According to him, some of the placement mechanisms are transporting the money (smuggling it offshore) and commingling the same with the receipt of a legitimate business; (*existing business or may set up a business to use as a front*). A launderer too may establish one or more bank accounts to receive the funds.

Equally, Blunden (2001, pp. 20-21) argues that the three stages of money laundering are universally recognized (in line with a washing machine cycle) as: *placement* (immersion), *layering* (heavy soaping) and *integration* (spin drying). Blunden describes placement as the physical disposal of the criminal proceeds which is mainly in cash and can include:

- Depositing cash at a bank (often intermingled with clean funds to obscure any audit trail)
- Physically moving cash between jurisdictions
- Purchasing high value goods for either personal use or as gifts
- Purchasing the services of high value individuals
- Purchasing negotiable assets in one off transactions
- Making loans in cash to businesses that appear to be legitimate or are connected to legitimate businesses

### **1.7.3 Layering**

Again, Blunden (2001, p. 23) observes that in the layering phase, money is separated from its source by the creation of complex layers of transactions designed to disguise the audit trail and to give it an appearance of legitimacy which may include:

- Rapid switches of funds between banks and/or jurisdictions
- Use of cash deposits as collateral security in support of legitimate transactions
- Transferring cash through a network of legitimate and “shell” companies across several jurisdictions
- Resale of goods/assets

In the same fashion, Reuter & Truman (2004, p. 3) and Chaikin (2008, p. 275) suggest that layering is passing illicit funds through many institutions, numerous jurisdictions and deposit in multiple investment vehicles to disguise their origin. Similarly, Ryder (2012, p.1) asserts that layering could involve a large number of financial transactions or conversions whose main purpose is to create as much distance between the initial placements of the proceeds of crime from their original source. Additionally, Ryder argues that it is during this phase that the money could be moved via the purchase of property or shares, or simply transferred to several different countries via the World Wide Web, thus making it increasingly difficult to detect. In summary, layering is a stage where criminals make all possible efforts to distance themselves from the source of illicit funds. Like in the placement phase, one way of disguising or hiding the source of dirty money is depositing small amounts of money (*smurfing*). Another method is through electronic funds transfer (EFT).

According to Levi (2015, p. 285), the aim of “true” laundering is to conceal the derivation of funds from crime and yet retain control over them. This involves trusting a particular person or persons — perhaps a member of one’s close or extended family. Likewise, Mandinger (2012, pp. 6, 259-260) observed that in this phase, launderers attempt to hide their tracks on the paper trail by creating layers of transactions in order to hide money and its source and that good layering schemes use offshore tax haven and bank secrecy jurisdictions. Examples of concealment mechanisms used are business entities, shell corporations and bank accounts. During interviews a participant - AML consultant - described layering thus:

“Once that money gets into the financial institution, the criminals now will want to hide the audit trail so that they can make it increasingly difficult for the investigator to catch them. The way they normally do it is to send this money to different bank accounts, their relatives or even lawyers. Remember, we say that the learned friends are one of the weak links in the fight against money laundering”. (Interview, 2)

As Cox (2014, pp. 17 - 18) noted, the aim of the layering phase is to disguise the proceeds of crime such that the original source and the current position of the funds are unclear. For instance, using the illegitimate funds to invest in something legitimate, so that the funds now appear to be “clean”. Other methods entail moving the funds between several accounts in a number of different jurisdictions/companies to ensure that the trail is as complicated as possible. This will essentially obscure the audit trail and sever the link with the original criminal proceeds. In addition, Cox claims that a more risky method of layering would be the purchase of property. This is because lawyers or solicitors will become involved. Lawyers generally are also under money laundering obligations and need to conduct various due diligence of their own to meet the standards placed upon them. However, in Kenya, one of the most popular methods of laundering illicit funds, as explained later in this study (Chapter 4), is the purchase of real estate properties through lawyers who do not have reporting obligations under section 2 of the POCAMLA (Choo, 2014; Middleton, 2008 cited by Gikonyo, 2018, p. 66).

#### **1.7.4 Integration**

Again, according to Blunden (2001, pp. 24-25), the final part of the wash cycle is the integration of the criminal funds as being legitimate, having been successfully immersed and layered – a stage sometimes called the spin dry cycle. He adds that the proceeds of crime are integrated

back into the economy in such a way as they appear to be legitimate. In like manner, Cox (2014, pp.18-19) pointed out that the integration stage is where illegal proceeds are re-integrated into a legitimate financial system to be assimilated with other assets in the system. Both Blunden (2001) and Cox (2014) gives examples of common methods in which laundered money can be integrated back into the economy:

- Use of false or inflated invoices – paying inflated, overvalued or deflated invoices for exports/imports to facilitate launders to move funds from one country to another
- Purchases of property i.e real estate – criminals use a shell company to purchase property then sell the company with its assets for a “legal profit”
- Creation of front companies or shell companies in countries where the right to secrecy is guaranteed and thereafter granting themselves loans out of the laundered money
- Transfer of money to a legitimate bank from a shell bank owned by the launderers
- Cancellation of an insurance policy after the premium has been paid. The premium returned by the insurance company is, of course, laundered funds

To summarise, during the integration stage, illicit funds are brought back into the economy appearing as ‘clean funds’ i.e genuine normal business funds. As will be shown in this thesis, this is common in Kenya – funds obtained by criminals from fraud and corruption are in most cases invested in cash-intensive businesses such as supermarkets, second - hand motor vehicles, purchase of real estate properties and buying high end luxurious motor vehicles.

### **1.8 Socio-Economic Impact of Money Laundering**

According to Ogbodo & Mieseigha (2013, p.173), developing countries are exposed to money laundering because of the nature of their economies which are regarded as informal economies. These economies are characterized primarily with informal economic activities which are unregulated. Cash payment and commodity exchange are the preferred methods of purchasing goods and services. Kenya’s economy is largely cash based and more than 70% of the country’s Gross Domestic Product (GDP) is from the informal sector. Most of the players in this sector do not have bank accounts, hence capturing and monitoring the transactions they conduct may be difficult and money launders may therefore be in the informal sector without being detected. Thus, audit trail or the tracing of transactions for investigations becomes difficult (Kenyan, Budget speech, 2005/6; Commonwealth Secretariat, 2005 cited by Afande, 2015, p.163). Highlighted below are some of the social and economic implications of money

laundering in a developing country like Kenya.

### **1.8.1 Economic Distortion and Investment Instability**

It has been argued that money launderers, in their quest to disguise the source of illicit funds or obscure the trail of their money, divert the same from one economic venture to another without sound economic reasons. This creates economic distortion. They invest in sectors that may not be profitable or productive economically but can launder money easily, such as the real estate sector. (McDowell & Norris, 2001; Tanzi, 1997 cited by Aluko & Bagheri, 2012, p. 445; Vito, 1997, cited by Ogbodo & Mieseigha, 2013, p.174; Khan *et al.*, 2018, p. 230).

### **1.8.2 Loss of Tax Revenue**

Again, Maiendra (2008 cited by Ogbodo & Mieseigha, 2013, p.176), observed that money laundering is a source of reduction of government revenue as it reduces government tax revenue base. When businesses and individuals avoid tax, then they need to launder the income that they receive or hoard this income to avoid being detected by authorities. Some of the laundered funds are invested in tax havens or offshore financial centres. As a result, government revenue is reduced impacting on service delivery such as public expenditure investment in infrastructure, health and education (Aluko & Bagheri, 2012, pp. 446 – 447; Quirk, 1996, cited by Hendriyetty & Grewal, 2017, p. 70; Nash, 2011, cited by Hendriyetty & Grewal, 2017, p. 70; Khan *et al.*, 2018, p. 230). In Chapter 4 of this thesis, several cases relating to criminal tax evasion in Kenya will be illustrated.

### **1.8.3 Undermining the Legitimate Private Sector**

Money launderers have the notorious tendency to discourage or frustrate legitimate private business enterprises, particularly in many developing countries (Adekunle, 1999, cited by Afande, 2015, p.150). They often use front companies, to intermingle or fuse the proceeds of their illicit activities with legitimate funds, to hide their illicit proceeds. With access to substantial illicit funds, these front companies are able to subsidize their products and services at levels that are well below market rates. They can manufacture low-priced goods or offer cheap services posing a threat to legitimate firms which borrow from the banks at high interest rates. Therefore, the front companies usually have a competitive advantage over legitimate companies or manufacturers that draw capital funds from financial markets. This makes it difficult, if not impossible, for legitimate business to compete against front companies with subsidized funding (Ogbodo & Mieseigha, 2013, p.175; McDowell and Norris, 2001, cited by Aluko & Bagheri, 2012, p.446; Khan *et al.*, 2018, p. 230).

#### **1.8.4 Reputation Risk / Lack of Foreign Investment**

Due to the prevalence of money laundering activities, lack of transparency and high levels of corruption, developing countries have been finding it difficult to attract potential foreign investments necessary to boost economic development and financial stability or growth. The negative damaging reputation attributed to these activities reduces legitimate international opportunities and sustainable economic growth (John and Gary, 2001, cited by Ogbodo & Mieseigha, 2013, p.176). In practice, international financial markets as well as investors only extend their ventures and investments to an economic environment perceived to be investor friendly (Hans and Oliver, 2007 cited by Ogbodo & Mieseigha, 2013, p. 176). Indeed, when financial institutions rely on proceeds of crime, they may scare away or discourage potential foreign investors or there may be lack of investor confidence thereby affecting economic growth of a country (Ogbodo & Mieseigha, 2013, pp.173 – 174; Afande, 2015, p. 150). Given that there are high incidents of financial crimes such as money laundering and corruption in Kenya, there is lack of adequate foreign investments in the country.

#### **1.8.5 Money Laundering Affects Illicit Capital Flows**

Levi and Reuter (2006, cited by Hendriyetty & Grewal, 2017, p. 69) note that not all money laundering processes require international transactions; some of the proceeds of crime are usually laundered domestically. Thus, money laundering that requires international transactions or an outside jurisdiction will create illicit capital flows between countries. Most illicit outflows from developing countries are related to money laundering (Baker, 2005 cited by Hendriyetty & Grewal, 2017, p. 69) because the proceeds of predicate crimes such as corruption, human trafficking and smuggling goods need to be sent offshore to disguise their illegal origin. Illicit flows therefore act as a tool to transfer proceeds of crime.

One of the impacts of illicit financial flows (IFFs) on a country's economy is the resultant lack of funds to develop the country's infrastructure and support the weaker members of society. The result is widening gap between the rich and the poor that increases as the wealthy avoid paying tax and continue to move their money out of the country into foreign bank accounts or overseas investments (Kar and Freitas, 2012, cited by Naheem, 2017, p.16). In this regard, a report released by Oxfam in 2019 noted that even with impressive economic growth since 2005, millions of Kenyans still live below the poverty line. The gap between the rich and poor is widening with a paltry 0.1% of the country's population or 8,300 people holding the bulk of wealth, limiting equal access to opportunities such as healthcare and education. The richest 10% of people in Kenya earned on average 23 times more than the poorest 10%. The report

further noted that the number of super-rich in Kenya is one of the fastest growing in the world. Oxfam points at the government, corporate companies and IFFs by wealthy individuals for exacerbating inequality in the country (Ndege, 2019, January 22. Business Daily).

### **1.8.6 Money Laundering Affects the Scope of the Shadow and Underground Economies**

Shadow economy involves legal activity but tax is not paid, whereas underground economy involves illegal activities related to money laundering (Schneider and Windischbauer, 2008 cited by Hendriyetty & Grewal, 2017, p. 66). Both terms are crucial for the success of the money laundering process. Hendriyetty & Grewal (2017, pp. 66-67) argued that self-employed workers and small firms are not registered in developing countries and therefore run their businesses informally. Thus, they fall under the shadow economy. Additionally, business entities in the informal sector are misused by money launderers as channels to conceal their proceeds of crime in the initial steps of money laundering. To finance their activities, they get funding from loan sharks who may acquire money from drug activities and lend money for laundering purposes. Therefore, the bigger the shadow economy, the more difficult it is to detect money laundering, as it is hard to separate legal from illegal transactions. The shadow economy also reduces the capacity of governments to provide goods and services due to the decrease in tax revenue.

In Kenya there are several informal small medium enterprises (SMEs) some of which are financed with corruption, drug trafficking, and human trafficking illicit funds. SMEs are mainly cash intensive businesses – open air market vendors, food kiosks, grocery stores, minibus transport (*matatus*) and so on. They employ less than 10 people. Others are operated by self-employed individuals. These small businesses operate in both poor urban and rural areas so as to avoid government scrutiny that will require them to register in the formal sector. They do not maintain accounting records and avoid paying taxes, thereby making it difficult to detect money laundering. They use informal methods of payment such as e-mobile money transfer systems and hawala. Ridley & Gilmour (2015, p.300) also state that low socioeconomic areas represent another situational factor, which not only facilitates the commission of the predicate offence but also the laundering of illicit funds.

### **1.8.7 Increased Criminality**

Farrugia, (2009, cited by Ogbodo & Mieseigha, 2013, p.176) observed that the rise of criminality is one major effect and a concern in money laundering. The success of money launderers is the distance they create between themselves and the criminal activity producing profit, so that they could enjoy the benefits of their crime without attracting attention and could

also go to the extent of reinvesting the profits to finance other crimes. Likewise, Khan *et al.*, (2018, p.230), concurs stating that proceeds of crime attract criminals, thus enhancing the chances of fraudulent activities in financial institutions as many employees associated with such transactions may emulate such criminals and become conspirators. This damages financial institutions reputation if it is associated with money laundering ((Reuter & Truman, 2004, p.131). It also damages the financial position and may create deposit or liquidity issues. In addition, as, Unger (2013, p.673) noted, money laundering can be harmful to the economy. It is a ticking time bomb, and the more laundering the more white-collar people like bank employees, real estate agents, and accountants will get drawn into the underworld.

### **1.9 Brief Profile of Kenya**

Kenya is a country in Eastern Africa and is bordered by South Sudan to the northwest, Ethiopia to the north, Somalia to the east, Uganda to the west, Tanzania to the south, and the Indian Ocean to the southeast. At 580,367 square kilometres (224,081 sq. miles), it is the world's 48th largest country by area. With a population of more than 47.6 million in the 2019 census, Kenya is the 29th most populous country. Its capital and largest city is Nairobi, while its oldest city and first capital is the coastal city of Mombasa. The Republic of Kenya is named after Mount Kenya which is the highest mountain in the country and the second highest peak in Africa. The country is a former British Colony and gained independence in December 1963. East Africa, including Kenya, is one of the earliest regions where modern humans (*Homo sapiens*) are believed to have lived (2019 Census, KNBS News).

Kenya is a lower-middle-income economy. As of 2020, the country has the third-largest economy in sub-Saharan Africa after Nigeria and South Africa. Its economy is the largest in eastern and central Africa, with Nairobi serving as a major regional commercial hub. Agriculture is the largest sector: tea and coffee are the principal cash crops. Additionally, Kenya is the world's 3rd largest exporter of fresh cut flowers. The service industry is also a major economic driver, particularly tourism. Chinese investment in Kenya represents the largest source of foreign direct investment and bilateral trade. Kenya is a member of the East African Community trade bloc. Africa is Kenya's largest export market, followed by the European Union (Standard Reporter,2019).

As indicated above, Kenya has a more developed financial services sector than its neighbours. Its banking system comprising of 42 commercial banks and several non-bank financial institutions including mortgage companies, four savings and loan associations, and several core foreign-exchange bureaus is supervised by the CBK. More than 20 microfinance institutions offer business loans on a large scale, specific agriculture loans, education loans, women's loans and loans for other purposes. Out of approximately 48 million Kenyans, about 14 million are unable to receive financial service through formal loan application services, and an additional 12 million have no access to financial service institutions at all. Further, one million Kenyans are reliant on informal groups for receiving financial aid (Kimenyi, Mwega & Ndung'u, 2016).

Tourism in Kenya is the second-largest source of foreign exchange revenue following agriculture. The country is rich in wildlife and hosts the "Big Five" game animals of Africa, that is the lion, leopard, buffalo, rhinoceros and elephant which can be found in the Masai Mara game reserve. The main tourist attractions are photo safaris through the 60 national parks and game reserves. Other attractions include the wildebeest migration at the Masaai Mara, which is considered to be the 7th Wonder of the World. This is because, between June and September every year, more than two million wildebeest and 200,000 zebras migrate a distance of 2,900 kilometres (1,802 miles) from the Serengeti in neighbouring Tanzania to the Masai Mara in Kenya, in a constant clockwise fashion, searching for food and water supplies. Tourists, the largest number being from Germany and the UK, are attracted mainly to the coastal beaches and the game reserves (Otieno, 2015, May 27. Kenya Travel Tips).

75% of the 47.6 million population is under the age of 35, making Kenya a country of the youth. Youth unemployment and underemployment in Kenya has become a problem. Approximately 1.7 million people lost their jobs as a result of the COVID-19 pandemic, which eliminated some informal jobs and caused the economy to slow. The Kenyan government has made progress in addressing the high youth unemployment by implementing various affirmative action programmes and projects which include, the National Youth Service (NYS). As indicated in Chapter 4 of the thesis, it is in this institution where one of the major corruption and money laundering scandals recently occurred (Kabata, D.G, 2021; Kimenyi, Mwega & Ndung'u, 2016).

Kenya has a presidential system of government, a multiparty political system, in which elected officials represent the people and the president is the head of state and government. It is a member of the United Nations, Commonwealth of Nations, World Bank, International

Monetary Fund, Common Market for Eastern and Southern Africa, International Criminal Court, and other international organisations.

The two official languages are English and Kiswahili and 69 other ethnic languages are spoken in Kenya. English is widely spoken in commerce, education institutions and government. Kenya is active in several sports, among them cricket, rallying, football, rugby, field hockey, and boxing. The country is known mainly for its dominance in middle-distance and long-distance athletics, having consistently produced Olympic and Commonwealth Games champions in various long-distance events which includes the marathon (Wikipedia, the free encyclopedia, 2022, March 20). Before conclusion of this chapter, presented below is the structure of the thesis.

### **1.10 Structure of the Thesis**

This thesis is organised into seven chapters which will be briefly summarised here.

**Chapter 1**, as indicated above consist of background of the study and research aims and objectives. The rationale and significance for this study are also discussed in this chapter. In addition, the limitations of the study, an overview of the financial services sector in Kenya, definition and cycle of money laundering and socio-economic implications of money laundering are other issues that are explored in the chapter. At the end of the chapter is a brief profile of Kenya.

**Chapter 2** covers the literature review. In the chapter, tools and strategies for combating money laundering in the financial services sector in Kenya are identified. These are Know Your Customer (KYC), suspicious transaction and cash transaction reports, asset recovery, training, internal controls and international cooperation. Then, the advantages and challenges of these AML measures and tools in regulating money laundering in the sector are explored.

**Chapter 3** focuses on the research methodology. Here philosophical assumptions that guides the study are discussed. This include the constructivist approach which was selected by the researcher. In the chapter, research questions and the mixed method research design or approach, which the researcher has adopted are considered. Likewise, various sampling techniques such as *snowball sampling*, which the researcher utilised to recruit participants are examined. The chapter too covers the impact of Covid-19 in accessing participants and

respondents. Last to be discussed in the chapter are issues relating to collection of data, survey questionnaires, data analysis, data management and ethics.

**Chapter 4** explored in detail the nature of money laundering in Kenya. The literature review that was conducted in this chapter, survey questionnaire results and participants perspectives showed that money laundering is a major problem in Kenya. In this chapter, the NYS I and II scandals which are the two main money laundering reported cases in Kenya's history are examined. Additionally, in the chapter, the five main sources of laundering illegal money in the financial sector were established to be corruption, drug trafficking, fraud and theft, criminal tax evasion, cybercrime and terrorism. Equally, the five common methods for laundering illicit funds were noted to be real estate transactions, cash intensive businesses, lawyers and accountants, structuring or "smurfing" and purchase of high-value goods. In the chapter, these results are supported by relevant cases that were widely covered in the mass media in Kenya.

**Chapter 5** considered the AML policing institutions whose mandate is to fight the practice of money laundering in Kenya. In the chapter, concepts such as *policing*, *private* and *hybrid* were explained to understand what is meant by policing. The institutions that were considered are state police bodies such as the National Police Service (NPS) and hybrid policing bodies (non-police) as for example the FRC. Other state public policing bodies (non-police), which were discussed are statutory bodies whose focus is regulatory and preventative. For instance, the Insurance Regulatory Authority (IRA). In this chapter, voluntary policing bodies, NGOs, private policing bodies and specialised police bodies (public) were also examined.

**Chapter 6** covered an evaluation of the effectiveness of AML tools and strategies for reducing money laundering in the sector. Among them are KYC or customer due diligence (CDD), legal reporting obligations (STRs, CTRs), information sharing, domestic cooperation, asset recovery and regional and international AML initiatives. Other AML measures that were considered include political will, civic education, whistle blowing and social and economic impact of money laundering.

**Chapter 7** is the last chapter of the study which summarises the key findings. These key findings relate to most of the AML measures and tools that have been noted above and include corruption, information sharing, fragmented AML enforcement, multi-agency team approach, political will, NGOs, ESAAMLG, and money laundering enablers etc. The chapter concludes by highlighting key recommendations, contribution to literature and knowledge, areas for

further research and research limitations. The next chapter's discussion is on the literature review.

## **Chapter 2: Literature Review**

### **2.1 Introduction**

The purpose of this chapter is to identify what tools and strategies are available in the financial services sector in Kenya to combat money laundering. This chapter will then critically examine the potential benefits and challenges of these tools and strategies in preventing money laundering in the sector. In this chapter, these tools and strategies will be considered in five sections. First, there is the customer due diligence (CDD) or KYC which are activities that are conducted by banks to establish or ascertain the identity of a customer or company before opening an account or carrying out a transaction. The second section will consider the financial reporting requirements which alert authorities to activities that may involve attempts to launder the proceeds of crime. These are suspicious or unusual transaction and cash transaction reports which are to be filed to a country's FIU if a transaction is suspected to be linked to money laundering (Reuter & Truman, 2004, pp.46,55,207). Additionally, cross-border cash declarations and seizure will also be discussed in this section.

In the third section, the focus will be on asset recovery – confiscation and forfeiture which are tools used to deny offenders the right to enjoy funds or property acquired illegally. Also, in this section to be considered are the AML skills development and staff obligations in reducing money laundering. In the fourth section, the discussion will be on control procedures, risk management and record keeping which are the internal control mechanisms put in place by institutions to address potential money laundering risks. Section five which is the last one in the chapter will explore international collaboration, cooperation and coordination which are global initiatives for fighting money laundering. It is to be noted that in this chapter, reference will be made of the three main legal tools for combating money laundering in Kenya, namely POCAMLA, Proceeds of Crime and Anti-Money Laundering Regulations 2013 (POCAMLR) and CBK/PG.

### **2.2 Customer Due Diligence or KYC**

One of the most vital tools for the prevention of money laundering in financial institutions is CDD. In this regard, a financial institution conducting business in Kenya is required to conduct CDD before opening an account or carrying out a transaction with a customer. This process also known as “Know Your Customer” entails the institution establishing or ascertaining the true identity of a customer or company. In the case of an individual this can be achieved by

producing a birth certificate, national identity card (ID), passport, personal identification number (PIN) or driver's licence. Additional CDD measures may include a customer providing residential address, utility bill - electricity or water bill, occupation or employment details, source of income, line of business and location of business activity. Accordingly, if no proper identification is provided, the institution should decline to open the account or complete a transaction. These records are required to be maintained for a minimum period of 7 years (Peter & Truman, 2004, pp.47, 54; POCAMLA, s.46; POCAMLR, ss.12-14).

In relation to establishing the identity of a company, Cox (2014, p.174) and section 45 of POCAMLA indicate that the following information is required:

- Evidence of registration or incorporation such as certificate of registration/incorporation or memorandum and articles of association
- The registered name of the company
- Board resolution authorising a person to open an account or transact business, borrow funds and account signatories
- Full names, identity or passport numbers and addresses of persons managing, controlling or owning the company
- Latest annual return of the company
- Audited financial statements for the last year
- PIN of the company

In addition to this, Cox (2014, pp.169-170) suggests that the level and depth of the CDD activities will need to be commensurate with the risks that the relationship poses. Cox added that some level of investigation should generally be undertaken to establish that documents and information provided are indeed valid. Also, one may agree with Blunden (2001, p.39) when he observed that "Know your client(s)" is without doubt the most important defence against the money launderer. Likewise, Hock (2020, p.237) advanced that obtaining beneficial ownership information, such as who in fact owns a bank account, is extremely relevant not only for tax collection but also for law enforcement, whether it be in relation to tax fraud, money laundering, or foreign anti-bribery enforcement.

### **2.3 Enhanced Customer Due Diligence**

Due diligence carried out by a firm on new customers is in two distinct parts - verifying their identity and the risk-based approach commonly referred to as enhanced due diligence (EDD) procedures. EDD are measures applied to persons and entities that present a higher risk to an organisation. EDD entail obtaining additional information that may assist in establishing the customer's identity. It may involve applying extra measures to verify the documents supplied. The measures too may include making surprise visits to a customer's business premise or obtaining report from credit reference bureau. These KYC checks are designed to understand the customer's business, source of funds, purpose of specific transactions, the expected nature and level of transactions and ensure that information maintained is both current and valid. Moreover, while undertaking EDD, it may be necessary to obtain senior management approval for the new business relationship or transaction. It is also important to carry out ongoing monitoring of the business relationship (Cox, 2014, p.170; POCAMLR, s.18). According to Naheem (2017, p.18), EDD systems require a closer investigation into the client's accounts, closer scrutiny of the business activity and business partners and examining the beneficiaries linked to the account such as family members. Illustrated here is a case of Kenyan bank which was in January 2023 sanctioned by court for failing to conduct adequate CDD.

In February 2017 fraudsters opened an account in a manufacturing company's name at the bank using forged documents. In collusion with bank staff, they then banked several cheques amounting to Ksh.1.2 million (US\$120,000) which were stolen from the account's office of the company. These cheques were drawn in the company's name. Thereafter, the bank failed to carry out CDD and US\$120,000 was withdrawn. Consequently, the manufacturing company sued the bank for negligence and failure to conduct CDD.

In her ruling, the judge found that the individuals who opened the account were "indeed fraudsters who used forged documents to have the account opened in their favour. The bank failed to exercise the due diligence expected of a banker when it opened and allowed the operation of the account in the manner it was operated, leading to a loss of money on the company's part. I am satisfied that the company had proved on a balance of probabilities that the bank was negligent in the manner that it handled the entire transaction with the persons who turned out to be fraudsters, leading to the loss of substantial sums of money where its cheques were deposited and withdrawn from an account opened and operated by the fraudsters. Moreover, the bank having admitted that it failed to adhere to the CBK, regulator prudential

guidelines, cannot escape liability for the loss of the money.” said the judge (Wangui (2023, January 10, Nation Media).

### **2.3.1 Politically Exposed Persons**

Again, in Kenya, section 22 of POCAMLRL and section 5, CBK/PG provides that EDD measures should be undertaken to determine whether a customer or beneficial owner is a politically exposed person (PEP). PEPs are individuals entrusted with a prominent public function either in Kenya or a foreign country. For instance, cabinet ministers, senior government and important political party officials, senior military/police officers and judges and relatives or close business associate of a PEP. Where a customer has been found to be a PEP, the institutions are required to undertake CDD measures before engaging in a business relationship or transaction with such an individual. Some of these measures includes obtaining approval from senior management, establishing source of funds, gathering information on immediate family members or close associates, determining purpose and the expected volume and nature of account activity. Once the account has been opened, to conduct enhanced on-going monitoring of the relationship.

### **2.3.2 Wire Transfers**

Financial institutions also have an obligation to ensure that adequate information is provided when processing both domestic and international or cross-border wire transfers. This includes name, account number, address, ID or passport numbers of both the originator and the beneficiary. In the absence of an account number, a unique transaction reference number should be included which makes it possible to trace the transaction (POCAMLRL, s.27; CBK/PG, s.5). Illustrated below are some of the benefits and challenges encountered by the financial institutions when undertaking CDD or KYC activities.

### **2.3.3 Benefits - CDD**

An advantage of CDD, if properly implemented or enforced, is that it prevents illicit financial or cash flows from being injected in the economy of Kenya through financial institutions. Thus, it is an important and effective safeguard against those individuals with illegal cash flows. Second, CDD compels financial institutions to identify whom they are dealing with, thus enabling them to mitigate risks of money laundering. Moreover, CDD acts a deterrent and

can prevent the commission of economic crimes such as money laundering. Notably, CDD can help to limit the success of kleptocrats (corrupt high - level public officials), since they generally have little interest in keeping their ill-gotten gains invested in their own countries where any change in government might threaten control of those assets (Reuter & Truman, 2004, p.150).

#### **2.3.4 Challenges – CDD**

A key challenge faced by financial institutions is establishing the authenticity or genuineness of the documents which are required to be presented by customers for opening of an account. These can be forged documents such as the national ID, driving licenses and passports. Regarding passports, Cox (2014, pp.171-173) cautioned that firms need to be aware of the risks associated with camouflage passports. These passports are generally issued in names of countries that no longer exist or have changed their name, for example Burma ("Myanmar") or Ceylon ("Sri Lanka"). Others use the names of places that exist but cannot issue passports, for example Zurich or New York. Such passports are also often sold with several matching documents, including an international driving licence and similar supporting identity papers. Cox added that another KYC challenge relates to customers that do not provide key data such as addresses, telephone numbers, false residential address, telephone or mobile numbers that are specifically used for opening an account and then discarded - making it difficult for the financial institution to keep in touch with the customer.

It is generally held that financial institutions are in business to generate profits. Hence, there is the increased pressure on bank employees to deliver on the job and bring in new business in opening of accounts, sale of credit cards and new deposits to drive up profits and enable banks to adequately manage their assets, liabilities and operational costs. Under such circumstances, at times, proper KYC procedures and due process are not followed (Nunda, 2020, January 2020, Kenya Tribune).

It is also suspected that corrupt government officials at the National Registration Bureau, Nairobi, Kenya facilitate money launderers acquire Kenyan IDs which are used for opening a bank account. The officials are also suspected to be facilitating Nigerians acquire birth certificates, IDs and Kenyan passports and to adopt local names, at a fee (Wambugu, 2019, December 21. Nation Media). With current advanced technology, the use of fraudulent documents to open bank accounts are still prevalent in financial institutions. Therefore, it is important that financial institutions have in place strict rules when opening an account for a

new customer. Consequently, rather than relying on ID card and passport to identify clients, a number of institutions in Kenya have embraced biometric technology which allow customers to use their fingerprints and voice for identification purposes when conducting transactions. Moreover, the use of this technology is also expected to eliminate the use of passwords and assist in reducing cases of fraud, identity theft and money laundering (Mutege, 2017, December 18. Business Daily).

## **2.4 Financial Reporting Requirements**

This section will explore the financial reporting tools for combating money laundering in financial institutions. These are suspicious transactions reports (STRs), suspicious activities reports (SARs) and cash transactions reports (CTRs) that are to be filed with the regulator. In addition, cross-border cash declarations and seizure made to customs officials at port of entry or exit will also be considered.

### **2.4.1 Suspicious Transactions/Activity Reports**

One of the strategies of preventing money laundering is a requirement that financial institutions must file STRs and SARs to a country's FIU if a transaction is suspected to be linked to money laundering (Reuter & Truman, 2004, pp.55,207). In this regard, financial institutions in Kenya have a legal obligation to monitor on an ongoing basis all complex, suspicious or unusual transaction or activity which have no apparent economic or lawful purpose. Upon establishing that such transactions or activities are related to money laundering, the institution is required to report to the Financial Reporting Centre (FRC) immediately or within 7 days. If an institution fails to do so, it commits an offence (POCAMLA, ss.39,44; POCAMLR, s.32).

Prior to submitting a suspicious transaction report, a financial institution is required to investigate and report the findings to the FRC. The report should be accompanied by copies of all documents directly relevant to the suspicion. Additionally, sufficient information should be disclosed which indicates the grounds on which the suspicion is based. After submission of the report, the FRC scrutinizes the same in a bid to detect doubtful transactions that may involve money laundering. Upon discovery, the FRC forwards the same to the relevant law enforcement agencies for further investigation (POCAMLR, s.32; Gikonyo, 2018, pp.62-63). The STR shall be retained by financial institutions for a period of 7 years and the report and findings shall be shared with the management or auditors of the relevant institution (POCAMLA, s.44; POCAMLR, s.36).

### **2.4.2 Advantages – STRs/SARs**

It is suggested that STRs or SARs reports are the primary source of information from financial institutions that assist to prevent money laundering. They can generate evidence of a crime and increase the risk of criminal sanction. These forms too represent the best source of tactical and strategic financial intelligence and can create a paper trail through which launderers might be traced (Reuter & Truman, 2004, pp.106,119; Madinger, 2012, pp.297-300; Ryder, 2012, pp.60-61). STRs or SARs are more informative than CTRs. A rise in the number of these reports may reflect either an increase in money laundering or increased stringency of the AML regime. However, Levi & Maguire (2004, p.463) argues that “---the impact of money laundering reporting depends on enforcement follow-up of those reports”.

### **2.4.3 Limitations – STRs/SARs**

There are several criticisms levelled against these reporting obligations in the US and UK. First, that they generate a lot of data which may cause an information overload and not be useful for investigation purposes. Second, the requirements can escalate compliance and administrative costs making it expensive and administratively burdensome for the banks to comply with. Third, banks complain that these tools are an investigatory burden that they are not equipped to handle. Fourth, that there are too many AML policing authorities resulting to delays and confusion which causes uncertainty among regulatory agencies. Other limitations are that banks may also face the risk of reporting of genuine transactions as suspicious. That these measures are intrusive and undermine the unique relationship between banks and their clients thus compromising the right to privacy. Overall, it has been argued that the effectiveness of these reporting requirements regime is heavily reliant upon the accuracy of the reports completed by the regulated sector and the quality of the investigation by the police (Ryder, 2012, pp.62-63, 93-95,101; Reuter & Truman, 2004, pp.34,55,89; Chaikin, 2008, p.275; Ghosh, 2012, p.13; Madinger, 2012, p.297).

Another key challenge requiring financial institutions to report suspicious transactions is that these reporting institutions may opt for defensive reporting, in which anything and everything is reported (Ai and Tang, 2011; AlRashdan, 2012 cited by Gikonyo, 2018, p.63). This can dilute or eliminate the information value of these reports (Afande, 2015, p.164). This too is probable in Kenya, because in addition to filing STRs, banks are also required to file all cash transactions exceeding US\$10,000 whether or not the transaction appears to be suspicious to FRC (POCAMLA, s.44; POCAMLR, s.34). As a result, FRC may be overwhelmed with these

reports and fail to identify some of the suspicious ones (Takatas, 2011; US Department of State, 2017 cited by Gikonyo, 2018, p.63).

#### **2.4.4 Cash Transaction Reports (CTRs)**

Again, in a bid to curb money laundering, financial institutions are required to submit CTRs to the regulator. In most jurisdictions, the normal threshold for CTRs is US\$10,000 and covers withdrawals as well as deposits. In the US under the Bank Secrecy Act 1970 (BSA), banks are required to complete a currency transaction report which must be filed with the regulator for transactions that exceed US\$10,000. A transaction includes a deposit, withdrawal, exchange or transfer of money (Reuter & Truman, 2004, pp.55, 207; Ryder, 2012, p.60). Likewise, as indicated above, in Kenya, financial institutions are also required to file CTRs with FRC for transactions of US\$10,000 and above (POCAMLRA, s.44; POCAMLR, s.34).

Accordingly, in an effort to reduce money laundering, illicit money transfers and tax evasion, CBK, the regulator in January 2016, issued guidelines requiring customers complete forms explaining the nature of any cash transaction exceeding Ksh.1 million (US\$10,000). For each transaction, customers should provide details of the source of money being deposited or withdrawn. Second, they are required to justify whether the nature of their business generates cash to support the transaction. Third, they should show why such cash deposit or withdrawal is necessary and why the same cannot be made through wire transfer. Fourth, they should explain where the money will be taken to after withdrawal. Finally, customers are required to indicate what the money is going to be used for and beneficiaries, including their full identities. Significantly, banks are encouraged to use electronic payments which are an alternative and secure channel to process payments (Ngugi, 2016, February 20. Nation Media).

Additionally, in June 2018, new tough rules were introduced by the financial sector industry lobby, the Kenya Bankers Association (KBA), that were aimed at sealing loopholes for money laundering. The guidelines require customers withdrawing or depositing Ksh.10 million (US\$100,000) and above in cash to give a three-day notice. They are also required to provide supporting evidence of the source of funds and the purpose for withdrawing the same. They should also justify why they can't use wire transfer and are required to provide ID or passport copies of persons involved in the transaction. Furthermore, any cash transactions exceeding Ksh.20 million (US\$200,000) must be approved by the senior management of the bank. Where

a customer is unable to provide the information, the bank is required to immediately file a STR with the FRC (Genghis Capital, 2018, June 26).

#### **2.4.5 Challenges – CTRs in Kenya**

The regulations on CTRs exceeding US\$10,000 faces a number of challenges in Kenya. For instance, some legislators are opposed to the regulations and are persuading CBK, for its review and removal, claiming that the rule have inconvenienced many customers, prompting some to keep their money at home instead of depositing in banks. They also claim that Kenyans were being harassed by banks and could not get access to their money. Regarding businessmen, the legislators are arguing that the rules have impacted on planning of their businesses as banking processes have added several layers of bureaucracy. Notably, the long queues had returned to banking halls as banks strive to comply with the new rule. Further, they advance that the Kenyan economy is cash-based and the rule is, therefore, hurting and frustrating legitimate business due to its restrictive nature (Ngugi, 2016, February 20. Nation Media; Nyamori & Otieno, 2019, February 25. Standard Media).

In response, the regulator, CBK argues that removing or repealing the regulations on cash transactions that are above US\$10,000 threshold would conflict with AML legislation (POCAMLA, s.44) and undermine the fight against corruption and money laundering. Secondly, removing them would put Kenya in danger of being blacklisted internationally as a haven for money-laundering by the FATF, of which it is a member. Thirdly, the removal of the regulations would lock Kenya out of the global financial system and adversely affect the integrity of the country's financial system. This includes the immediate termination of relationships by foreign correspondent banks and closure of accounts of Kenyan banks (de-risking). In short, the regulator warns of dire consequences if the regulations are repealed, including a near stoppage of investment inflows to the country (Kenya-Tribune, 2019, February 26). The last reporting requirement to be explored before concluding this section is cross-border currency reporting, that is, maximum amounts of cash which could be brought into or outside a country.

#### **2.4.6 Cash Declarations and Seizure**

#### **2.4.7 Limits of Cash Transfers**

One of the tools used by governments to reduce the money laundering risk is to limit the amounts of cash which could be brought in and outside the country. In the European Union,

the limit is €10,000 and, in the US, the threshold is set at US\$10,000 (Riccardi & Levi, 2018, pp.147-150). Similarly, in Kenya under section 8 POCAMLR, the threshold is US\$10,000 which should be declared to a customs officer at the port of entry or exit. Any declarations made are to be submitted to the FRC by a customs officer. Failure to make a disclosure or declaration, the customs officer has powers of arrest, search and seizure. Where the customs officer has made a seizure, disclosure and surrender of the said amount is to be made to the Assets Recovery Agency (ARA) immediately or within 5 days. Gikonyo (2018, pp.61-62) states that as it is, this provision can assist in the identification of suspect illicit funds. However, as Gikonyo has argued below, the regulation does have loopholes, which affect its effectiveness.

#### **2.4.8 Loopholes - Cash Declarations**

First, the customs officer is required to submit completed declarations to the FRC but at the same time to disclose any seizure to the ARA and not to the FRC. Yet, the FRC is mandated to receive and analyse reports of unusual or suspicious transactions in a bid to identify proceeds of crime. This implies that the FRC would have to await a report from the ARA whose primary functions is not to analyse CTRs or STRs, but to undertake forfeiture of criminal proceeds (POCAMLA, s.54). Consequently, this is likely to lead to delays in the FRC analysing and forwarding the matter to law enforcement agencies for initiation of timely investigations into suspected proceeds of crime. The solution to this lack of information flow would be to require double reporting to both FRC and ARA concurrently at the time of seizure.

Second, the maximum duration of five days within which disclosure and surrender of the seized cash is to be done by the customs officer is too long. This is because it would possibly lead to delay in commencement of investigations, not to mention the possibility of the cash disappearing through corruption. To remedy this, Gikonyo suggest that the period should be shortened to a maximum of 2 days. Third, the law only provides for what is to happen at the port of entry as the cash is seized. No guidance is provided on what should follow the seizure and surrender to the ARA. Gikonyo proposes that it would be preferable that post seizure follow-up provisions be included in the AML legislation. For instance, guidance should be given regarding how long the ARA can keep the cash; where it should be deposited and if there is need to seek a court order to allow continued detention of the cash, as investigations are conducted (Gikonyo, 2018, p.62).

#### **2.4.9 Seizing Cash**

Cash plays a key role in the illicit economy: it is more frequently seized because some criminals may prefer to keep dirty proceeds in banknotes than laundering it via real estate or through businesses. Another reason is that cash is easier to manage once seized. For instance, it can be deposited in a bank account or transferred to special public funds used for various purposes (Riccardi & Levi, 2018, p.152). Two cases that illustrate seizure of undeclared cash at the main airport in Kenya are presented below.

In December 2020, a Nigerian national was arrested by customs officials carrying more than Ksh.100 million (US\$1m.) in his handbag at Nairobi Airport, while on transit to Dubai. He was taken to court after investigations were conducted by ARA. His attempts to get back the money, so that he could proceed with his journey was rejected by the High Court. ARA argued that the documents which the suspect produced were suspicious and inquiries were to be made to establish their authenticity. Further, the court heard that there were reasonable grounds to believe that the funds were proceeds of crime. This is because ARA said his failure to declare that he was carrying such a huge amount of cash and without a reasonable explanation, or documents to support the legitimacy of the cash, raises suspicion of money laundering (Kiplagat, 2022, February 16. Business Daily).

In yet another case in November 2022, a Nigerian national attempted to bring into Kenya US\$28,000 concealed in a bag that contained a jacket and textbooks. He said that the money was sent to him by a relative residing in the US. ARA faulted him for failing to declare the cash or the source leading to suspicion that he was using Kenya as a smuggling route for laundering illicit funds. When asked about the source, he claimed that it was from his relative who didn't know that she was supposed to declare the cash. He also advanced that he is a music producer which earns him US\$2,000 a month and does poultry farming which gives him an income of US\$44,000. He added that he was coming to Kenya on holiday and had US\$4,000 in his account for that purpose (Kiplagat, 2022, February 16. Business Daily).

## **2.5 Asset Recovery - Confiscation and Forfeiture**

In this section, the discussion will be on asset recovery - confiscation and forfeiture of illicit proceeds of crime. These are legal tools for preventing money laundering. Before considering these tools, however, it is important to briefly describe what confiscation and forfeiture entails. This will be followed by an examination of the types of forfeiture procedures in the US and Kenya. Some of the advantages and constraints in the application of civil forfeiture will then be considered. At the end of the section, two cases relating to how forfeiture orders operate in Kenya will be illustrated.

### **2.5.1 Forfeiture and Confiscation**

Forfeiture has been defined as “the surrender or loss of property or rights without compensation” (Gallant, 2005, p.54 cited by Ryder, 2011, p.178). Forfeiture has also been referred to as the power granted to a court “to take property that is immediately connected with an offence”. The forfeiture powers also act as a deterrent (message sent to people that crime does not pay), and in the US they have been used to compensate the victims of crime by recovering property lost as a result of the criminal activity (Ryder, 2012, pp. 64-67).

Likewise, the Vienna Convention (1988, cited by Ryder, 2011, p.179) provides that confiscation is the “permanent deprivation of property by order of a court or other competent authority”. Stessens (2000, pp. 29-30 cited by Ryder, 2011, p.179), defined confiscation as “depriving the offender of the proceeds or profits of crime”. Stessens, further observed that “the first and most important legal tool for depriving offenders of illegal profits is confiscation of the proceeds of crime”. Finally, confiscation prevents criminal property from being laundered or reinvested either to facilitate other forms of crime or to conceal illicit proceeds (Ryder, 2012, p.35).

### **2.5.2 What can be Forfeited?**

Ryder (2012, pp.67-69,90) explains that there are three types of forfeiture procedures in the US: administrative, criminal and civil forfeitures. Administrative forfeiture is the most popular procedure and it relates to unchallenged cases which are pursued by federal law enforcement agencies as a “non-judicial” matter that results in the court ordering the transfer of title to the government. Criminal and civil forfeitures are “judicial matters, requiring the commencement of a formal action in a federal court”. Criminal forfeiture is an integral part of the criminal case which is imposed by a court on the defendant, once convicted – also referred to as *in personam*,

which means it is against the individual. Criminal forfeiture proceedings also are part of the sentencing practice. Notably, US law allows all property involved in the commission of money laundering offence to be forfeited.

In Kenya, civil forfeiture is a controversial tool available to seize proceeds of crime. It is also referred to as non-conviction based (NCB) forfeiture. This is because the proceedings are not criminal in nature and do not depend on a criminal conviction. The proceedings are a separate action from any criminal proceedings against the defendant. Hence, the action is taken *in rem*, and is taken against the property, that is, against the “thing” itself not the defendant, or *in personam*. This means that the government acts as a civil plaintiff and anybody who challenges the proceedings is referred to as the claimant. Indeed, during the trial, it must be shown that the property is “tainted”, that is, was obtained in whole or part from unlawful activity (Kruger, 2013, cited by Gikonyo, 2020, p.1; Ryder, 2012, p.69).

Again, civil forfeiture permits the government to control property that has been obtained with illegal funds. It can be used to target both the proceeds of crime and its instrumentalities - property used or intended for use to commit crime and it is this association that causes the property to be “tainted”. According to section 92 of POCAMLA, NCB forfeiture can target property held by third parties who may have known or not known of the property’s connection to the proceeds or instrumentalities of crime (Ryder, 2012, p.69; Gikonyo, 2020, pp.1-2).

Equally, in Kenya, under sections 81 to 99 of POCAMLA, civil forfeiture is undertaken in two stages: preservation and forfeiture. The preservation phase aims to prevent the wasting or disappearance of property that may become the subject of a forfeiture order. The forfeiture stage seeks to establish if the targeted property does indeed constitute the proceeds or instrumentality of criminal activity. If proved in the affirmative, a forfeiture order is issued. These stages are effected through court proceedings where the relevant orders are given (Gikonyo, 2020, pp. 2-3).

### **2.5.3 Advantages – Civil Forfeiture**

Civil forfeiture proceedings are popular with law enforcement agencies because – if prosecutors are unable to obtain a criminal conviction, they are able to initiate proceedings against property and not the defendant. Second, it requires a lower burden of proof (balance of probabilities) and there is no need for a criminal conviction for a predicate offence which is required, since the focus is on the tainted property. Further, property held by third parties who did or did not commit the predicate offence, or who may or may not be aware of the property’s

link to proceeds or instrumentalities of crime, can be targeted. Thirdly, they are an “easy way to deprive criminals of the fruits of their acts”. Moreover, the use of such powers ---- is a means to generate revenue and in effect, permits these agencies to become self-sufficient (Ryder, 2012, pp. 70-72; Gikonyo, 2020, p.25). Finally, considered somewhat as an afterthought by many, asset recovery, in itself, provides another direct means through which to inflict harm against organised crime (Ridley & Gilmour, 2015, p.298).

#### **2.5.4 Constraints in the Application of Civil Forfeiture**

There are a number of challenges in civil forfeiture proceedings. For instance, the popularity of these proceedings may tempt the government to “fill its coffers” by seizing property for minor offences. That in some circumstances, given that there is no need for a criminal trial, civil forfeiture has been described as “legalised theft” and unconstitutional. That due to the complex nature of the money laundering process and difficulties in securing a successful conviction, evidence does suggest that regulatory and law enforcement agencies are more likely to pursue the “easier” available option of civil forfeiture. Thus, by instituting civil forfeiture proceedings, it may be possible to use the lesser standard of proof (balance of probabilities) to target the associated property (Ryder, 2012, pp.71, 181,191; Gikonyo, 2020, p.22; POCAMLA, s.92).

Other limitations are that civil forfeiture proceedings are burdensome procedural requirements and are technical in nature. Second, forfeiture is “limited to property traceable to the offence”, which in many instances is impossible to determine. Third is the potential of unfair treatment of so called “innocent owners” whose property could be forfeited because of the illegal activity of another party which they could not have anticipated. Moreover, its use violates the Double Jeopardy clause of the US Constitution when it is used in conjunction with a criminal prosecution and may not be a fair one (Ryder, 2012, p.70).

There is also a legal conflict between government agencies mandated to pursue civil forfeiture orders in court. *Locus standi* refers to a person having the right or capacity to bring legal proceedings. If someone has no *locus standi*, they lack the legal standing to be heard in court. Under Kenyan law, as will be shown in the chapter on AML policing institutions of this thesis, the general powers of prosecution are granted to the Director of Public Prosecutions (DPP). However, under sections 82 and 90 of POCAMLA, the mandate for civil forfeiture sits squarely with the ARA - preservation or forfeiture orders can only be done by the ARA director (Gikonyo, 2020, p.9).

Additionally, in Kenya, the investigatory approach provided under POCAMLA is a fragmented one which may lead to buck-passing and lack of co-ordination in investigations. There is no central investigative agency to handle asset forfeiture matters. It involves three different agencies that can initiate investigations in relation to criminal proceeds: the Attorney General (AG), the DPP and the ARA. However, all three lack the capacity to perform investigations independently, since the National Police Service is the institution permitted by law and have the requisite manpower, to carry out investigations of all types of crimes in the country (Gikonyo, 2020, p. 10). Another key player in asset recovery is the EACC, which is the anti-corruption watchdog in Kenya.

Consequently, there is need for a more collaborative working relationship between the AG, DPP, ARA, EACC and the police in relation to undertaking the identification, tracing, freezing, seizure and confiscation of the proceeds or instrumentalities of crime. Co-operation between these institutions is necessary from the time investigations are pursued, to deciding whether to commence forfeiture proceedings and during trial. Indeed, the staff of the agencies tasked with investigating, prosecuting and enforcing forfeiture cases, including judges should all have the relevant skills, training and resources to handle civil forfeiture investigations and trials. Lack of these translates into difficulties in enforcing effective execution of asset forfeiture. In fact, it would be appropriate, in the long term, for the ARA to have its own team of investigatory staff (Gikonyo, 2020, pp. 11-12, 24). Highlighted below are two cases relating to how forfeiture orders operate in Kenya.

In February 2022, assets valued at close to Ksh.1billion (US\$10m.) owned by a senior government official were frozen by court pending determination of a case filed by the EACC. The court allowed the preservation of the assets until the seizure and forfeiture suit is determined. To disguise the proceeds of crime, the public official acquired 27 properties which include 7 apartments, 8 commercial and residential plots, 2 schools linked to him and his wife, shares in multiple companies, 4 vehicles and a hardware store. Also frozen was about Ksh.600 million (US\$6 m.) in 22 bank accounts held at 4 local banks. EACC stated that his wealth was built from kickbacks and bribes from road construction contracts or tenders that he awarded. Some of these companies were linked to him in conflict of interest and contrary to procurement laws. Further, EACC argued that the assets and cash held in bank accounts could not have been acquired with his monthly salary of Ksh.390,000 (US\$3,900). Hence, he was in possession of assets hugely disproportionate to his known legitimate source of income and were proceeds of crime. It was indicated that he amassed the wealth between February 2009

and December 2018 where his pay would have amounted to Ksh.136 million (US\$1.36 million) for the 119 months (Wangui, 2022, February 4. Nation Media).

In yet another case, in November 2021, ARA was allowed to freeze nearly US\$1million held in a 21-year-old student's bank account amid concerns that the money could be proceeds of crime. The preservation orders were issued to allow ARA to investigate the source of the funds. According to ARA, the funds were sent to the female student by her Belgian boyfriend in four transactions in her bank account in August 2021 which the ARA suspected are proceeds of crime. ARA indicated that these bank accounts were opened solely to receive the funds – they were used as conduits of money laundering in an effort to conceal and disguise the nature, source, location and movement of the funds.

When the student was asked by ARA to explain the source and purpose of the funds, she stated that her boyfriend had given them to her as a gift and for investment in several land projects and holidays. She added that she was a full-time student and the funds were meant for her upkeep and general investment for her current and future social and economic security. The Belgian, who is believed to be a cryptocurrency specialist, indicated in the declaration documents that the student was *“free to use the money to secure financial security for our future children”* (Kiplagat, 2021, November 27, 2022, June 8. Nation Media).

## **2.6 Skills Development, Staff Obligations and Recruitment Screening**

### **2.6.1 The Importance of Staff Awareness and Training**

One of the most important tools for the prevention and detection of money laundering is to have staff that are alert to the risks of money laundering and that are well trained in the identification of unusual or suspicious activities. It is essential that firms implement a complete and structured policy of training that encompasses all relevant employees, so that, in particular, they are aware of their personal obligations with regard to money-laundering deterrence. They also need to understand the role that they play in the overall achievement of the firm's objectives regarding money-laundering deterrence. This will be of particular importance to staff who interact with customers face-to-face and those who handle customer transactions and instructions, although all staff will require training, including temporary and contract staff who have customer-facing functions. The training programme need to be conducted regularly and be design tailored to meet the needs of specific groups (Cox, 2014, pp.181,184).

### **2.6.2 The Core Obligations of Training**

According to Cox (2014, pp.182, 185-86) and section 5, CBK/PG, the core obligations of training staff with regard to money-laundering deterrence are that relevant employees are:

- Made aware of the risks posed by money laundering, the relevant legislation and their obligations under that legislation.
- Made aware of the identity and responsibilities of the money laundering reporting officer (MLRO) who coordinates training of staff in AML awareness and detection methods.
- Trained in the firm's procedures and in how to deal with potential money-laundering suspicious transactions or activities.
- Made aware of how money-laundering crimes operate and how the products and services offered by the firm may be used as a vehicle for money laundering.
- Understand how to operate a risk-based approach to combating money laundering.
- Made aware of customers who may present a higher risk of money laundering to the institution such as PEPs.

### **2.6.3 Legal and Regulatory Obligations**

In many jurisdictions, individual members of staff may face criminal penalties if they become involved in money laundering or if they fail to report suspicious activities. It is important that staff are trained and made aware of these legal liabilities both to the firm and to its employees, and the risk of prosecution if suspicious transactions are carried out. For example, in the UK, the Financial Conduct Authority (FCA), recommends that senior management must take measures to ensure that employees are made aware of laws which relate to money laundering and given training on how to deal with transactions related to money laundering (Cox, 2014, pp.182,185-86).

Similarly, in Kenya, financial institutions have an obligation to provide employees, including the MLRO, with training to facilitate recognition and handling of suspicious transactions. Likewise, FRC is required to design training requirements and provide training to financial institutions in respect of transactions, record-keeping and reporting obligations. These institutions too are required to provide for, and document AML training for appropriate personnel (POCAMLR, s.9; POCAMLA, s.24). Below is an illustration of a case where a bank manager was charged before court for failing to report suspicious transactions which financed a terrorist attack in Nairobi, Kenya on 15 January 2019.

A branch bank manager, in Nairobi was charged with aiding and abetting the DusitD2 business complex terror attack which claimed the lives of 21 people. Specifically, the manager was charged for failing to report suspicious transactions to FRC of about Ksh.40 million (US\$400,000) suspected to have funded the attack. As the branch manager, she allowed the funds to be cashed within a very short time, without requesting documentary evidence or asking justification about the source or use of suspected illegal funds. As noted above, this is contrary to POCAMLA where cash transaction beyond US\$10,000 should be reported to FRC. The money was sent to *al Shabaab* headquarters in Jilib town, Somalia (Kakah, 2019, January 23. Business Daily; Awich, 2019, February 26. The Star).

#### **2.6.4 Staff Responsibilities**

In order to comply with the overall obligations under the various money-laundering legislation and regulations, responsibilities are distributed amongst the various employment levels within the firm.

#### **2.6.5 Senior Management**

It is the responsibility of senior management to ensure that a financial institution has in place appropriate systems and effective training arrangements to combat money laundering. However, as indicated above, it is normally the responsibility of the MLRO to ensure that appropriate training is undertaken. This is normally achieved through providing oversight in respect of training and ensuring that the firm's systems and controls include appropriate training for all employees – which includes, awareness training for senior management, MLROs and nominated officers (Cox, 2014, pp.184 -185).

#### **2.6.6 Staff**

It is also the responsibility of senior management to ensure that all staff are aware of their personal responsibilities regarding AML procedures at the start of their employment. They should be made aware that they are to monitor and report all suspicious transactions directly, on a timely basis, to the MLRO. Staff should be advised specifically about the details of the unusual patterns of behaviour, transactions and other suspicious scenarios that they are to look out for. Failure to report suspicions, tipping off those suspected of money laundering and prejudicing an investigation into money laundering are all generally offences under

POCAML. In many cases, the individual employee engaged in customer-facing or back-office activities who tips off the client can be personally subject to some form of enforcement action. Accordingly, it is important that all employees are provided with sufficient training, whether in the regulated sector or not (Cox, 2014, pp.85, 163; POCAML, ss.3, 4, 5, 7, 8).

### **2.6.7 Pre-employment Screening**

The main purpose of pre-employment screening is to ensure that financial institutions hire staff of high integrity, ethical and professional standards. The process involves conducting inquiries or investigations into the background of employment applicants, interviews of applicants, tests, and other screening methods to select the best possible candidates for an offer of employment. The human resources, internal or external security practitioners may be involved in the screening process depending on the organization. A primary objective of the background check is to verify the accuracy of information provided by the applicant such as education, work history, credit report and criminal record. Since this process involves the collection of personal and confidential information, such data must be protected (Purpura, 2010, pp.225, 231,235).

In Kenya, one method of verifying criminal record of applicants in most organisations is through the police clearance certificate commonly known as the “certificate of good conduct”. An applicant makes an online application, at a fee, to the police and is invited to have his or her fingerprints taken. Consequently, the police conduct a search at the criminal records database and issue a report which either confirms whether an applicant has a criminal record or not. According to Purpura (2010, pp.235-236), fingerprint-based records ensure positive identification and that the availability of high-quality false documents on the internet makes verifying identity via fingerprints especially important.

## **2.7 Control Procedures, Risk Management and Record-Keeping**

### **2.7.1 Board of Directors - AML Obligations**

Probably the best protection against money laundering is a commitment by the whole organization to defend itself actively against attack. This principle must be instilled in all members of staff across the board. One of the vital administrative elements of self-protection is a formal statement from the Board of Directors (BOD) or senior management of a financial institution spelling out the organization's commitment to combat the abuse of its facilities for the purpose of money laundering (Blunden, 2001, p.138).

In this regard, section 5, CBK/PG provide that it is the responsibility of the BOD to ensure that management:

- Establish adequate internal control measures to address potential money laundering risks.
- Obtain, verify and maintain proper identification documents of customers wishing to open accounts or conduct transactions. Such documents include passports, identity cards or driving licenses.
- Monitor and report any suspicious transactions or activities to the FRC.
- Cooperate with national law enforcement agencies during the investigations of suspected money laundering.
- Train staff on a regular basis in the prevention, detection and control of money laundering and the identification of suspicious transactions. As a matter of fact, train key staff and ensure that all staff (new, temporary and existing) are subject of pro-active vetting (Blunden, 2001, p.37).

### **2.7.2 Internal Control Obligations – The AML Compliance Programme**

Again, under section 9 of POCAMLR and section 5, CBK/PG, financial institutions are required to put in place effective internal control measures and other procedures to reduce money laundering and these measures include:

- Programmes for assessing risks relating to money laundering.
- Monitoring programmes in relation to complex, unusual or large transactions or suspicious activities.
- Designate a MLRO and detail his or her responsibilities.

- Provide for and document policies and procedures to perform independent testing or audit, to measure compliance with the relevant AML laws and regulations.
- Provide employees, including the MLRO with training to facilitate recognition and handling of suspicious transactions.
- Conduct EDD procedures with respect to persons, business relations and transactions carrying high risk such as PEPs.
- Making employees aware of the procedures under the AML legislation, policies and guidelines that are adopted by a financial institution.
- Provide for adequate screening policies and procedures to ensure high ethical and professional standards when hiring staff. In this connection, Blunden (2001, p.144) concurs stating that it is important that all prospective employees are vetted to ensure that the financial business does not suffer the consequences of employing the dishonest. Appropriate vetting procedures for new employees and appropriate AML training programmes for both new and existing employees are all essential.

### **2.7.3 What is a Money Laundering Reporting Officer?**

As was noted above, to prevent money laundering, financial institutions are required to establish and maintain internal controls and internal reporting procedures. Thus, to monitor compliance and effectiveness of these tools, institutions are required to appoint a compliance officer or MLRO to undertake this function. The officer shall hold a senior management position and shall have authority and independence to carry out the function. The MLRO should be the first point of contact within a firm for any issues which relate directly or indirectly to money-laundering deterrence. The MLRO should be the central point of contact with the regulator for AML matters. He or she should be provided with the necessary access to systems, records and information that may be relevant in determining whether a sufficient basis exists to report the matter to the regulator. Insufficient performance of this role can result in fines being imposed by the appropriate regulatory authority.

Here is an illustration of some of the functions of the MLRO as provided under section 47, POCAMLA, sections 9 and 10, POCAMLR, Cox (2014, pp.159-160, 163-164 and Blunden (2001, p.140):

- i) Making strategic decisions concerning suspicious activity reports.
- ii) Receive and vet all suspicious activity reports on money laundering submitted by staff.

- ii) File suspicious transaction or activity reports related to money laundering or to the proceeds of crime with the FRC.
- iii) Develop the institution's AML compliance programme, policies and procedures and document them in a staff handbook or manual.
- iv) Ensure that the AML compliance programme is implemented - followed and enforced within the financial institution.
- v) Coordinate training of staff in AML awareness and detection methods.
- f) Maintain close co-operation and liaison with the regulator.
- (g) Ensure that staff of the financial institution are made aware of the money laundering legislation as well as the audit systems adopted.
- (h) In liaison with the institution's human resource department, ensure that persons are screened before being hired as employees.
- (i) Maintain a register of suspicions received, investigated, and reported to provide some monitoring of the process. The regulators do place major importance on financial institutions implementing appropriate AML internal controls and failure to do so can put both the firm and the MLRO at risk (Cox, 2014, pp.159-60).

#### **2.7.4 Independent Testing**

According to Blunden (2001, p.143), internal audit or compliance should implement an annual independent test of the effectiveness of the AML deterrence procedures which should include:

- interview of employees handling transactions and supervisors to determine their knowledge and compliance with the procedures
- sampling of transactions, records retained and suspicious transaction referral reports
- testing the reasonableness and validity of any exemptions granted to clients
- testing the record keeping system and any deficiencies reported to appropriate manager for corrective action and deadline for implementation.

#### **2.7.5 Risk Management**

Risk in banking refers to the potential loss that may occur to a bank due to the happening or an occurrence of some expected or unexpected event in the economy (Ghosh, 2012, p.1).

Accordingly, in Kenya, financial institutions are required to undertake a money laundering risk assessment to enable it identify, assess, monitor, manage and mitigate the risks associated with money laundering. In undertaking this assessment, the institution shall develop and implement systems that will enable it to identify and assess money laundering risks consistent with the nature and size of the institution. Additionally, it shall develop policies, controls and procedures to effectively manage and mitigate the identified risks. These policies or programmes should regularly be updated at least once every 2 years taking into account changes such as the entry of the institution into new markets and the introduction of new products and services.

Further, when preparing a risk assessment, institutions are to consider various factors such as customers, transactions and entities that potentially pose a greater risk of money laundering. For instance, PEPs and their family members or close associates. Second, identify geographic locations such as countries where it is known that money laundering takes place. Third, consider risks associated with the introduction of a new product or service prior to its launching in the market. In addition, look at risks associated with new or developing technologies for products or services not specifically being offered by the institution as for example wire transfers, automated teller machines (ATMs) and mobile telephone financial services. Also, to be considered is whether interaction with customers is face-to-face or non-face-to-face such as electronic banking or mobile banking (POCAML, ss.6, 7, 22; CBK/PG, s.5).

### **2.7.6 Record - Keeping**

Proper record keeping is one the most important tools in the fight against money laundering in the financial services sector. Hence, it is an essential feature of money-laundering-deterrence legislation in most countries. Consequently, in Kenya, financial institutions have a legal obligation to establish and maintain records concerning customer identification and all transactions conducted. Moreover, they are required to keep a copy of records and other evidence obtained during CDD process such as copies of passports, identification cards, account files and business correspondence. This includes results of inquiries conducted to establish the background and purpose of complex, unusual, large transactions.

Records of transactions can be in numerous forms such as credit and debit slips, cheques and correspondence. These records should be maintained in a form where a satisfactory audit trail may be compiled and a financial profile established for any suspect account or customer. The

documents too are to be kept for a period of at least 7 years from the date on which the transaction is completed or account closed. They should be made available to relevant law enforcement authorities where required on a timely basis. Furthermore, such records are to be kept up to date (POCAMLA, s.46; POCAMLR, s.36; Cox, 2014, pp.271-272). The main objective of keeping the records is to ensure that the firm is able to provide details of the identification of its customers and transactions and maintain an adequate audit trail so that in the event of an investigation, the document or transaction sequence can be followed. In short, the records may be used by the firm as evidence in the event that an investigation is subsequently conducted by a law-enforcement agency (Cox, 2014, pp.271-272; Blunden, 2001, pp.139-142).

## 2.8 International Collaboration, Cooperation and Coordination

This section, which is the last one in this chapter, will consider the current global efforts for fighting money laundering. It will illustrate that to tackle the practice, there is need for close international collaboration, cooperation and coordination. In this regard, the United Nations (UN) was the first international organization to undertake significant action to fight money laundering on a global scale. This is because the international effort to fight money laundering can only be addressed effectively using a multinational law. These legislative measures that aim to combat money laundering globally are referred to as the UN conventions (Table 1 below) and are to be considered in this section. Kenya is a signatory to some of these conventions. It is to be noted that these UN initiatives are coordinated by the UN Office on Drugs and Crime (UNODC), by way of its Global Programme against money laundering (Reuter & Truman, 2004, pp.51-53; Rider, 2012, p.11; CBK/PG, s.3).

**Table 1**

*Evolution of the AML Regime Globally*

Adapted from Reuter & Truman (2004, pp.50-53)

Year	Global
1988	<ul style="list-style-type: none"> <li>▪ Statement of Principles (Basel Committee)</li> <li>▪ UN (Vienna) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</li> </ul>
1989	Financial Action Task Force (FATF) established
1990	FATF Forty Recommendations released
1995	Egmont Group of Financial Intelligence Units (FIUs) of the World established
1996	FATF Forty Recommendations revised
1999	Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) established
2000	<ul style="list-style-type: none"> <li>▪ UN (Palermo) Convention Against Transnational Organized Crime</li> <li>▪ FATF Report on Non-Cooperative Countries and Territories (NCCT)</li> </ul>
2003	<ul style="list-style-type: none"> <li>▪ UN Convention Against Corruption</li> <li>▪ New FATF Forty Recommendations released</li> </ul>

The Basel Committee on Banking Supervision (BCBS) is an important part of the global AML policy. The Committee was sponsored by the G-10 central banks and in 1988 issued a Statement of Principles (AML campaign or Basel Accord) regarding the obligation of banks to know their clients or customers (KYC), compliance with AML laws, avoid suspicious transactions, cooperate with law enforcement authorities and establish policies, procedures and AML training. The Basel Committee normally meets at the Bank of International Settlements (BIS), Switzerland and though not legally binding is an example of 'best practice' (Reuter & Truman, 2004, p.80; Rider, 2012, p.18; Gichuki, 2013, pp.295-296).

Following Basel Accord, in Kenya, CBK also issued Prudential Guidelines on the Proceeds of Crime and Money Laundering 2013 (CBK/PG). These guidelines which have been cited throughout this chapter provide guidance regarding the prevention, detection and control of possible money laundering activities. They apply to all financial institutions and as previously pointed out cover methods of prudent customer identification, record keeping, identification of suspicious activities and the need to report such activities to the FRC (Gichuki, 2013, pp.296-297).

The UN (Vienna) Convention, 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is the first significant international instrument to address the proceeds of crime. It creates offences and spells out specific sanctions and procedures for the confiscation of the proceeds of crime and in particular provides a legal definition of what constitutes money laundering. The convention encourages member states to adopt measures to identify, trace, freeze or seize proceeds of crime (Shehu, 2005, p.221).

The UN Palermo Convention, 2000 is the main international instrument in the fight against transnational organized crime. Its purpose is to promote cooperation to prevent and combat transnational organized crime more effectively. It represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle it. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences to include corruption and money laundering and all the predicate offences of money laundering. Second, the adoption of new and sweeping frameworks for extradition, mutual legal assistance (MLA) and law enforcement cooperation.

Third, the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities (UNODC, 2004; Gichuki, 2013, pp.293; CBK/PG, s.3).

The UN Convention against Corruption of 2003 is another international legislative measure aimed at preventing money laundering. This convention extended the definition of money laundering in its convention against corruption to include the “concealment and laundering of the proceeds of acts of corruption”. The convention also includes prevention measures such as the establishment of anticorruption bodies, increased international cooperation and technical assistance in asset recovery. This convention criminalised drug money laundering and these measures were extended to include “proceeds of serious crime” under the Palermo Convention (Ryder, 2012, pp.2-3, 26-27; Reuter & Truman, 2004, p.152).

The Financial Action Task Force (FATF) is the global AML watchdog. It was established by the G-7 Summit in Paris in 1989 to set standards and to promote effective implementation of legal, regulatory and operational measures for reducing money laundering. In short, it is an inter-governmental body that sets standards related to legal, regulatory, and operational measures for combating money laundering and the financing of terrorism. FATF has 36-member jurisdictions, in addition to the EU and the Gulf Co-operation Council (Hock, 2020, p.236). Moreover, as a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms to counter money laundering.

In 1990, FATF developed and released Forty Recommendations that were aimed at setting international AML standards which were to be adopted by national governments in the fight against money laundering. In 2012, the FATF combined these Forty AML Recommendations with their nine Special Recommendations to form a new updated list of recommendations against terrorist financing and money laundering. One specific recommendation was devoted to the use of cash couriers to address their extensive use by terrorist groups (Ridley & Gilmour, 2015, p.297). These recommendations have become the international AML benchmark on which countries are assessed to determine their level of compliance regarding preventing money laundering. For instance, in line with the FATF recommendation 1, besides drug trafficking, many countries have introduced the criminalization of laundering of proceeds

derived from other sources such as corruption, terrorism, and human trafficking. Moreover, FATF sponsors self-evaluations and peer reviews of its members, thus exercising global-level supervision, but has limited scope to sanction non-compliance.

The FATF other key role is identification of emerging AML threats or risks. Accordingly, it reviews money laundering techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity. It monitors countries to ensure they implement its Forty Recommendations fully and effectively and holds countries to account that do not comply. Furthermore, “Name and shame list” is a mechanism used to press countries which are non-cooperative in implementing those recommendations and fall short in their AML regime. More than 200 countries and jurisdictions across the globe, which include Kenya have directly endorsed the FATF recommendations and have committed to implementing them (FATF, 2022; Ryder, 2012, pp. 3,14; Reuter & Truman, 2004, pp. 85, 203-204; Unger, 2013, p.660; Gichuki, 2013, pp.292; CBK/PG, s.3).

The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) which was established in 1999, is one of the FATF Associate regional bodies of which Kenya is a founding member. Its purpose is to combat money laundering by implementing the FATF Forty recommendations. This mandate includes co-ordinating with other international organisations concerned with countering money laundering, studying emerging regional trends, developing institutional and human resource capacities to contain money laundering and coordinating technical assistance where necessary. ESAAMLG enables regional factors to be considered in the implementation of AML measures. ESAAMLG members participate in a self-assessment process to evaluate their progress in implementing the FATF Forty recommendations. Such an evaluation was conducted by ESAAMLG on Kenya in 2022 and a mutual evaluation report issued. ESAAMLG currently has 20 member countries and its Secretariat is in Dar es Salaam, Tanzania. These countries are Angola, Botswana, Eritrea, Eswatini, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, South Africa, South Sudan, Tanzania, Uganda, Zambia and Zimbabwe. In addition, ESAAMLG membership includes a number of regional and international observers such as AUSTRAC, COMESA, Commonwealth Secretariat, East African Community, Egmont Group of FIUs, FATF, IMF, SADC, United Kingdom, United Nations, UNODC, United States of America, World Bank and World Customs Organization (FATF, 2022; ESAAMLG, 2022).

As a founding member of ESAAMLG, Kenya plays a prominent role in this Group. For instance, the country has adopted and is committed to the effective implementation and enforcement of FATF Forty Recommendations and Special Recommendations for Combating the Financing of Terrorism. Kenya also has a legal framework and has implemented measures for the prevention and control of laundering of proceeds of all serious crimes and the financing of terrorism. These legal provisions and measures are provided for under POCAMLA and the Prevention of Terrorism Act, 2012 (POTA). Finally, the country too participates in key decision-making bodies of ESAAMLG such as the Council of Ministers which is responsible for setting the strategic direction of the Group, including approving work programmes and the Task Force which consists of senior government officials from legal, financial and law enforcement agencies responsible for AML/CFT matters (ESAAMLG, 2018, NRA, 2021).

The FATF Non-Cooperative Countries and Territories is an initiative that was undertaken by FATF in 1999 to identify jurisdictions that had inadequate AML regimes and were not cooperating sufficiently with the global AML effort. The assessment criteria covered areas such as – financial regulations (customer identification), lack of suspicious transaction reporting system, obstacles to international cooperation, inadequate budgetary outlays for AML activities and the lack of financial intelligence unit (FIU) or similar entity. This FATF review of 46 countries was called “name and shame” process. The FATF report was released in 2000. For countries that had inadequate AML regime or fails to comply with these (FATF) soft laws, FATF imposes countermeasures such as – stringent CDD and enhanced reporting requirements, economic sanctions, blacklisting and being declared a country of money laundering concern. Warnings too may be issued to financial institutions, businesses and investors worldwide not to deal with such a country or jurisdiction. This makes the country's financial dealings slower and more expensive (Reuter & Truman, 2004, p.86; Ryder, 2012, p.14; Levi & Maguire, 2004, p.417).

The Egmont Group is an informal network of financial intelligence units (FIUs) that was established in 1995 to encourage international cooperation in combating money laundering and the financing of terrorism. In most jurisdictions, FIU mandate is to process information received of financial crimes committed and submits the same to the relevant law enforcement agencies. The Egmont Group meets regularly in order to facilitate information exchange, training, the sharing of information (Hock, 2020, p.236), personnel exchanges and cooperation

amongst member FIUs. In essence, the Egmont Group was created to act as a forum for the various FIUs to network with each other about ongoing case investigations, requests for financial information and technological developments. Significantly, Egmont Group enables FIUs to communicate securely over the internet through Egmont Secure Web which is maintained by the Financial Crimes Enforcement Network (FinCEN) of the US. FinCEN is US national intelligence unit and is part of the Egmont Group of international FIUs. The group has 84 members, and the UK was a founding member. It has an observer status at the FATF. Its headquarters are in Toronto, Ontario, Canada (Egmont Group, 2022; Ryder, 2012, pp.20,44,76,82; Blunden, 2001, p.126; Reuter & Truman, 2004, p.203; Madinger, 2012, p.297). Kenya is currently being assessed with a view of joining the Egmont Group.

Both the World Bank (WB) and the International Monetary Fund (IMF) play an important role in the global fight against money laundering. They provide an information-sharing environment, promote the best AML practices and policies and conduct financial sector assessments. These assessments are programmes that evaluate a country's AML framework and compliance with FATF recommendations. Under its Global Dialogue Series, one of the main functions of the WB is developing a universal AML assessment methodology and building efficient and transparent institutions (Ryder, 2012, pp. 21-22). For example, in 2021, Kenya conducted its national money laundering risk assessment using the National Risk Assessment Tool developed and provided by the WB. The WB role was limited to delivery of the tool and providing guidance on the technical aspects of the tool (NRA, 2021).

Mutual Legal Assistance (MLA) is a tool used to deal with the threat of money laundering. It is an important part of the US AML policy. It is defined as a "process by which states seek and provide assistance in gathering evidence for use in criminal cases or in the restraint and confiscation of proceeds of crime". According to Transparency International it is a "process by which states seek and provide assistance in gathering evidence for use in the investigation and prosecution of criminal cases." It permits international cooperation between countries over a wide range of matters including the obtaining of evidence and the measures are usually contained in bilateral or multilateral treaties. In the UK it has been described as a "vital weapon in the armoury of those who investigate and prosecute international financial crime". For example, MLA was effected by the UK when it returned back over US\$1 billion that was stolen by General Sani Abacha of Nigeria (Ryder, 2012, pp.29, 30,72,90).

Likewise, section 115 of POCAMLA provides that the Attorney-General (AG) in Kenya may seek and provide assistance to another country in obtaining evidence of an investigation or prosecution. Second, the AG may seek for assistance from another country for search and seizure of property obtained illegally. Third, the AG can arrange for a person from another country to come to Kenya to assist in the investigation or prosecution. Requests by other countries to Kenya for assistance in investigation or prosecution may be made to the AG. Conversely, despite the AG having these powers, it will be shown later in the chapter on policing institutions in Kenya that the initiation of extradition proceedings has been a controversial issue between the DPP and the AG. In this connection, when both the DPP and the AG sought legal action, in November 2021, the Supreme Court in Kenya determined that the authority to extradite criminal suspects lies with the DPP and not the office of the AG.

According to Reuter & Truman (2004, pp.129-131,172), some of the benefits of AML regimes are to protect the integrity of the financial system, particularly banks, which are at the core of that system. This is because the banking system plays a central role in the collection and movement of funds. They also provide public goods such as banking services and liquidity to the financial system and the economy. Other goals or objectives of the AML regime are reducing the incidence of crime such as drug trafficking and money laundering and controlling a number of global “public bads” as for instance terrorism, corruption and kleptocracy. If diligently implemented on a global basis, the FATF recommendations will expand the AML global regime even further. This entails preventing money launderers from accessing financial institutions by conducting CDD, SARs and implementing AML legislation and policies. According to FATF (2003), full implementation of AML regulations will make the bank more credible and attract more clients and in return the bank will make substantial profits.

An important tool in preventing money laundering is “effective law enforcement cooperation across the global AML regime”. However, investigation, prosecution or asset forfeiture is often constrained by tensions and differences between national criminal justice systems. In the US, for example, there is no integrated federal police system, and the federal agencies that would be involved in the fight against money laundering such as the FBI, Secret Service, and the Drug Enforcement Administration, often do not even co-operate with each other internally. These agencies compete for resources and prestige. Moreover, the resources available for

funding international policing ventures tend to be chiefly limited to drug trafficking control (Marenin, 1997 cited by Afande, 2015, p.162; Reuter & Truman, 2004, pp.185-186).

In the light of the above, Reuter & Truman (2004, pp. 185-186) suggest that more fully streamlined modalities of information sharing in money laundering cases should be established between law enforcement authorities to replace the cumbersome multistep process of existing multilateral assistance arrangements that require the use of diplomatic channels. Secondly, global standards with respect to asset freezes and forfeitures are also needed so that such actions are not only internationally coordinated but also comprehensive in their effect. Finally, international agreement is also needed to streamline procedures in relation to money laundering extraditable offences.

As Afande (2015, pp.161-163) notes, another key challenge is lack of cooperation by some countries and reluctance to participate in co-operative agreements. For example, if a regional cooperative operation is established specifically to control money laundering or smuggling, and one of the countries in that geographic region fails to co-operate or allows that country to be used as a “safe haven,” the effectiveness of the operation is greatly reduced. Coupled with this, in order to regulate money laundering more effectively the legal systems in various jurisdictions have to be synchronized. Synchronized laws ease investigation, extradition procedures and MLA between jurisdictions, which are key activities in AML regimes.

International cooperation is often a challenge not only because of differences in AML regimes but because of differences across countries with respect to the structure and development of their financial systems. Different countries have different AML priorities, but cooperation is essential to achieve an effective overall global strategy. Cooperation with the private sector too should be enhanced, and more technical and financial assistance should be made available to poorer jurisdictions. Further, limited resources are another issue for the global AML regime due to competing government objectives: which one to allocate scarce government or private resources. Other jurisdictions regard AML regime as an “unaffordable luxury good”. (Reuter & Truman, 2004, pp.184,192).

In conclusion, Afande (2015, p.166) suggests that African countries must work together in this laudable fight against money laundering; and be willing to share experiences, and even competences to ensure that money launderers do not have safe havens in the continent to run to, as they would readily do, where some countries do not have effective AML legislations and

mechanisms. Afande adds that it hardly needs to be stressed that the success of AML initiatives depend, to a large extent, on the level of co-operation and co-ordination between the major role players in the fight namely: the financial institutions and law enforcement agencies, as well as between countries since the crime is essentially a trans-border one. Significantly, as (Hock, 2020, p.8), observed, “the collective action perspective is based on an assumption that states are more effective in addressing global societal problems if they cooperate and coordinate their action in the provision of public goods”. In this context, given that money laundering is a worldwide problem, what is required is collaborative and collective goodwill from the international agencies responsible for regulating this financial crime.

## **2.9 Conclusion**

In this chapter, a wide range of tools and strategies for reducing money laundering in the financial services sector were identified. These are tools such as KYC which deny criminals access to the financial system and financial reporting obligations which alert authorities that money laundering may be taking place. Asset recovery strategy which deprives offenders of illicitly acquired wealth was also considered. The chapter also focussed on other tools such as skills development, proper record keeping and internal control procedures which are measures put in place by management to address potential money laundering risks. Significantly, international cooperation and coordination for the exchange of information, training and personnel exchanges which are vital in the global effort against money laundering were also discussed. Then each tool or strategy was critically examined and the major strengths and weaknesses which are encountered during implementation were highlighted. To address some of these challenges, suggestions for improvements were also illustrated. In chapter 6 of this study, an evaluation of these AML tools and strategies was conducted.

## **Chapter 3: Research Methodology**

### **3.1 Introduction**

This chapter will start by briefly discussing the philosophical assumptions that guides this research study. Understanding the philosophical worldview assumptions that the researcher brings to the study helps him or her adopt the most appropriate research design, methods of data collection, analysis and interpretation that addresses the research questions. Thus, in the study, the researcher has selected the constructivist approach that utilises both qualitative and quantitative methods for data collection and interpretation. This chapter has six sections.

The next section considers the research questions whose main focus is to examine the effectiveness or impact of tools and strategies for combating money laundering in the financial services sector in Kenya. This is followed by the research design in the next section. The researcher has adopted mixed methods research design as the most appropriate approach to address the research questions. Again, in the section, advantages and challenges of mixed method approach are discussed. In the next section, various sampling strategies are considered which includes *snowball sampling* which have been used by the researcher to recruit participants. The impact of Covid-19 in accessing research participants is also highlighted in the section. Section four describes the characteristics of the data that was gathered by the researcher in this research project. Principles in designing interview questions, pros and cons of self-completion questionnaires and pilot testing are also considered in the section. In the next section, issues of data analysis which is in three phases – qualitative, quantitative and mixed methods are examined. At the end of the chapter, data management, ethical issues and considerations and whether the researcher is an “insider” or “outsider” are discussed.

### **3.2 Research Philosophy or Worldview**

According to Smith, Thorpe, Jackson, & Jaspersen (2018, p.60), there are several reasons why an understanding of philosophical issues is very useful. First, understanding the philosophical foundations of one’s research is essential for clarifying research designs. This involves considering not only what kind of evidence is required and how it is to be gathered and interpreted, but also how this will provide good answers to the basic questions being investigated in the research. Second, knowledge of philosophy can help researchers to

recognize which designs will work and which will not. Third, it should enable them to avoid going up too many blind alleys and should indicate the limitations of particular approaches.

Likewise, Creswell & Creswell (2018, pp.3, 5) argues that research approaches are plans which involve several decisions. The overall decision involves which approach should be used to study a topic. Informing this decision, should be the philosophical assumptions the researcher brings to the study; procedures of inquiry called *research designs*; and specific *research methods* of data collection, analysis and interpretation. Thus, in planning a study, researchers need to think through the philosophical worldview assumptions that they bring to the study, the research design that is related to this worldview and the specific methods or procedures of research that translate the approach into practice. The selection of a research approach is also based on the nature of the *research problem* or issue being addressed, the researchers' personal experiences and the audiences for the study.

### **3.2.1 Philosophical Worldviews**

According to Guba (1990, p.17 cited by Creswell & Creswell, 2018, p.5), the term worldview means "a basic set of beliefs that guide action". Others have called them --- *broadly conceived research methodologies* (Neuman, 2009 cited by Creswell & Creswell, 2018, p.5). Additionally, Creswell & Creswell (2018, p.5-6) advance that they see worldviews (beliefs) as a general philosophical orientation about the world and the nature of research that a researcher brings to a study or inquiry. Individuals develop worldviews based on their discipline orientations, research communities, advisors and mentors and past research experiences.

### **3.2.2 The Constructivist Worldview**

Constructivism, as Creswell & Creswell (2018, pp.7-8) have noted is typically seen as an approach to qualitative research. *Social constructivists* believe that individuals seek an understanding of the world in which they live and work. Individuals develop subjective meanings of their experiences – meanings directed towards certain objects or things. These meanings are varied and multiple, leading the researcher to look for the complexity of views rather than narrowing meanings into few categories or ideas. The goal of the research is to rely as much as possible on the participants' views of the situation being studied. The questions become broad and general so that the participants can construct the meaning of a situation, typically forged in discussions or interactions with other persons. The more open-ended the

questioning, the better, as the researcher listens carefully to what people say or do in their life settings. Often these subjective meanings are negotiated socially and historically. In other words, they are not simply imprinted in individuals but are formed through interaction with others (hence social constructivism) and through historical and cultural norms that operate in individuals' lives. Thus, constructivists' researchers often address the process of interaction among individuals.

In addition, Smith et al. (2018, p.72) noted that social constructivism aim is to increase general understanding of the situation by gathering rich data from which pattern of ideas are induced. Secondly, that sampling requires small numbers of cases chosen for specific reasons. Likewise, in discussing constructivism, (Crotty, 1998 cited by Creswell & Creswell, 2018, p.8) identified several assumptions:

- Human beings construct meanings as they engage with the world they are interpreting. Qualitative researchers tend to use open-ended questions so that participants can share their views.
- Humans engage with their world and make sense of it based on their historical and social perspectives. Thus, qualitative researchers seek to understand the context or setting of the participants through visiting this context and gathering information personally. They also interpret what they find, an interpretation shaped by the researchers own experiences and background.
- The basic generation of meaning is always social, arising in and out of interaction with a human community. The process of qualitative research is largely inductive; the inquirer generates pattern of meaning from the data collected in the field.

Regarding this research study, the main focus is to evaluate the effectiveness and impact of tools and strategies for fighting money laundering in the financial services sector in Kenya. In addressing this problem, the philosophical worldview proposed by the researcher in the study is that of constructivism. It is considered by the researcher to be the most appropriate approach to be adopted because the bulk of this research is qualitative. Further, this research philosophy identifies several assumptions that relate to gathering and interpreting data in this research project. For instance, to answer the research questions, the researcher used open-ended questions to gain an in-depth understanding and gather rich data from participants who shared their views on the effectiveness of these tools and strategies for reducing money laundering.

Indeed, the interviews were conducted with a sample of 20 AML experts (cases) chosen because they had the relevant knowledge and experience of reducing money laundering. Moreover, during interviews different participants held different and varied views on the same subject matter (money laundering), depending on their experiences. These are the views or “subjective meanings” which the researcher has relied on to formulate the research findings. These findings were arrived at through an inductive process – the researcher had to review the interview transcripts, code them and identify themes or categories and finally describe and interpret the themes. It is also worth noting that the researcher gathered this data or information personally through face-to-face interviews.

### **3.3 Research Questions**

Research questions are explicit statements of what you want to find out about. Having no research questions or badly formulated research questions can lead to low-quality research. If you do not specify clear research questions, there is a greater risk that your research will be unfocused and you will be unsure about what your research is about and what you are collecting data for (Bryman, Clark, Foster & Sloan, 2021, p.10).

According to Bryman et al. (2021, p.10), the advantages of research questions are that they will

- guide your literature search;
- guide your decisions about the kind of research design to use;
- guide your decisions about what data to collect and from whom;
- guide the analysis of your data;
- guide the writing up of your data;
- stop you from going off in unnecessary directions; and
- provide your readers with a clear sense of what your research is about.

In like manner, Creswell & Creswell (2018, p.19) observes that a research problem or questions are issues or concerns that need to be addressed. The problem comes from a void or gap in the literature, topics that have been neglected in the literature and so forth. Similarly, Merriam & Tisdell (2016, pp.80, 84) argues that research questions reflect the researcher’s thinking on the most significant factors to study. Research questions are *not* usually specific interview questions; research questions are broader, identifying areas to ask questions about. Also, Maxwell (2013 cited by Merriam & Tisdell, 2016, p.84) suggests researchers ask themselves “what questions are most central to your study?” Three or four main questions are usually a

reasonable amount for a qualitative study. In this regard, the three research questions that guides this study are:

- What are the current strategies for countering money laundering in the financial services sector in Kenya?
- To what extent are anti-money laundering (AML) strategies effective in combating money laundering in the financial services sector in Kenya?
- What are the main sources of funds and methods used to launder the proceeds of crime in the financial services sector in Kenya?

As illustrated in the study, these three research questions were addressed by adopting the mixed methods design research approach. In this research method, the researcher combined qualitative and quantitative techniques when collecting and analysing data. This research approach was selected because it offers several advantages which are highlighted below (3.4). Significantly, utilising qualitative methods together with quantitative methods in a single study like this one complemented one another, as the strengths of one method were brought together with the strengths of the other method.

In relation to the first research question on identification of strategies and tools for preventing money laundering in the financial services sector in Kenya, along with the literature review, both qualitative research interviews and quantitative research questionnaires, were used as demonstrated in this thesis. Regarding this, 20 semi-structured interviews were conducted and 64 survey questionnaire responses were received and analysed. Notably, the participants and respondents were located through snowball sampling technique. An analysis and evaluation of the interviews and the results of the survey questionnaire are documented in Chapter 6 of this thesis. Accordingly, key strategies and tools for combating money laundering in the financial services sector were identified by AML experts in Kenya. It is to be noted that the interview questions and the survey questionnaire are attached in Appendix 1 of the thesis.

Equally, in connection with the second research question on the effectiveness of AML strategies in reducing money laundering in the financial services sector in Kenya, again, as indicated above, interviews were carried out and a survey questionnaire was administered. As

a result, participants and respondents identified the main tools for fighting money laundering in the financial sector in Kenya. Consequently, as detailed in Chapter 6, an evaluation of the responses received from questionnaire responses and the themes that emerged from interviews was conducted. Finally, a discussion on the effectiveness of these AML tools then followed. These tools are KYC, STRs, CTRs, asset recovery, domestic cooperation etc.

The third question involved investigating the main sources of funds and methods used to launder the proceeds of crime in the financial services sector in Kenya. In addressing this research question, the main research instruments used for gathering and analysing research data are the qualitative research interviews and quantitative research questionnaire. As indicated in Chapter 4, the results of responses received in the survey questionnaire and participants views disclosed that corruption is the main source of illicit funds whereas real estate transactions is the main laundering method.

### **3.4 Research Design**

Bryman et al. (2021, pp.38-39), states that a research design provides a framework for the collection and analysis of data in order to answer a certain research question or questions. These frameworks are known as research designs. Likewise, Smith et al. (2018, p.137) argues that a research design is a strategy that lays out the principles of the research methodology for a given study. It articulates methods and techniques for all stages of the research process and justifies their appropriateness in relation to both the research question and the research context.

Also, Saunders, Lewis, & Thornhill (2016, p.163) observed that, “in many ways, designing research is like planning a journey. Formulating the most appropriate way to address your research question is similar to planning the route to your destination, your research objectives are a little like your planning criteria, the need for coherence is the same in each situation and the journey itself, like the research process, will necessarily prove to be an interactive experience”.

Your research design is the general plan of how you will go about answering your research question(s). It will contain clear objectives derived from your research question(s), specify the sources from which you intend to collect data, how you propose to collect and analyse these, and discuss ethical issues and the constraints you will inevitably encounter (e.g. access to data, time, location and money). Crucially, it should demonstrate that you have thought through the elements of your particular research design (Saunders et al., 2016, pp.163-164). Accordingly, in this study, mixed methods research design approach was considered appropriate by the researcher to address the three research questions.

#### **3.4.1 What is Mixed Methods Research?**

“Mixed methods” generally refers to studies that use both quantitative and qualitative approaches within a single study design. It is a study that employs both quantitative and qualitative methods as part of a single research strategy (Bryman et al., 2021, p.557). Equally, Creswell & Creswell (2018, pp.4,19) and Smith et al. (2018, p.123) advances that a mixed methods research design approach is where both qualitative and quantitative techniques are combined or integrated during data collection and analysis.

### 3.4.2 Why Mix Methods

There are a number of reasons why we might want to combine quantitative and qualitative methods in a single study. Mostly, the idea is that the different methods complement one another, as the strengths of qualitative methods are brought together with the strengths of the quantitative methods (Bryman et al., 2021, p.556). In addition, as Silverman (2017, pp.125-126) have argued, an advantage of mixed methods is that like videos, mixed methods are tempting because they seem to give you a fuller picture. Furthermore, by using mixed methods, you get at many different aspects of a phenomenon.

By the same token, Creswell & Creswell (2018, pp.4,19) explains that a mixed methods design is useful when the quantitative and qualitative approach, each by itself, is inadequate to best understand a research problem and the strengths of both quantitative and qualitative research (and its data) can provide the best understanding. For example, researchers may first survey a large number of individuals and then follow up with a few participants to obtain their specific views and their voices about the topic. In these situations, collecting both closed-ended quantitative data and open-ended qualitative data proves advantageous. In other words, the integration of quantitative and qualitative data yields additional insight beyond the information provided by either the quantitative or qualitative data alone.

Correspondingly, Bryman et al. (2021, pp.557-559,562) proposes that combining quantitative and qualitative approaches can potentially add value to a study in a number of different ways:

- *Triangulation or greater validity* – researchers combine qualitative and quantitative research to triangulate findings i.e. that is, the findings confirm or support each other.
- *Offset* – combining research methods associated with both qualitative and quantitative strategies allows the researcher to offset their weaknesses and draw on the strengths of both. Use strengths of each type of research to make up for the shortcomings of the other.
- *Completeness* – the researcher can produce a fuller account of the area in which they are interested if they use both quantitative and qualitative research. Using both quantitative and qualitative methods will give the researcher a more complete answer to research question or set of research questions.
- *Different research questions* – quantitative and qualitative research strategies can each answer different research questions.
- *Explanation* – researchers can use one of the two research methods to help explain findings generated by the other.

- *Sampling* – one approach can allow researchers to sample respondents or cases for the other approach - quantitative data being used to purposely sample participants for qualitative research.
- *Credibility* – using both approaches can enhance the integrity of findings.

In addition, as, Smith et al. (2018 pp.126-127) have noted, there are many reasons why mixed methods are regarded as a good thing:

- they have the potential to throw new perspectives on research questions
- they increase confidence, credibility and validity of results
- they stimulate creative and inventive methods
- they can provide deeper insights that explain why things take place
- they can present greater diversity of views and
- they can provide better (stronger) inferences

Also, according to Creswell & Creswell (2018, pp. 216-217), there are advantages for choosing mixed method research as an approach for a research study for the following reasons. First, because of its strength of drawing on both quantitative and qualitative research and minimising the limitations of both approaches. Second, it is an ideal approach if the researcher has access to both qualitative and quantitative data. Third, it yields additional insight beyond the information provided by either qualitative or quantitative data alone. Conversely, Creswell & Creswell and Smith et al. (2018, pp.126-127) states that there are challenges to mixed methods design such as:

- The need for extensive data collection.
- The time-intensive nature of analysing both qualitative and quantitative data. Likewise, Silverman (2017, p.122) adds that collecting multiple databases may not allow time to analyse any one dataset thoroughly.
- The requirement for the researcher to be skilled in the use of both methods.
- It is not helpful if one method simply provides window dressing for the other.

### **3.4.3 Method Selection**

There are three different types of mixed methods designs: explanatory sequential mixed methods, exploratory sequential mixed methods and convergent mixed methods design. In explanatory sequential mixed methods, Creswell & Creswell (2018, p.15) indicate that in this design, the researcher first conducts quantitative research, analyses the results and then builds

on the results to explain them in more detail with qualitative research. It is considered explanatory because the initial quantitative data results are explained further with qualitative data. It is considered sequential because the initial quantitative phase is followed by the qualitative phase. It is popular in fields with a strong quantitative orientation. In contrast, exploratory sequential mixed methods is the reverse sequence from the explanatory sequential design. In the exploratory sequential approach, the researcher first begins with a qualitative research phase and explores the views of participants. The data are then analysed and the information used to build into a second, quantitative phase. One generally employs this method of research when little is known about a particular population or subject and the qualitative data are used to *explore* and define the topic in order to create a survey instrument to gather data from a larger sample (Creswell, 2015 cited by Merriam & Tisdell, 2016, p.47).

In convergent mixed methods design, Creswell & Creswell (2018, p.15) observes that this is a design in which the researcher converges or merges quantitative and qualitative data in order to provide a comprehensive analysis of the research problem. In this design, the investigator typically collects both forms of data at roughly the same time and then integrates the information in the interpretation of the overall results. In short, both the qualitative and quantitative data are collected more or less simultaneously; both data sets are analysed and the results are compared (Creswell, 2015 cited by Merriam & Tisdell, 2016, p.46). Contradictions or incongruent findings are explained or further probed in this design.

In this single phase-approach, a researcher collects both quantitative and qualitative data, analyses them separately, and then compares the results to see if the findings confirm or disconfirm each other. It is be noted that an important factor considered when choosing convergent design or strategy is timing in data collection. A convergent strategy is an efficient way of collecting data and typically involves collecting data concurrently, roughly at the same time ---- and it does not require repeated visits to the field to gather data (Creswell & Creswell, 2018, pp.217, 239). Also, Bryman et al. (2021, p.568) argued that this kind of design tends to be associated with *triangulation* exercises, in which the researcher aims to compare two sets of findings, as well as with situations in which the researcher aims to *offset* the weaknesses of both quantitative and qualitative research by capitalising on the strengths of both. Thus, in this research study, convergent mixed methods design was selected by the researcher as the most appropriate method for collecting and analysing the data gathered with a view of addressing the research questions.

## **3.5 Sampling Strategy**

### **3.5.1 Purposive Sampling**

In purposive sampling, the researcher has a clear idea of what sample units are needed according to the purposes of the study, and then approaches potential sample members to check whether they meet the eligibility criteria. Those that do are used, while those that do not are rejected (Smith et al., 2018, p.109).

Merriam & Tisdell (2016, p.97) states that the common types of purposive sampling strategies are typical, unique, maximum variation, convenience and snowball or chain sampling. In *typical sample*, the sample selected represents the average person, situation, or instance of the phenomenon of interest. When using a typical purposive sampling strategy, you want to “highlight what is typical, normal and average” (Patton, 2015, p. 268 cited by Merriam & Tisdell, 2016, p.97). *Unique sample* is based on unique, atypical, perhaps rare attributes or occurrences of the phenomenon of interest. You would be interested in them because they are atypical or unique such as talented professional footballers etc. (Merriam & Tisdell, 2016, pp. 97-98). *Convenient sampling* – is just what is implied by the term – you select a sample based on time, money, location, availability of sites or respondents and so on. It involves selecting sample units on the basis of how easily accessible they are (Smith et al., 2018, p.109). The selection made on this basis alone is likely to produce “information-poor” rather than information-rich cases (Merriam & Tisdell, 2016, pp.97-98).

### **3.5.2 Snowball Sampling**

*Snowball, chain, or network sampling* is perhaps the most common of purposive sampling. Merriam & Tisdell (2016, p.98) explains that this strategy involves locating a few key participants who easily meet the criteria you have established for participation in the study. As you interview these early key participants, you ask each one to refer you to other participants. “By asking a number of people who else to talk with, the snowball gets bigger and bigger as you accumulate new information—rich cases” (Patton, 2015, p. 298 cited by Merriam & Tisdell, 2016, p.98). Likewise, Bryman et al. (2021, p.177) advanced that in this sampling approach, the researcher makes initial contact with a small group of people who are relevant to the research topic and then uses them to establish contact with others. The term “Snowball”

refers to the process of accumulation as each located subject suggests other subjects (Babbie, 2007, pp.184-185 cited by Merriam & Tisdell, 2016, p.98).

Similarly, Smith et al. (2018, pp. 109, 184) notes that snowball sampling starts with someone who meets the criteria for inclusion in a study, who is then asked to name others who would also be eligible. It is a strategy where selected participants recruit or recommend other participants from among their acquaintances. This sample works well for samples where individuals are very rare and it is hard or difficult to identify members of the desired population (Saunders et al., 2016, p.303). It works well too for individuals, groups or companies that are part of networks whose membership is confidential (LinkedIn is a useful resource here, and its owners actively promote the professional network as a useful way of finding interesting people to get in touch with). It is a useful strategy in settings with limited or difficult access. Students who conduct research on illegal activities and other topics that require a high level of trust and confidentiality also tend to use snowball sampling.

As was noted above, given the sensitive nature of the information that was to be gathered in the research study, it is for this reason that the researcher adopted *snowball or network sampling* method as the research recruitment strategy in selecting participants to participate in interviews and survey questionnaires. Hence, during fieldwork, the researcher employed the strategy and conducted 20 semi-structured, face-to-face interviews with participants. Also, about 100 survey questionnaires were distributed through this method and 64 responses were received. Most of the participants and respondents were able to identify strategies for combating money laundering and their effectiveness.

### **3.6 Impact of Covid -19: Recruitment of Participants and Respondents**

#### **3.6.1 Online Survey Questionnaire**

The fieldwork in this research study which included administering the survey questionnaire and conducting semi-structured interviews took place during the outbreak of Covid-19 pandemic. As noted above, it entailed using snowball or network sampling method to recruit both participants and respondents. Due to the pandemic, the researcher faced several challenges in accessing potential participants and respondents - AML experts working in the private and public sectors. This was because these institutions were closed and people were working from home following health authorities and government guidelines which discouraged people from interacting outside their family circles to avoid contracting the virus.

In the light of this, to access participants and respondents, the researcher was advised by his supervisor to join an online network, LinkedIn, to contact and distribute the questionnaire to targeted respondents. As indicated above, LinkedIn is one of the leading professionals' social media platforms which is useful in contacting people in settings with limited or difficult access such as financial institutions. Consequently, the researcher joined LinkedIn and introduced himself to potential respondents by posting an online message which is illustrated in Appendix 3.

Regarding encouraging participation and response rate, Smith et al. (2018, p.279), suggest that compliance is higher if the request comes from a source that is regarded as legitimate. Hence, the researcher approached his supervisor and requested him to post another message in LinkedIn and introduce the researcher and his research project requesting respondents with AML expertise to assist in completing the survey questionnaire. The supervisor concurred, posted online message and provided the researcher's UoP email address.

Additionally, to identify suitable participants in LinkedIn, the researcher would type a phrase, "*Money laundering in Kenya or AML in Kenya*" and several names and profiles of individuals with money laundering experience would appear. Then the researcher would review the profile of each person who met the set criteria - knowledge, experience and expertise on AML. These people were mainly working in commercial banks and insurance companies as risk and compliance managers/money laundering reporting officers (MLRO), AML consultants, investigators and so forth. Thereafter, the researcher would connect online with them and as noted above send a brief message of introduction requesting them provide their email address to facilitate submitting *Jisc* online survey. *Jisc Online Surveys* (*Jisc*) is on the UoP portal and has inbuilt online features that facilitates designing the survey questionnaire, distributing and analysing the same.

When a participant responded in LinkedIn and provided an email address indicating willingness to complete the survey questionnaire, the researcher would acknowledge the email. The online survey was then submitted to the respondent through *Jisc* and after completion, the researcher, as suggested by Smith et al. (2018, p.279) sent an email thanking the respondent for taking part. Also, at the same time, the researcher would invite the respondent to take part in semi – structured interviews. Consequently, some participants would indicate that they would like to participate in interviews. Others would introduce the researcher to potential respondents. These emails are summarised in Appendix 3.

In some situations where a response was not received, to increase the response rate as proposed by Bryman et al. (2021, p.215), after two weeks, the researcher would send a reminder email together with a copy of the survey questionnaire. Then, after two weeks, the researcher would send all remaining non-respondents another email along with a further copy of the survey questionnaire. In several instances, the researcher would send 3-5 reminders without receiving a response. Further follow-ups entailed the researcher sending a list of respondents whom he had contacted but have not yet responded to the supervisor who would also network with them online with a request to assist in completing the survey questionnaire. An example of a reminder email can be found in Appendix 3.

Also, Smith et al. (2018, p.279) advises that by telling people that they only have a limited time to respond can increase participation rates. In this regard, when submitting the online survey questionnaire, the researcher granted respondents two weeks to complete the questionnaire before sending reminder emails. Accordingly, through *snowball sampling* technique, 119 potential participants were identified in LinkedIn and 100 responded and provided their email addresses. A log too of all the respondents who were contacted was maintained in the researcher's field notebook. Of the 100 survey questionnaires that were distributed, 64 responses were received and were analysed and evaluated in Chapters 4 and 6 of this thesis.

### **3.6.2 Semi - Structured Interviews**

Bryman et al. (2021, p.191) observed that research interviews are about gaining information from the interviewee and they are conducted with varying degrees of formality or explicitness. As noted above, in the study, it was difficult to access participants for the interviews due to the Covid-19 pandemic since most of them were working from home. Nevertheless, the researcher surmounted some of these challenges and conducted 20 face-to-face interviews in this project.

After identification of the participants, then relevant organisations were contacted by email, telephone or personal visit by the researcher clearly explaining the purpose of the research and type of access required. The telephone call was followed up in writing (Form IE Invite and Form I3 Information Sheet) with a request that the organisations consent to their employee being approached and, if he or she consents, participating in interviews. Where approval was granted, this initial approach was then followed up by a written briefing and invitation to the target participant (Form I1 Invite and Form I4 Information Sheet) and consent form (Form I2

Consent). Participants were given a week to consider the information submitted before asking them to consent. Thereafter, one-on-one interview meetings were scheduled.

As explained above, very few interview meetings took place in an office setting as most of the offices were closed due to the pandemic. Therefore, a majority of the interviews were conducted in public places - shopping malls, coffee shops, restaurants etc. Notably, one interview was conducted inside the researcher's personal vehicle. Another one was conducted via Zoom because the participant lives in Canada. Other constraints included keeping social distance and mandatory wearing a face mask which posed a challenge given interviews had to be audio-recorded. Then there was noise emanating from public places and background music/TVs in coffee shops and restaurants which interfered with the interviews and in some cases audio-recording. Finally, was the issue of confidentiality given that financial institutions are sensitive to information that they provide. Significantly, the researcher had also to record key points of the interviews in his field notebook as a back-up in such an environment.

Besides Covid-19 pandemic challenges, the researcher also faced other difficulties in accessing participants as will be illustrated here. An official of a public institution, whose principal role is to fight corruption and money laundering deliberately frustrated the researcher's efforts to conduct semi-structured interviews and completion of the survey questionnaire in that organisation. Through personal contact, the researcher was introduced to senior officials of this institution. Then, the researcher followed this up with a telephone call and requested that the organisation consent to three of their employees be approached to participate in the study. Approval was granted and the researcher was introduced to the contact person who was responsible for the unit handling investigation of corruption and money laundering matters in that organisation.

Subsequently, the researcher was invited by this contact person in his office to conduct the interviews with him and two other staff members. In addition, the official also sent the researcher his email address and those of his other two colleagues with a request to submit online surveys. Prior to the meeting, the researcher submitted the online survey to them together with Form 13 – Host Organisation Information Sheet, Form 14 – Participant Information Sheet and Interview Schedule (questions) which the official had requested. Upon arrival in the contacts office, the researcher had a brief meeting with him and the official advised that he wanted to meet the researcher first before conducting the interviews and completing the online questionnaire. The researcher explained the nature of research study and

persuaded this official to spare 30 minutes for the interview but the request was declined. The official promised that he will arrange for another meeting in a weeks' time.

During the second meeting, the contact abruptly postponed the meeting citing other commitments as the researcher was driving on his way to his office. The official also indicated that they did not receive the documents that had earlier been submitted, including the online survey and a third meeting was arranged. Again, before the meeting the researcher sent him an email and attached Forms 13 and Form 14 referred above. Likewise, the online survey was resubmitted to the three staff members as indicated below:

Dear Mr. xxxx

As requested, kindly find attached the documents for review prior to the interviews. Let me know when you and your colleagues are available for interviews next week. Please note that I have resubmitted the questionnaire online - it is a link in your email inbox. I have checked and confirmed that I used your correct email address. Kindly confirm receipt of the questionnaire. Many thanks, Jesse. *Attachments* – Form 13 – Host Organisation Information Sheet, F14 – Participant Information Sheet and Interview Schedule (questions).

This meeting too did not take place as the official kept on postponing the same and eventually discontinued email or telephone communication with the researcher. Moreover, the survey questionnaires that the researcher submitted to the three staff were not completed. Eventually, the researcher had to give up on this contact after pursuing him for three months.

Again, through personal contact, the researcher sent a letter to a company that provides telecommunications services in Kenya requesting permission to invite staff who have expertise or experience on money laundering matters to participate in the research study. This company too provides mobile or digital money services - a service to send and receive money or pay for goods and services through a mobile phone, which is prone to money laundering. In response to the request, the researcher received an email and documents from the company outlining the steps to be taken and conditions that must be met before approval was granted. These are listed as follows:

- Step 1: Send an official letter from the University of Portsmouth (UoP) and the interview questions to Human Resources (HR, me).

- Step 2: Sign the Non-Disclosure Agreement (NDA) - a copy is attached for your ease of reference - and have the University sign the Letter of Indemnity which should be done on the University's letter head and sealed with University seal.
- Step 3: Approval letter is issued upon receiving the relevant documents.
- Step 4: The student sends the interview questions in form of a google form to the targeted individuals who will fill and send it directly to the student's personal email.

This was an unusual request given that the researcher had already been granted ethical approval by the UoP for the research study. Accordingly, the researcher forwarded the email and attached documents to the supervisor for advice on how best to proceed with the request from the company. The supervisor forwarded the same to the relevant UoP departments, including the University Solicitor. After wide consultations on this strange request, the UoP decided that the company should be informed that the NDA should be executed by the University rather than the researcher. This was because the researcher was undertaking the research project under supervision of the UoP and this would cover the company. Additionally, the UoP was opposed with the requirement for a separate letter of indemnity. The aim of the indemnity letter was to indemnify the company against any losses incurred pursuant to any breach or non-observance of the researcher's obligations under the NDA which he was required to execute with the company. When these decisions were communicated to the company, it did not agree with the UoP position. Thus, despite all those efforts, under those circumstances the supervisor and the researcher decided not to pursue this company further.

### **3.7 Recording Interviews**

Despite the challenges noted in conducting interviews in public places, all interviews were audio-recorded for accuracy and with the consent of the participants. This was possible because the researcher had a good quality digital audio – recorder which was used for recording the interviews. Also, the interviews were later transcribed and were all audible. As (Braun & Clarke, 2006, pp.17, 36) have proposed, the transcripts were transcribed to an appropriate level of detail, and the transcripts were checked against the tapes for “accuracy”. At a minimum a transcript requires a verbatim account of all verbal (and sometimes nonverbal [e.g., coughs]) utterances. What is important is that the transcript retains the information you need, from the verbal account, and in a way, which is “true” to its original nature.

Likewise, Smith et al. (2018, pp.192) have argued that the main reasons in favour of using a voice recorder are that it aids the listening process and gives the opportunity of an unbiased record of the conversation. Good audio recordings are essential for accurate transcripts and also enable the researcher to listen again to the interview, possibly hearing things that were missed at the time. What is particularly important is for researchers to create a verbatim account as soon as possible after the interview is completed, which the researcher did after completion of the interviews. Also, Merriam & Tisdell (2016, p.131), state that an advantage of audio recording an interview is to ensure that everything said is preserved for analysis. The interviewer can also listen for ways to improve his or her questioning technique. However, the potential drawbacks are malfunctioning equipment and a respondent's uneasiness with being recorded. Ideally, verbatim transcription of recorded interviews provides the best database for analysis.

### **3.8 Target Population**

This study involved the collection of information relating to money laundering held by private and public institutions and non-government organisations in Kenya. Both survey questionnaire and semi-structured interviews were targeted towards the main stakeholders in the financial sector and organizations that are involved in the fight against money laundering. All the participants and respondents for the study met the selection criteria – knowledge, experience and expertise on AML matters. Most of them are working in commercial banks, insurance companies, regulatory authorities, private/public organisations etc. Details of the respondents who completed the survey questionnaire are documented in the AML evaluation chapter of this thesis. Similarly, Table 2 below illustrates the particulars of the 20 participants who took part in semi-structured interviews.

**Table 2***Participants: Semi – Structured Interviews*

(Please note that all the names of individuals and organisations are anonymous (**pseudonym** names))

<b>Interviewee No.</b>	<b>Name</b>	<b>Job Title</b>	<b>Organisation</b>
1	Anna Scott	Compliance & Risk Manager/MLRO	Commercial Bank
2	John Mugi	AML Consultant	AML Consultant
3	Pascal Wama	Risk & Compliance Officer/MLRO	Insurance Company
4	Joyce Muthomi	Scholar, AML Specialist	University of XYZ
5	Munene Mwega	Asset Forfeiture Specialist	Asset Recovery Unit
6	Odour Kaiyaba	Senior Manager, Risk & Compliance/MLRO	Commercial Bank
7	Mary Mike	AML Analyst	Commercial Bank
8	Morris Harry	Senior AML Investigator	Law Enforcement
9	Lily Mahua	MLRO	Insurance Company
10	Mugendi Kioi	AML Investigator	Law Enforcement
11	Safari Karibu	Manager Legal & Compliance/MLRO	Insurance Company
12	Jacinta Mbeca	Director- AML Consulting Firm	AML Consultant
13	Ambrose Njau	Risk & Compliance Officer/MLRO	Commercial Bank
14	Mwangaza Tano	AML Investigator	Law Enforcement
15	Edith Kola	Compliance Manager/MLRO	Commercial Bank
16	Gibson Sharp	Law Enforcement Officer	Law Enforcement
17	Ndegwa Mwamba	Senior Manager, Risk & Compliance/MLRO	Commercial Bank
18	Paul Shujaa	AML Analyst	Regulator
19	Hamisi Abdul	Branch Operations Manager	Commercial Bank
20	Maina Ruchiu	AML Investigator	Law Enforcement

**3.9 Data Description**

As indicated above, with a view of addressing the research questions, the researcher has adopted mixed methods research design approach where both qualitative and quantitative techniques are combined or integrated during data collection. Table 3 below illustrates the characteristics of both qualitative and quantitative research. This section will examine the two main research instruments that were utilised by the researcher for gathering research data in the study. These are qualitative research interviews and quantitative research questionnaires.

**Table 3***Characteristics of Qualitative and Quantitative Research*

Adapted from Merriam &amp; Tisdell (2016, p.20)

<b><i>Point of Comparison</i></b>	<b><i>Qualitative</i></b>	<b><i>Quantitative</i></b>
Focus of research	Quality (nature, essence)	Quantity (how much, how many)
Associated phrases	Fieldwork, ethnographic, naturalistic, grounded, constructivist	Experimental, empirical, statistical
Goal of investigation	Understanding, description, discovery, meaning, hypothesis generating	Prediction, control, description, confirmation, hypothesis testing
Design characteristics	Flexible, evolving, emergent	Predetermined, structured
Sample	Small, non-random, purposeful, theoretical	Large, random, representative
Data collection	Researcher as primary instrument, interviews, observations, documents	Inanimate instruments (scales, tests, surveys, questionnaires, computers)
Findings	Comprehensive, holistic, expansive, richly descriptive	Precise, numerical

**3.9.1 Qualitative Research**

In the introduction chapter of this study, it was illustrated that money laundering is a new phenomenon and limited research has been conducted on the subject in Kenya. Accordingly, Creswell & Creswell (2018, p.19) argues that if a concept or phenomenon needs to be explored and understood because little research has been done on it, then it merits a qualitative approach. Regarding this, the researcher prepared in advance of conducting the interviews 10 broad open-ended questions which were used consistently in all the interviews. This is because, as Merriam & Tisdell (2016, pp.19, 117,118, 126) advise, the key to getting good data from interviewing is to ask questions adding that questions are at the heart of interviewing and to collect

meaningful data a researcher must ask good questions. The fewer, open-ended questions are, the better. Having fewer broader questions unhooks you from the interview guide and enables you to really *listen* to what your participant has to share. Getting good data in an interview is dependent on your asking well-chosen open-ended questions that can be followed up with probes and requests for more detail. Equally, Dexter (1970, p. 11 cited by Merriam & Tisdell, 2016, p.109) summarises when to use interviewing “Interviewing is the preferred tactic of data collection when: it will get better data or more data or data at less cost than other tactics”

In the same fashion, Creswell & Creswell (2018, p.190) recommend that the total number of interview questions should be somewhere between 5 and 10, although no precise number can be given. These questions should be prepared in advance of the interview and used consistently in all the interviews. Given the wide scope of the study, it is on this basis that the researcher prepared in advance of conducting the interviews the 10 broad open-ended questions. These questions were aimed at identifying and evaluating the impact and effectiveness of AML strategies in the financial services sector. Specifically, they addressed issues relating to legal reporting requirements, Know Your Customer (KYC), asset forfeiture, internal controls, domestic and international cooperation etc. As previously mentioned, 20 semi-structured interviews were conducted. The duration of each interview was approximately one hour.

### **3.9.2 Principles in Designing Interview Questions**

When preparing interview schedule or questions, Smith et al. (2018 p.186) suggest that researchers first revisit their research questions, research design and sampling strategy. This helps them to clarify the purpose of the interviews that they would like to conduct. Therefore, when preparing individual questions, it is important to reflect on how potential respondents might understand and feel about certain questions, in order to ensure that questions relate to the world and the identity of the respondent as well as to the research interests of the interviewer.

Likewise, Bryman et al. (2021, pp.200-201) proposes that when constructing your interview schedule, questions that are more likely to be of most relevance to respondents should be asked early in the schedule, in order to attract respondents’ interest and attention. They should also be straightforward questions because such questions are a good way of “warming up” participants. In this regard, the first “warm up key question” that the researcher asked

participants during interviews was, “*Tell me about how money laundering generally occurs in the financial services sector in Kenya?*”

Also, when developing the 10 research questions, the researcher considered Smith et al. suggestions and avoided asking difficult questions. The questions were clear and easy to understand. They were good questions which promoted open-ended answers and allowed participants to report or reflect on issues raised. Where necessary, the researcher followed up the questions with appropriate “probes” or other questions. There were no leading questions i.e asking a question that suggests an answer. A leading question is likely to produce a predictable response. Finally, when developing each question, the researcher ensured that participants could respond to the question in a spontaneous way (Smith et al., 2018, pp.186, 292).

### **3.9.3 Quantitative Research**

Regarding quantitative research approach a cross-sectional survey questionnaire was adopted i.e data collected at one point in time (Creswell & Creswell, 2018, p.149). The primary purpose of the survey was to answer the research questions. Questionnaire or instrument is a good way of collecting data as long as they are done well. Because each person (respondent) is asked to respond to the same set of questions in a predetermined order, it provides an efficient way of collecting responses from a large number of people (Saunders, 2016, p.438; Smith et al., 2018, p.276; De Vaus 2014 cited by Saunders, 2016, p.437; Ekinci 2015 cited by Saunders, 2016, p.437).

The self-completion questionnaire is sometimes referred to as a self-administered questionnaire or survey. As the name suggests, this method involves respondents answering questions by completing a questionnaire themselves. Self-completion questionnaires can be administered through different modes – online, by email or by post. Email and online surveys are the most common method, mainly due to their convenience compared to postal questionnaires. Also, these digital formats tend to be cheaper and quicker to administer than postal questionnaires, which involve posting a paper questionnaire to the respondent and usually asking them to return their completed questionnaire by post (Bryman et al., 2021, p.211; Saunders, 2016, p.440). Given these advantages, this study utilised online survey questionnaire.

### 3.9.4 Advantages of Self-Completion Questionnaires

According to Bryman et al., there are some advantages of self-completion questionnaires. First, they are cheaper to administer especially when the sample is geographically dispersed and would involve considerable travel time and costs for interviewers. They are more cost effective as they do not involve interviewers. Second, quicker to administer because they can be distributed in very large quantities at the same time, once you identify your sample. Third, free from interviewer effect since there is no interviewer present means that there is no possibility of interviewer bias effects. Lastly, they are more convenient for respondents because they can complete a questionnaire when they want and at their preferred speed (Bryman et al., 2021, pp.212-213).

### 3.9.5 Disadvantages of Self-Completion Questionnaires

Conversely, as noted below, Bryman et al. (2021, pp.213-214) states that there are disadvantages of self-completion questionnaires.

- *Researcher cannot prompt:* If respondents are having difficult answering a question, there is no interviewer to help them.
- *Respondents may not want to answer questions that are not relevant to them* and that they see as boring.
- *Other kinds of questions are difficult to ask:* Open-ended questions are not heavily used in survey questionnaires. This is because respondents frequently do not want to write a lot.
- *Questionnaire may not be completed by the intended respondent:* With online and postal questionnaires, you can never be sure whether the right person has answered the questionnaire.
- *Researcher cannot collect additional data* as with a personal interview.
- *Number of questions must be limited:* The possibility of “respondent fatigue” means that long questionnaires are usually best avoided.
- *Participants more likely to omit answers, leading to missing data:* Partially answered surveys are more likely with survey questionnaires than in interviews, because of lack of prompting or supervision. Also, questions that a respondent finds boring or irrelevant are especially likely to be skipped.

As indicated above, the online survey that the researcher used to develop the survey questionnaire is from the UoP portal. It is called *Jisc Online Surveys (Jisc)* and has inbuilt

online features that facilitates designing the survey questionnaire, distributing the same to targeted respondents and analysing responses received. Accordingly, as illustrated below, the researcher utilised *Jisc* to develop and distribute the questionnaire. Subsequently, through this modus operandi, 64 questionnaire responses were also received and analysed. The questionnaire comprised of different types of questions, as for example, *list*: a list of items was offered, any of which may be selected or ticked; *category*: e.g Age 10-15; *ranking*: the respondent was asked to place something in rank order; *quantity* where the response was a number and Linkert scales (Bell, 2010, pp.141, 142).

### **3.9.6 Steps to Improve Response Rates in Survey Questionnaires**

Smith et al. (2018, p.278) argues that a high response rate in a survey is clearly important: it gives a larger body of data, which the researcher can use to address research questions and it makes it much more likely that the sample is representative of the population of interest. Here is an illustration of some of the steps that were taken by the researcher to increase participation. First, in constructing the survey questionnaire, the researcher used few open-ended questions as possible, since as have been noted by Bryman et al. (2021, p.216), people are often put off when they see that they will have to write a lot of text. For instance, at the end of the survey questionnaire, the only open-ended question that the researcher asked respondents was “*Are there any other measures that are in place to prevent money laundering in the financial services sector in Kenya? Open*”.

Second, bearing in mind that shorter survey questionnaires with fewer questions tend to achieve better or higher response rates than longer ones, the researcher utilising *Jisc* developed 25 questions which were easy to complete, simple and straight forward (Bryman et al., 2021, p.215; Smith et al., 2018, p.280). As, Bryman et al. (2021, p.231) advanced, the questions asked were clear, unambiguous and were relevant to the respondents. Third, the survey too consisted mainly of simple close-ended questions and as proposed by Smith et al. (2018, p.279), the questions asked were interesting given that better responses are obtained for topics that matter to the people taking part.

Besides the introduction and some basic demographic questions, the survey questionnaire was organised into sections dealing mainly with AML for reducing money laundering in the financial sector. These tools and strategies are similar to the ones indicated in qualitative research above as for example KYC, asset recovery, reporting obligations, internal controls

and risk assessment. Additional topics were the main sources and methods used to launder illicit funds. Concurrently, as the researcher was conducting the interviews, electronic method was used to distribute and receive questionnaire responses.

### **3.10 Pilot Testing**

Prior to using your questionnaire to collect data, Saunders et al. (2016, p.473) suggests that it should be pilot tested with respondents who are similar to those who will actually complete it. The purpose of the pilot test is to refine the questionnaire so that respondents will have no problems in answering the questions and there will be no problem in recording the data. For any research project, there is a temptation to skip the pilot testing. We would endorse Bell and Waters' (2014, p. 167 cited by Saunders et al., 2016, p.473) advice, "however pressed for time you are, do your best to give the questionnaire a trial run" as, without a trial run, you have no way of knowing whether your questionnaire will succeed.

Likewise, Bryman et al. (2021, p.251) observed that before you administer a survey questionnaire to the respondents in your sample, it is always a good idea to conduct a pilot study. Piloting is not just about checking that your survey questions operate well; it also plays a role in testing whether the research instrument as a whole function effectively. It enables the researcher to find out whether the instructions provided to respondents completing a questionnaire are clear and effective. Moreover, it allows a researcher to have the opportunity to consider how well the questions flow and whether it is necessary to move some of them around to improve the flow.

In conclusion, as was noted by Bell (2010, p.151), "all data – gathering instruments should be piloted to test how long it takes recipients to complete them, to check that all questions and instructions are clear and to enable you to remove any items which do not yield usable data. The purpose of a pilot exercise is to get the bugs out of the instrument so that respondents in the main study will experience no difficulties in completing it". The questionnaire in the study was pilot tested, and all the suggestions made were incorporated. As a result, a few extra questions on the role and effectiveness of the Financial Reporting Centre (FRC) in preventing money laundering in the financial institutions were added to the questionnaire. FRC, as earlier noted, is Kenya's Financial Intelligence Unit (FIU).

### **3.11 Data Analysis**

It was noted above that in this study, the researcher selected convergent mixed methods design as the most appropriate method for analysing the data. In this connection, data analysis in a convergent design consists of three phases. First, is to analyse the qualitative database by coding the data and collapsing the codes into broad themes. Second, analyse the quantitative data base in terms of statistical results. Third is the mixed method data analysis ---- that consist of integrating the two databases. This integration consists of merging the results from both the qualitative and quantitative findings. One challenge in this design is how to actually merge the two databases since bringing together a numeric quantitative database with a text qualitative database is not intuitive (Creswell & Creswell, 2018, pp. 219- 220).

According to Creswell & Creswell (2018, p. 220), one of the ways to merge the two databases is called a side – by - side comparison. The researcher will first report the quantitative statistical results and then discuss the qualitative findings (e.g themes) that either confirm or disconfirm the statistical results. Alternatively, the researcher might start with the qualitative findings and then compare them to the quantitative results. Mixed method writers call this a side-by-side approach because the researcher makes the comparison within a discussion, presenting first one set of findings and then the other. This is the approach that is utilised by the researcher to discuss the quantitative and qualitative findings in the evaluation chapter of this thesis. Thus, the results findings from the two research approaches – qualitative and quantitative - are complementary of each other.

Another procedure involves merging the two forms of data in a table or a graph – *joint display* of data. The basic idea is for the researcher to jointly display both forms of data – effectively merging them – in a single visual and then make an interpretation of the display (Guetterman, Fetters, & Creswell, 2015 cited by Creswell & Creswell, 2018, p. 220).

#### **3.11.1 Qualitative Data Analysis**

In the study, the qualitative data that was gathered during the interviews was analysed by conducting a thematic analysis approach. The researcher selected this method because as Braun & Clarke (2006, p.28) have suggested, “a rigorous thematic approach can produce an insightful analysis that answers particular research questions. What is important is choosing a method that is appropriate to your research question”. The researcher concurs with this

statement because this approach addresses the three research questions, hence the selection of the method.

### 3.11.2 What is Thematic Analysis?

Thematic analysis is a method for identifying, analysing, and reporting patterns (themes) within data. It minimally organises and describes your data set in (rich) detail. In short, thematic analysis involves the searching *across* a data set – be that a number of interviews or a range of texts – to find repeated patterns of meaning. Its main purpose is to search for themes, or patterns, that occur across a data set (such as a series of interviews). It involves coding qualitative data to identify themes or patterns for further analysis. It involves segmenting and taking apart the data (like peeling back the layers of an onion) as well as putting it back together. It is a process that requires sequential steps to be followed, from specific to the general, and involves multiple levels of analysis (Braun & Clarke, 2006, pp.6,11,15; Saunders et al., 2016, p.579; Creswell & Creswell, 2018, pp.190-192,192-195). These different phases or steps in thematic analysis are summarised by Braun and Clarke (2006, p.35) here below in Table 4.

**Table 4**

*Phases of Thematic Analysis*

Adapted from Braun & Clarke (2006, p.35)

Phase	Description of the process
1. Familiarising yourself with your data:	Transcribing data (if necessary), reading and re-reading the data, noting down initial ideas.
2. Generating initial codes:	Coding interesting features of the data in a systematic fashion across the entire data set, collating data relevant to each code.
3. Searching for themes:	Collating codes into potential themes, gathering all data relevant to each potential theme.
4. Reviewing themes:	Checking if the themes work in relation to the coded extracts (Level 1) and the entire data set (Level 2), generating a thematic “map” of the analysis.

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5. Defining and naming themes:	Ongoing analysis to refine the specifics of each theme, and the overall story the analysis tells; generating clear definitions and names for each theme.
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6. Producing the report:	The final opportunity for analysis. Selection of vivid, compelling extract examples, final analysis of selected extracts, relating back of the analysis to the research question and literature, producing a scholarly report of the analysis.
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In this research study, in analysing the qualitative data that was gathered during the semi-structured interviews, the researcher was guided by the sequential steps listed above in Table 4 and conducted a thematic content analysis. Accordingly, with a view of getting a feel for the data, the researcher read and re-read in detail all the 20 interview transcripts a couple of times. In addition, to familiarise with the depth and breadth of the content of the data (Braun & Clarke, 2006, p.16), concurrently the researcher also listened to the tape recordings of the interviews. Subsequently, all the data was entered into Microsoft Excel spreadsheet to facilitate sorting, coding and identification and generation of themes, patterns or categories.

Henceforth, from the data extract, a coding scheme was developed and the researcher segmented sentences, phrases and paragraphs into categories with similar meanings. Then each unit of data or data extract was labelled with a code (Creswell & Creswell, 2018, pp.193-194). In the data set, three main types of codes were identified and created namely the main-code, sub-code 1 and sub-code 2. The main codes that were created and generated in the entire data set were 9, sub-code 1 had 110 codes and sub-code 2 had 59 codes. From this list of codes, the researcher again reviewed the data extracts and commenced searching for patterns and relationships to create a short list of themes or categories that related to the three research questions. In short, the process involved sorting the different codes into potential themes and collating all the relevant coded data extracts within the identified themes (Saunders et al. (2016, p.584; Braun & Clarke, 2006, pp.19-20). As the researcher was developing these themes, in Microsoft Excel, “*Sort & Filter*” icon/function was utilised to reorganise coded data extracts under the relevant theme or sub-theme.

Consequently, the researcher generated or created a short list of themes. These themes relate to information sharing, domestic cooperation, money laundering enablers such as lawyers, asset recovery, fragmented AML enforcement, internal controls, capacity building and training, political will and civic education and public awareness. Significantly, these are the themes that are used as major findings in evaluating AML strategies in Kenya (Chapter 6).

Below is an example of a data extract that was coded into the *main code* - “*Effectiveness*” and sub-code 1 was labelled *STRs*. Hence, in both codes the theme that was developed is “*Effectiveness of STRs*”. This theme was developed during interviews after an asset forfeiture specialist stated that,

When we are conducting investigations, we find some suspicious transactions which were noted but were never reported by banks to FRC. Therefore, this money laundering still exists and continues; and the reason why it continues is because the banks are in business, they will tell you, "my friend, if we report them, all of the suspicious transactions customers will not bring the money here. They'll keep the money in their mattresses, and if they keep the money in their mattresses, then we will have no job."  
(Interview, 5)

### **3.11.3 Quantitative data analysis**

As, Creswell & Creswell (2018, pp. 219, 220) have argued, the second phase of data analysis in a convergent design is to analyse the quantitative data base in terms of statistical results. Regarding this, all 64 questionnaire responses have been received and analysed using descriptive statistics in the AML evaluation chapter of this thesis. The researcher selected this approach because the number of responses (i.e.64) is not enough to conduct statistical tests. Thus, the data analysis was facilitated by *Jisc Online Surveys* (Jisc) which as previously pointed out, has an inbuilt capability that provided the researcher with the ability to export response data into Microsoft Excel spreadsheet. Consequently, in Excel, relevant tables, graphs, bar charts and mean scores were generated as indicated in the evaluation chapter of the study. Indeed, *Jisc* was also able to provide text responses of other measures for combating money laundering that were not covered in the survey questionnaire such as political will and civic education.

The third phase in the data analysis is the mixed methods data analysis which consist of integrating the two databases. This integration entail merging the results from both the

qualitative and quantitative findings - side-by-side comparison (Creswell & Creswell (2018, p. 220). As demonstrated in the AML evaluation chapter of the study, the researcher has made the comparison within a discussion, presenting first quantitative findings and then qualitative findings (themes/quotations) that either confirm or disconfirm statistical results (responses).

### **3.12 Data Management**

In this research study, all personal data obtained from participants is protected under sections 25 and 26 of the Data Protection Act 2019, Kenya which stipulates the principles and obligations of personal data protection. Also, the same data is protected under section 31(d) of the Constitution of Kenya 2010 which provides that every person has the right to privacy, which includes the right not to have the privacy of their communications infringed. Additionally, during field work, the researcher collected all data in strict conformity with “Researchers” Responsibilities towards Research Participants, BSC (2015, pp.5-9). Moreover, the researcher ensured that data collection was in accordance with the UoP principles and commitments set out in the Concordat to Support Research Integrity, 2012 and the UoP Ethics Policy, 2017.

Data that was collected during the study is stored in the researcher’s personal laptop which he has sole access. It is being backed up onto UoP N drive and the researchers memory stick. There is no data that is located on any server. None of the original data will be shared. The identities of individuals and organisations have been coded to create anonymity in the raw data. Role and organisation descriptions are sufficiently vague to prevent traceability, including participants names which are pseudonym names. To ensure confidentiality, access to the personal data is restricted to only the researcher and his supervisor. Confidentiality was maintained by anonymizing data collected as quickly as possible. The strategy for anonymizing data entailed changing names of individuals and organisations, in other words coding the data. After completion of the research, data collected will be retained for a minimum period of ten years.

Published information output from the research study will be in the form of a thesis, journal articles and presentations. This information will therefore be public (open access), but untraceable anonymity will be maintained by continuation of the coding arrangements. Any data in the public domain, traceable to an anonymous participant, will be anonymized, disguised or discarded.

### **3.13 Ethical Issues and Considerations**

The proposal to conduct this research study was reviewed and approved by the Faculty of Humanities and Social Sciences Ethics Committee (FHSS), UoP and the research study was granted a favourable ethical opinion.

Bryman et al. (2021, p.118) states that the principle of informed consent means that prospective research participants should be given as much information as might be needed in order to make an informed decision about whether or not they want to participate in a study. Accordingly, during field work, as indicated above, the researcher ensured that participation by all participants was voluntary and informed them that they had a right to refuse to answer questions or participate in the interview. Additionally, before requesting permission to proceed with the interviews, the researcher ensured that participants signed consent forms. That where participants were employees of organizations, consent for their participation was obtained from the management of the host organisation. Similarly, the researcher provided participants with UoP supervisory details for making complaints.

Regarding withdrawal of consent, as was noted above, participants were informed by the researcher of their right to withdraw participation at any point during the interview. In such cases, participants were given one week to think about and consider their decision to withdraw. Further, participants were informed of their right to change their consent and to ask for destruction of data collected at any time during the data gathering phase (BPS, 2010, p.15). To safeguard against breach of confidentiality the researcher has ensured that quotations attributed to participants in the thesis have been anonymised. Moreover, as Smith et al. (2018, pp.279-280) have suggested, “in your research project, you should make sure that data are kept confidential and anonymous and telling your participants that this is so will make it easier for them to trust you and give their informed consent to take part in your study”.

Given that money laundering in the banking sector is a sensitive topic, it was critical that disclosures do not cause harm or adverse consequences to the participants or their organisations. For this reason, during data collection, the researcher ensured that no one was harmed or suffered adverse consequences such as retaliation from research activities. To guard against all forms of reputation risks, when gathering data, the researcher demonstrated the highest standard of integrity, adhered to the requirements of informed consent and handled sensitive data in a confidential manner. Finally, the researcher too took all reasonable steps to correct any misrepresentations and adopted the highest standards in all his professional relationships with institutions and participants (BSC, 2015, pp.2-5).

### **3.14 Researcher – Insider or Outsider?**

The ‘insider’ position was first defined by Merton (1972 cited by Bryman et al., 2021, p.133) as when a researcher has cultural, linguistic, ethnic, religious and /or national continuity with the group being studied. By extension, an ‘outsider’ is a researcher without these elements of continuity with the group being studied. In quantitative research, researchers with the status of an outsider are often seen as better placed as they benefit from a certain degree of distance and can collect data beyond the realm of their personal experience. In this study, the researcher considers himself as an ‘outsider’ because he had no previous interaction with the 64 respondents who completed the survey questionnaire and 20 participants who were interviewed.

The researcher is a former law enforcement officer in Kenya as well as a United Nations investigator who was engaged in investigation of all aspects of fraud and corruption in private and public sectors for over three decades. The researcher acknowledges that in the 1980s, he was actively involved in investigating banking fraud cases in Kenya, a period when there was a banking crisis and 3 major banks collapsed and were closed by the regulator due to alleged theft of depositors’ funds, money laundering and other fraudulent activities. However, it is to be noted that, as indicated in the AML evaluation chapter of the thesis, 86% respondents are below 40 years and hence were not born when the researcher was conducting investigation in the banking sector. Again, as previously pointed out, due to Covid-19 pandemic, the researcher had access to participants in the study mainly through snowball sampling strategy.

As an ‘outsider’ and given the researchers previous fraud and corruption investigation background and experience offered significant benefits for this study. First, due to the researcher’s familiarity with the research environment (i.e the financial services sector), the researcher was able to conduct in-depth detailed face-to-face interviews and gathered information or rich data to address the research questions. Second, the researcher easily created rapport with participants and was able to access sensitive data which is relevant to the research questions. Third, during interviews, the researcher’s exposure to the financial sector enabled him to evaluate the reliability of responses received from participants. However, the researcher acknowledges bias in that in one or two interviews he conducted detailed in-depth interviews which the participants through their body language indicated were fatigued and bored and their response to interview questions decreased as the interviews progressed.

### **3.15 Conclusion**

This chapter has considered philosophical worldview assumptions that the researcher has adopted in the study, which is constructivism. It was adopted because the bulk of this research is qualitative. The three research questions were then considered which guided the research design. Convergent mixed methods research design was selected by the researcher as the most appropriate design to address the research questions. *Snowball or network sampling*, the most common of purposeful sampling too was selected as the best suited sampling strategy for recruiting participants in the study. Here issues relating to the impact of Covid-19 in accessing participants and respondents were discussed. The chapter also explored the characteristics of qualitative and quantitative data that the researcher gathered in the research study. Additionally, issues relating to designing interview questions and self-completion questionnaires and steps to be taken to improve response rate were examined. Equally, in this chapter, qualitative, quantitative and mixed methods data analysis was discussed. In conclusion, the chapter also considered some of the data management and ethics issues and researcher as an ‘insider or ‘outsider’ concept. The focus of the next chapter is to consider the nature of money laundering in Kenya.

## **Chapter 4: Nature of Money Laundering in Kenya**

### **4.1 Introduction**

The practice of money laundering is rife in Kenya. It is an emerging and new crime in the country which has both adverse social and economic implications. Money laundering is nowadays a phenomenon that is frequently reported in both the local and international mass/digital media - the daily newspapers, TV outlets, the internet and social media platforms. As is to be noted throughout this study, due to increased corruption in the country, the practice of money laundering is currently a major problem in Kenya since this is the vehicle through which these illegally acquired funds are being concealed or hidden.

According to the NRA (2021 p.11) report, money laundering in the country is both complex in scale, settings and diversity of its actors. Typical typologies entail opening accounts and making periodic cash deposits which do not correspond to the suspect's known sources of income. In such incidences, there may be no withdrawal from the accounts despite receiving huge sums of money which obviates a presumption of innocence.

In this chapter, the nature of money laundering in Kenya will be explored. Accordingly, the chapter will draw upon the research that the researcher has carried out in the field, the literature review conducted and relevant information gathered from the mass media and other open sources of information. In the first section, the results from the survey questionnaire and views from participants on the extent or scope of money laundering in Kenya will be considered. Next to be illustrated are the two largest money laundering cases so far in Kenya's history popularly known as the National Youth Service (NYS) I and II scandals.

Similarly, in the second section, an analysis of responses received in the survey questionnaire and participants perspective regarding the main sources of money laundered in the financial sector in Kenya will be discussed. These are corruption, drug trafficking, cybercrime, fraud and theft, criminal tax evasion, wildlife trafficking and human trafficking. In examining these crimes, several reported cases on the nature of money laundering in Kenya will be demonstrated. In the same fashion, different methods used to launder illegal funds will be discussed in section three. These are cash intensive businesses, gambling, cash smuggling, e-money transfer services, credit card payments, real estate transactions, lawyers, accountants, purchase of high value goods etc.

## 4.2 Scope - Money Laundering in Kenya

Regarding the scope or extent of money laundering in Kenya, in the survey questionnaire, the following question was posed to respondents: “On a scale of 1 to 5 where 1 is a major problem and 5 is not a problem, how would you rate the problem of money laundering in the financial services sector in Kenya?” Data in Table 5 below illustrate that 40% respondents rated money laundering as a major problem in Kenya and ranked the same at 1 – “*major problem*”. This was followed by 17% who ranked the practice at 2. In addition, 16% ranked the problem at 4 and it was only 10% who indicated that money laundering was “*not a problem*”. An analysis of these scores tend to show that money laundering is a major problem in the financial services sector in Kenya.

**Table 5**

*Scope – Money Laundering in Kenya*

Scale	N	%
1	25	40
2	11	17
3	11	17
4	10	16
5	6	10
<b>Total</b>	<b>63</b>	

Also, during interviews, participants were asked how money laundering generally occurs in the financial services sector in Kenya. Here is a response from an asset forfeiture specialist.

Money-laundering occurs for example when the government has donor funds or its own resources. Then for public officials to steal such funds, they use a government project and collude with a procurement officer. This officer will float a tender for the government to be supplied with goods or services. It is during the tendering process and evaluation of the same that the process of money laundering manifests itself. Here parties to the tendering process collude – the supplier or vendor, the procurement and accounts departments. Consequently, the supplier will get a contract to supply a mobile telephone with a market value of Ksh16,000 (US\$160), but the officers will collude and inflate the budget for the phone by 10 times to US\$,1,600. After the supplier has supplied the phone at the inflated price, how will you know there is money laundering? You wait, when this supplier is paid, you follow the trail of financial transactions, you follow the trail of the money.

Immediately the money is paid to the supplier, what follows is a series of transactions of cash withdrawals to take to the procurement officer and other government employees who processed and facilitated the tender and payments. Some of the funds are transferred to companies related to these government employees. We call that process layering because initially when the money is being deposited in the bank account, it is placement. Again, once you look at those transactions immediately after the payment, you find these funds were moved to several accounts or banks because you see this is a deal and you cannot wait one year. You don't know whether you'll be transferred tomorrow (i.e government employee). So, you want your money immediately the money is paid. Others start acquiring real estate property, that is integration, because they want to bring the funds in the economy as clean money. It is clean money now because when they build a house, they'll rent out and will be given clean money which they will take to the bank. That is how we detect that this is money laundering. (Interview, 5)

Similarly, a compliance and risk manager of a commercial bank explained how money laundering takes place in the financial sector and stated that,

Placement is the most commonly used way that money obtained illegally gets into the banking industry. This is either through cash deposits or incoming funds from the various agencies or through payments of cheques. In terms of layering, we have seen scenarios where people start transferring small, small monies to several accounts in different institutions or to buy houses which now goes also into integration. But the major thing for integration is where a lot of people come for cash covered facilities.

Here, they have accumulated cash from various sources, and then they use that to do cash covered facilities to purchase buildings or engage in real estate itself. Actually, I think the real estate industry has had a lot of integration issues. The law firms are facilitating that a lot because most of them receive cash or their customers deposit cash into their accounts with the pretext of having to buy properties, sale agreements are provided and because the banking industry itself, we don't have a capacity to do investigation, then it would be very hard for us to know whether even those sale agreements are real or not. (Interview, 1)

Equally, a risk and compliance officer from an insurance company advanced that;

I would like to state that money laundering is a big problem in the insurance sector where I work. An example of how it occurs is like this. In the insurance industry we do what we call a fund management where clients come to deposit their money for investments and get returns at the end of the investment period. First, an investor will go deposit that money that has been illicitly acquired in a bank, in our bank account - that's placement. As an asset management firm, we have what we call a collection account that is domiciled in a bank. That bank we call it a custodian. As a firm we'll go and collect that money that has been deposited in that bank and invest on behalf of the client.

When investing that money that is layering meaning that the money has gotten its way in the insurance firm to be specific in the financial function. Once we invest that money for the client, we may not know how the client got this money. The money takes some period but the interest of the client would have been just to hide the origin of this money

in the name of investing in the insurance firm. Once you have invested this money, the client has a right to come and withdraw the money from us, the accumulated returns.

Consequently, we'll process the payments, give back the money to the client. But, when we are paying the client, the money goes through the bank that the money came from. In short, that money is integrated in the financial system. Therefore, by the time the client is now getting what he or she invested in the insurance firm through his or her bank account, now the money will have been cleaned and now the source of funds would be very much concealed. (Interview, 3)

Finally, a scholar, AML specialist argued that,

In the financial services sector in Kenya, from my own research, I would say that money laundering is undertaken mainly through bank deposits that are not properly looked into so that you find somebody will place a certain amount of money into their bank account and the banks in my view at times, do not do proper investigations as required at their level to find out where this money has come from. Although they may file the suspicious transaction reports, actually the reality is that most of the time they do not file these reports. (Interview, 4)

### **4.3 National Youth Service (NYS) I and II Scandals**

#### **4.3.1 What is National Youth Service?**

The NYS is a paramilitary training institution that has been at the forefront of the Kenya government's plan to combat high youth unemployment. It is an institution or service designed to create employment for the youth. Its focus has been to help the youth discover and develop their potential. Enrolment is voluntary, and on recruitment youths are paid a stipend while receiving technical training and working on government infrastructure projects. With a budget of \$250 million a year, the NYS has been adversely affected by Kenya's endemic corruption, with a first scandal breaking in 2015 after the theft of \$7 million through inflated pricing and fictitious payments. The second scandal involving over \$90 million occurred in 2018 and was brought to light by suppliers who had not been paid (Githaiga, 2018, September 12. The East African).

#### **4.3.2 NYS I Scandal**

In 2015, public officials at the NYS conspired with outside vendors to fraudulently pay out Ksh.3.5 billion (US\$35m.) allocated by the government for the construction of a 3.5-kilometre road under a slum upgrading project in Nairobi, the capital city of Kenya. A total of Ksh.2 billion (US\$20m.) was paid in fraudulent circumstances to one vendor, the principal beneficiary of the theft, who owned and operated 11 companies. She was a hairdresser by

profession. In most of the cases, these companies were barely 2 months old and had no prior contractual relationship with NYS. Also, the companies were not pre-qualified and were dealing in goods and services for which they were not officially registered. When she was charged before court, she claimed that she operated the companies in partnership with a cabinet minister. However, the minister denied the relationship maintaining that she was a whistleblower who prevented the loss of millions from the NYS (Ngirachu, 2016, June 8. Nation Media; Business Daily, 2016, June 7).

The Auditor-General, Kenya who conducted the audit attributed the fraudulent payments to poor internal controls at NYS and failure to conduct proper due diligence on suppliers before they were awarded contracts. For instance, in one case, one of the suspect's companies received irregular payments of over Ksh.200 million (US\$2m.), five months before it was even registered by the registrar of companies (Registrar). Other companies started receiving their payments about two months after registration. Surprisingly, a company registered as trading in garments was paid for civil works. Notably, suppliers who were grain dealers were paid for civil works whereas those of school learning equipment were paid for hire of equipment and machinery. The Registrar confirmed that these suppliers were actually shell companies that existed as mere business names owned by one proprietor. (Ngirachu, 2016, June 8. Nation Media; Business Daily, 2016, June 7).

Other procurement anomalies were that all payments were based on supporting documents which were forged such as delivery notes, local purchase orders (LPO's) and inspection and acceptance certificates. Secondly, the vendors added a zero to each of these documents to inflate the price ten-fold. For instance, in one case, an alteration was done which increased the fraudulent payment from Ksh.80 million (US\$80,000) to Ksh.800 million (US\$800,000). Thirdly, deliveries were signed for without inspection: when the construction materials were delivered to the road project site, the inspection and acceptance committee just signed to have received or accepted goods and services without any evidence of conducting physical verification. In conclusion, the government payment system software - Integrated Financial Management Information System (IFMIS) - was accessed irregularly. For instance, passwords to the system were shared and controls were so lax that staff whose access rights had been withdrawn or revoked could still log on to it 5 months later, curiously after official office hours and weekends (Ngirachu, 2016, June 8. Nation Media; Business Daily, 2016, June 7).

This investigation led to the prosecution of 11 individuals with the offense of money laundering. It was alleged that the suspects stole US\$8 million from NYS and to conceal the source of the funds, the money, which was proceeds of crime was used to purchase luxury vehicles, prime properties through shell companies and a restaurant in Nairobi. The high-end vehicles included Range Rovers, Toyota Land Cruisers, Toyota Prados and a Jeep Cherokee. In addition, substantial cash deposits were made in several bank accounts and transferred to relatives using legal firms (Kiplagat, 2019, August 20. Business Daily; Nyaga, 2017, Jan. KBC).

During the trial, the first person to be convicted was found guilty of procurement fraud. He was a former NYS official who was fined Ksh.4 million (US\$40,000) or serve four years in jail. He was also barred from holding any public office. He was the secretary to the tender committee in NYS and was alleged to have added a bidder who was not pre-qualified (Sang, 2019 January 17. Daily Active). The trial of money laundering cases relating to the other suspects is still ongoing.

Consequently, as the trial was ongoing, in July 2020, the High Court in Nairobi ordered the seizure of several multi-million-shilling properties and vehicles linked to the 8 suspects in this NYS scandal. These properties include a mansion in Nairobi, a residential plot and four Toyota Prados. The judge ruled that the Assets Recovery Agency (ARA) had proved those assets were proceeds of crime and should be forfeited to the State. “From the facts presented by the ARA which have not been controverted by the respondents, the assets in this matter were purchased using funds stolen from the NYS,” the judge ruled. The judge also noted that the assets were then registered in the names of the suspects or their associates in a manner which show a complex scheme of money laundering (Mbugua, 2020, July 24. People’s Daily Kenya).

In yet another NYS asset recovery matter filed by ARA against a senior government official, to recover proceeds of crime, the High Court ordered forfeiture to the government of about Ksh.33 million (US\$33,000) held in several bank accounts of the suspect. The suspect was the accounting officer responsible for NYS department. She failed to explain to ARA how she made the money or the source of the funds. The suspect and her young children had millions of cash in their accounts which they were unable to show a legitimate source. ARA had given the suspect ample time to explain how she made the money but her explanation was unsatisfactory. There were several suspicious cash deposits, withdrawals and internal transfers within the same and other banks. Further, most of the deposits made were below Ksh.1 million (US\$10,000) to evade the reporting threshold. Three accounts in the suspect’s children’s

names had more than Ksh.11 million (US\$110,000). Documents filed in court indicated that the funds were deposited between January 2016 and March 2018 when the NYS funds were fraudulently stolen and laundered (Kiplagat, 2020, April 15. Newszetu).

In this NYS matter, 3 commercial banks were fined Ksh.1 million (US\$10,000), each by the Central Bank of Kenya (CBK), regulator, for failing to report suspicious transactions and handling stolen funds from NYS of US\$8million. The banks were penalised for handling proceeds of crime. This is the maximum fine for banks that fail to report suspicious transactions. Further, CBK recommended the sacking of 9 top managers of one of the bank's where the bulk of the stolen cash was paid to the sole vendor, a hairdresser who was operating 11 companies as illustrated above. Four other managers from another bank were re-vetted and for engaging in financial misconduct were found unfit to hold office (Obala, 2016, August 5. Standard Media).

### 4.3.3 NYS II Scandal

This is the second NYS scandal involving about Ksh.10.5 billion (US\$100m.) that was allegedly stolen and laundered from the institution within a period of three years (2016-2018), in a well-orchestrated scheme again involving senior government officials and fictitious companies or suppliers. The theft involved payment of pending bills to these companies at the expense of genuine ones. Significantly, the payment was authorised and executed in favour of 36 companies which claimed to have supplied NYS with various goods but did not supply anything. A corrupt ring of NYS store keepers, inspectors, accountants and senior managers colluded with the accounting officer to approve the payments to these companies. Also, these officials set up fictitious or shell companies, sidestepped procurement processes, including forgery of tender documents. Additionally, they engaged in backdating, forgery and creation of fictitious documents to look like they were genuine. Moreover, circulars supporting the fraudulent payments and genuine contractors' numbers were forged and illegally used to pay non-existent suppliers. Consequently, after manipulating the IFMIS, the fictitious companies would receive double payments within a span of a few minutes. Once payments were made, the money was withdrawn almost immediately, either in cash or transferred to other accounts. As indicated above, IFMIS is a government payment system software aimed at enhancing accountability and transparency (Githae, 2018, May 12. Nation Media).

In a nutshell, the *modus operandi* in this fraudulent scheme was as follows: Corrupt officials created fictitious companies then assigned them contract numbers ordinarily given to genuine contractors who were pre-qualified. Whereas the contract numbers were valid and pre-qualified companies genuine, the false or fictitious firms were basically shell companies created to facilitate fraud. Significantly, these companies were not on the list of pre-qualified NYS suppliers of various items. Using a valid contract number, an account could be opened for the fictitious companies in the IFMIS. Local Purchase Orders (LPOs) were then raised in respect of the fictitious companies and the impression created that they had supplied goods to NYS. The fraudulent payments were slotted into the NYS stock of pending bills. Interestingly, these suppliers claimed that they had been contracted to supply motor vehicle spare parts and other mechanical wares to NYS, yet the companies were paid for supplies such as food and tents. After completion of investigation, 51 suspects were arrested and charged before court with various offences such as corruption, money laundering, economic crime etc. (Nation Team, 2018, May 13; Wasuna, 2018, November 1. Nation Media).

This is a case of four members from one family who received nearly Ksh.1 billion (US\$10m.) from the NYS transactions without supplying any goods or services. The family never tendered for the goods and services they allegedly supplied. No procurement was undertaken at NYS and the alleged goods and services supplied, was “air”. Additionally, payments were backdated for quick payments to the family. The family was paid for goods delivered by other firms, after prices had been inflated. Specifically, at the expense of individuals who did legitimate business with NYS, payments were made to the family after duplicating genuine supply contract numbers (Kiplagat, 2018, November 1. Business Daily; Wasuna, 2018, November 2. Nation Media).

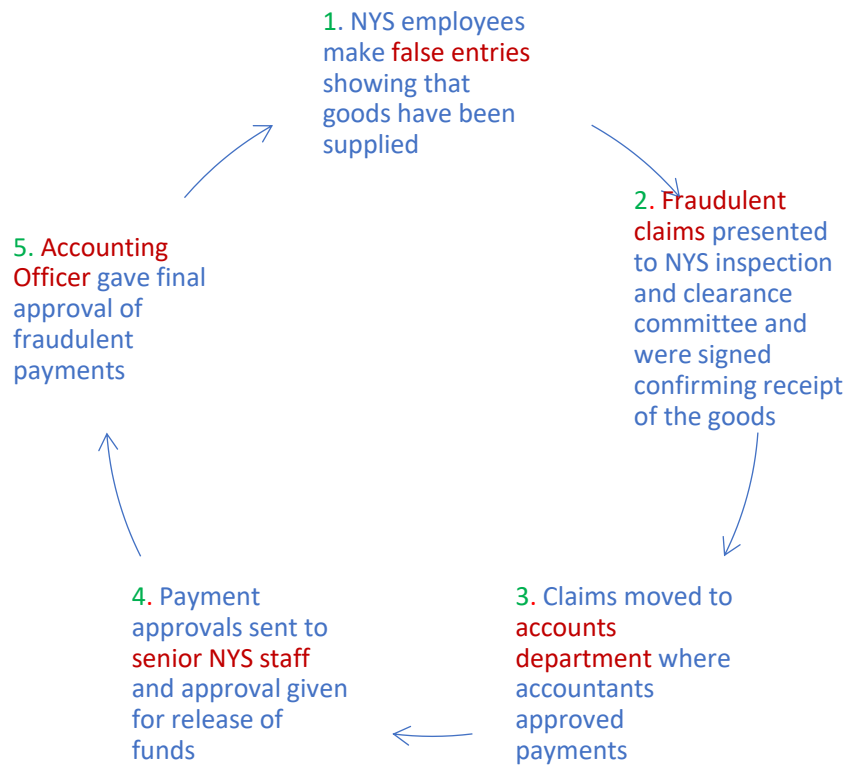
To facilitate the fraud and the payments, false entries were made in the NYS accounting records to indicate that the family had supplied goods. This included forging store ledgers and stock control cards. Also, as noted above, payment claims were backdated to ensure money was quickly processed and released to the four family members. After books had been manipulated, the inspection and clearance committee would confirm that goods had been received (Wasuna, 2018, November 1. Nation Media Group).

Subsequently, at the accounts department, payment would be logged in as due to the suppliers, who include the four family members and a chain of approvals sought from the accounts department, senior officials of NYS and finally the accounting officer ahead of payment. Notably, the claims would be approved by senior officials rather fast, and with no questions asked. After the payment was made the family laundered the money by purchasing assets such as luxurious cars and prime pieces of land (Wasuna, 2018, November 1. Nation Media). Figure 3 below demonstrates how the fraudulent payment of Ksh.1 billion (US\$10 m.) was executed in favour of the four family members.

### Figure 3

#### NYS US\$10 Million Fraudulent Payments

(Nation Media, 2018, November 1)



Consequently, ARA made application in court for the assets bought by the family with tainted cash to be forfeited to the government and the bank accounts frozen. The assets include three vehicles, several properties and cash held in their companies' and personal bank accounts which were split into several transactions. The family too failed to demonstrate how they acquired the assets. Finally, this family was unable to produce any evidence to justify contractual relationship with NYS or were in legitimate business of supplying goods or even paid any taxes to the government on income earned. (Kiplagat, 2019, October 16. Newszetu).

Again, in March 2020, CBK fined 5 top banks \$4 million for their role in handling more than \$35 million stolen from the NYS. The lenders were found to have violated the POCAMLA by failing to report large suspicious cash transactions to FRC, approving such transactions without proper supporting documents and failure to undertake adequate CDD. These penalties were imposed after all the banks involved opted for plea bargaining to defer prosecution of their senior managers by the office of the Director of Public Prosecutions (DPP). The money was deposited in the Prosecution's Fund – an account operated by the office of the DPP to handle proceeds of crime – as part of a plea bargain.

According to the terms of the agreement, the banks agreed to cooperate with the DPP and other law enforcement agencies in the investigation and prosecution of NYS theft suspects. In addition, they had to provide evidence and documents relevant to the NYS investigations. Likewise, the banks also agreed to strengthen their internal control procedures and operations to flag any suspicious transactions by their customers. The parties further agreed that the banks shall institute disciplinary procedures against staff involved and report to the DPP the action taken. Should the banks fail to comply with the terms of the agreement, they forfeit the cash and the DDP proceeds with the prosecution. This is the first deferred prosecution agreement involving financial institutions in Kenya (Otieno, 2020, March 1. The Star).

It is also to be noted that in 2019, Tanzania's Central Bank, regulator, fined 5 commercial banks over \$800,000 for breaching AML rules. These sanctions were imposed on 3 Kenyan and 2 Tanzania banks. The fines were imposed "for failure to conduct proper CDD and file STRs to the FIU." Additionally, the banks were required by the regulator to take disciplinary action against all staff members "who were involved in opening implicated deposit accounts contrary to KYC requirements". Moreover, the banks were also required to report STRs which they had failed to report and ensure that they obtained identities of their customers and details of their clients' transactions (Ng'wanakilala, 2019, September 23. Reuters). In the next section, the main sources of "dirty" money and laundering methods are to be explored.

#### 4.4 Main Sources of Illicit Funds

In the survey questionnaire, 14 main sources of money laundered in the financial services sector in Kenya were listed. Then respondents were requested to select 5 of the main sources. The results are documented, in rank order, in Table 6 below which show that corruption was on top of the list, after being selected by 98% respondents. Second, was drug trafficking which tied with fraud and theft, both of which were each selected by 78% respondents. Third source was tax evasion which was selected by 77% respondents. Cyber-crime and terrorism also tied and were each selected by 34% respondents. Fifth, was poaching or wildlife trafficking which was selected by 31% respondents. The least likely source was prostitution which was chosen by 2% respondents.

**Table 6**

*Sources of Illicit Funds*

Rank	Sources	Respondents (N)	Response Rate (%)
1	Corruption	63	98
2	Drug Trafficking	50	78
3	Fraud and Theft	50	78
4	Tax Evasion	49	77
5	Cyber-Crime	22	34
6	Terrorism	22	34
7	Poaching/Wildlife Trafficking	20	31
8	Gambling/Casinos	16	25
9	Forex Exchange Bureaus	15	23
10	Human Trafficking	5	8
11	Piracy	3	5
12	Arms Smuggling	2	3
13	Forest Trafficking	2	3
14	Prostitution	1	2

The above scores confirm concerns recently raised by IMF regarding money laundering by corruption networks in Kenya. In a newspaper article, it was reported that IMF wants tighter checks on bank transactions in Kenya amid growing concerns about money laundering by

corruption networks (Rotich, 2022, July 25. Nation Media). An appraisal report by an IMF team in 2022 suggested that Kenya should intensify checks on corruption-related money laundering risk in banks and other higher-risk sectors using financial intelligence tools.

These concerns were raised because Kenya has lately witnessed an upsurge in suspected money-laundering schemes with billions of shillings seized from companies and individuals who could not explain the source of their wealth. For instance, the government last year seized about Ksh.15 billion (US\$150 million) from individuals and companies from Nigeria with the bulk of the money suspected to be from card fraud or remittance done by payment service providers. Additionally, a recent report by the US State Department warned of laxity among Kenyan officials in the global fight against money laundering, with officials tipping suspects to move assets before seizure (Rotich, 2022, July 25. Nation Media).

Also, in relation to the sources of these illicit funds, a risk and compliance officer of a commercial bank observed that:

Money laundering stems from, if you think of the predicate crime in our local context would be corruption. Also, we've seen a lot of game trophies and trafficking drugs, counterfeiting or that tax evasion. (Interview, 13)

Another interviewee, a law enforcement officer added;

Some of the main predicate offenses that the proceeds of crime come from in this country are corruption, drug trafficking, human trafficking as well as the proceeds from counterfeit goods etc. (Interview, 16)

Also, in the survey questionnaire, on corruption, one respondent reported that;

As it is today, the major source of laundered funds in Kenya is from corruption at the government agencies. To launder these corruption funds, government officials work with cronies who register shell companies to apply for tenders/receive fraudulent funds on their behalf. Therefore, financial institutions in Kenya should on a regular basis review the account activities of their customers, especially small medium enterprises (SMEs) that receive remittances from government agencies to establish their legality.

Further, according to a new survey released by the Kenya Ethics and Anti-Corruption Commission (EACC) in December 2022, it shows that corruption is one of the top-three key concerns in Kenya, after unemployment and poverty. 74 out of 100 Kenyans perceive that corruption is widespread in Kenya, with most of them of the view that corruption is on the rise. Significantly, at least 8 out of every 10 Kenyans perceive the National Police Service (NPS) to be corrupt in its service delivery. Again, the survey indicates that of the government services, a Kenyan was most likely to encounter corruption while seeking medical services at 27.8%,

followed by the application for or collection of a national ID at 14.8% (Gituku, 2022, December 31. Citizen Digital). Citing relevant examples, some of these main sources of illegal funds are discussed in detail below, commencing with corruption followed by drug trafficking.

#### **4.4.1 Corruption**

In 2021, Kenya scored 30 in the Transparency International (TI) Corruption Perceptions Index (CPI). The performance was evaluated on a scale of 0-100, where zero means “*highly corrupt*” and 100 “*very clean*”. Out of 180 evaluated countries, Kenya ranked close to the bottom of the list, at 128<sup>th</sup> and remained below the world's average of 43 points (Faria, 2022, January. TI, 2021). This means that Kenya is perceived to be one the most corrupt countries in the world. However, in 2022, the country CPI score was 32 and ranking was at 123 which was a slight improvement from the previous year (TI, 2022).

According to Chaikin (2008, pp. 275-269), corruption and money laundering are phenomena that often occur together with the presence of one reinforcing the other. That is, money laundering provides a get - away vehicle for those engaged in corrupt activities. In the Kenya situation, this can be illustrated where in 1986, two Kenyan senior public officials, formed in Jersey a shell company in order to hide the identity of true owners (Hock, 2020, p.237). They then opened a secret account for the purpose of receiving bribes disguised as “commissions” or “consultancy fees” from foreign companies which won some lucrative Kenya government tenders. Through this scheme, the officials received from these foreign companies’ bribery amounting to £8.1 million.

After investigations were conducted substantial funds were recovered and a total of Ksh.444 million (£3 million) was wired back to Kenya to be used for Covid-19 treatment. This was after the shell company in February 2006 admitted in Jersey to have engaged in bribery and corruption and laundered the proceeds of crime between July 1999 and October 2001. It is to be noted that this international bribery scheme was facilitated by third parties who were acting on behalf of the main parties: bribe-giver and bribe-taker (Hock, 2020, p.8). In this case, there were agents, third parties who were acting on behalf the bribe givers that is the foreign companies and the bribe takers, the two Kenyan corrupt officials who received kickbacks.

Subsequently, in April 2011, a court in Jersey issued a warrant for the arrest of the two Kenya officials which they are now challenging in court to stop their extradition. This systematic bribery scheme involved energy companies from a dozen countries, including the United

Kingdom (UK). Notably, part of the proceeds of the crime was for a loan to the Kenya government for a non-existent hydro - power plant which was diverted to the officials account in Jersey as a bribe. The UK government launched investigations after the matter was raised in the House of Commons in 2001 (Ngugi, 2021, January 7. Business Daily). Next to be considered is drug trafficking.

#### **4.4.2 Drug Trafficking**

Drug trafficking is a major problem in Kenya and is one of the main sources of money laundered in the financial sector. The country is a drug trafficking hub for heroin and cocaine destined for markets in the US and Europe. Some of these drugs are also locally consumed. Typical of the cases that demonstrates how Kenya's coast has become a transit point for drug trafficking in the East African region is presented here.

In March 2023, six Pakistanis and one Iranian national were found guilty of trying to smuggle heroin to Kenya's coastal city of Mombasa via the Indian Ocean were sentenced to life in prison. The foreigners have been in custody since 2014 when they were arrested and charged with trafficking heroin worth US\$10 million. They were also fined Ksh.3.9 billion (US\$4m.) each. The seven were crew members of a ship X and were arrested while on board the ship at sea (Musambi, March 10, 2023. Associated Press).

Also, the transnational element in drug trafficking and the use of Kenya as a drug trafficking hub is shown by actions taken by the government in which a luxury yacht suspected to contain Ksh. 22 million (\$220,000) heroin was destroyed at sea in the Indian Ocean. In this incident, in April 2015, the heroin was found aboard a luxury vessel/yatch, along the Kenyan coast during a search by the anti-narcotics police. Inside the vessel, the drugs were concealed in a black suitcase in a motor vehicle and under the water tank. Five suspects, one from Seychelles and four Kenyans were arrested and charged in connection with these narcotics drugs. Following the orders of the former President of Kenya, in August 2015, the yacht was later blown up in the high seas by the Kenyan navy. Before it was impounded, the vessel which is registered in Singapore, used to ferry wealthy Western tourists and vacationers to Kenya, Tanzania, Madagascar and Seychelles in the Indian Ocean (Bwana, 2015, August 15. Standard Media).

Another incident relates to two brothers who were the leaders of a sophisticated international drug trafficking network based in Kenya, responsible for tons of narcotics shipments throughout the world. For over 20 years, they manufactured and distributed drugs, sometimes

using violence against those who posed a threat to their enterprise. When the brothers encountered legal interference, they tried to bribe officials—including judges, prosecutors, and police officers—to avoid extradition to the US.

In 2014, the two brothers were arrested along with two associates in Mombasa, Kenya, by anti-narcotics police, after providing 99 kilogrammes of heroin and two kilogrammes of methamphetamine to US Drug Enforcement Administration (DEA) informants posing as drug traffickers of a South American drug cartel. Following the arrests and pending extradition proceedings, the two brothers continued with their criminal operations, using profits to bribe Kenyan corrupt officials.

Their bribery scheme ended in 2017 when the brothers were expelled from Kenya, and DEA agents brought them to the US for prosecution. On 24 October 2018, they pleaded guilty in a US Federal Court to conspiracy to import and importation of heroin and methamphetamine, conspiring to use and carry machine guns and destructive devices in connection with their drug-trafficking activities, and obstruction to justice. In August 2019, the younger brother was convicted to 25 years in prison and fined US\$100,000. Similarly, in January 2020, his elder brother received a sentence of 23 years (UNODC, 2018). Cyber-crime is the next source of illicit funds to be considered followed by fraud and theft.

#### **4.4.3 Cyber-crime**

According to Osterburg & Ward (2014, p. 276), cyber-crime or computer fraud is defined as an illegal activity whereby a computer is the subject or target of the crime and unauthorized access of computer network occurs. Similarly, a computer may be used as a tool to commit offence like illegal electronic funds transfer (EFT). Nowadays, besides computers, mobile telephone enabled cyber - crime such as identity theft is common in Kenya. There are many types of cyber-crime such as hacking, phishing and identity theft. In the financial sector, hacking is a crime where a bank's computer network is broken into and customers' personal and confidential information database is accessed to facilitate fraud. In this case, the bank may not be aware that its computer network is being accessed from a remote location.

Phishing is an attempt by unauthorized individual to fish sensitive information such as usernames, passwords and bank details - by disguising as a legitimate source - in order to commit fraud. It also refers to an email or a mobile telephone short text message (sms) that appears to have been sent by a legitimate party or credible source such as a bank. The email

or sms requests a customer to provide personal and confidential information or take action on an urgent matter by clicking on a link which is purported to be an official website of a bank. A “phishing” website will often trick customers because it closely replicates the banks legitimate website, making it appear authentic. Such websites can trick a customer into downloading computer viruses that steal his or her personal information (Phishing.org; Osterburg & Ward, 2014, p. 539; Cendrowski, Martin and Petro, 2007).

Identity theft or impersonation fraud is a crime that occurs when a customer’s personal identity information is stolen and used to commit fraud and other crimes. It is illegally obtaining information about an individual such as ID, bank account number, or other identification and then using the information to apply for identity cards, opening bank accounts, obtain credit cards and loans, purchase goods fraudulently and obtain genuine documents such as passports and driving licences in that person's name (Osterburg & Ward, 2014, p. 276; Cendrowski *et al.*, 2007). In summary, identity theft is illegally using of another person’s identity without his or her knowledge or consent – for example: name, date of birth, current or previous addresses etc.

Additionally, business email compromise (BEC) fraud or scheme is a new sophisticated type of cyber-enabled crime perpetrated in Kenya. This crime is facilitated by the internet where fraudsters use hacked email accounts to convince businesses or individuals to make payments that are either false or similar to actual payments owed to legitimate companies. Subsequently, payments made are diverted to the criminals’ personal accounts. As part of the scheme, fraudsters learn about key personnel in companies who are responsible for payments as well as the procedures necessary to perform wire transfers in various companies and then target the businesses that regularly perform wire transfer payments (Achuka, 2019, September 22. The East African). Below is an example of a cyber-enabled crime involving 3 Kenyans who hacked into US firms’ emails and then diverted the payments to their personal bank accounts in Nairobi, Kenya.

On 1 August 2018, employees at the finance department of Fairfax County (Fairfax), Washington, DC, US, received an email they believed to be from the headquarters of Dell Computers in Texas. Fairfax had a running multimillion-dollar computer supply deal for its schools in the county, and the email indicated it had been written by the Accounts Payables department of Dell. It requested Fairfax to reroute its pending payments, which were almost

due, to another account in Ohio. Fairfax obliged, and from 8 August to 10 September 2018 sent 28 payments amounting to US\$1,345,423.20 to the new account using electronic funds transfers. Unknown to the county, the money was being transferred almost immediately it hit the Ohio account to several other accounts worldwide before ending up in the fraudsters bank accounts in Nairobi, Kenya. By 10 September 2018, when Fairfax discovered it was being defrauded, some \$526,517.04 had already been withdrawn in Nairobi (Achuka, 2019, September 22. The East African).

As was noted in evidence filed in US courts, the fraudulent email account was very similar to a Dell employee's true email address and contained revised banking information for Dell. The investigation was led by the Federal Bureau of Investigations (FBI) and 281 suspects (including 3 Kenyans) were arrested in nine countries along with the seizure of nearly US\$3.7 million. Out of this amount, between them, the 3 Kenyans had stolen US\$3,154,118.83. About half of this money has not been recovered and all the suspects have been found guilty of their crimes after making plea bargain deals with the courts. They are currently serving jail sentences of more than 20 years each in the US (Achuka, 2019, September 22. The East African).

Significantly, Kenya and Nigeria were the only African countries on the list of nations where the FBI made arrests and recovered property bought by scammers after a year of investigations. Other countries in the list include Italy, Japan, Malaysia, UK, France and Turkey. Due to increased incidents of Kenyan hackers, the US government now has established a special unit whose role is to monitor cybercrime emanating from Internet Protocol (IP) addresses in Kenya (Achuka, 2019, September 22. The East African).

#### **4.4.4 Fraud and Theft**

Regarding fraud and theft, this case demonstrates how these offences are common sources of money laundering in Kenya. In September 2021, a Nairobi businessman was sentenced to serve a 7-year jail term and to pay a fine of Ksh.900 million (US\$900,000) for defrauding a national fund set up by the Kenya government to finance young people's businesses. His company was also directed by the court to refund the government Ksh.180 million (US\$180,000), being the amount that was lost in a dubious contract. Evidence showed that the businessman and his trading company received the money without rendering any services and after forging contract documents for provision of ICT consultancy services. The businessman

colluded with former youth fund CEO (now deceased) to transfer the money to his company's account. This sentence was imposed three years after the properties, which include a luxurious five-bedroom house that the businessman had purchased using the money were seized by the ARA after being flagged as proceeds of crime (Wangui, 2021, September 30. Nation Media). Next sources of money laundering to be examined are criminal tax evasion and wildlife trafficking.

#### **4.4.5 Criminal Tax Evasion**

Tax crime, which is also a predicate offence to money laundering is one of the top three sources of "dirty money" that is hidden in the financial system. It is estimated that more than two thirds of illicit financial flows involve tax evasion (OECD, 2009, 2012, p. 72 cited by Schlenker, 2014, p. 17). A number of cases that follow illustrates the nature of tax evasion in Kenya.

A motor vehicle smuggling syndicate keen on evading tax was importing high-end cars from the UK and making incorrect declarations to evade payment of tax to the Kenya Revenue Authority (KRA). In March 2016, KRA officials seized a container shipped from the UK with two stolen high – end cars declared as baby walkers and used mattresses. Upon inspection, the container brought in by an individual from London had two Range Rovers and one Mercedes Benz valued at Ksh.28 million (US\$280,000) destined to a consignee in Uganda, potentially denying KRA Ksh.8.5 million (US\$85,000) in tax revenue. A week earlier, KRA officials had identified yet another container declared as containing household goods and personal effects while in fact it had a stolen luxury vehicle. The container was also from the UK on transit to Uganda. The UK National Crime Agency (NCA) requested KRA officials to repatriate the vehicles so that they can be used as exhibits in criminal cases and also share information that could help prevent the crime (Okoth, 2016, June. Daily Nation).

Again, between January 2015 and June 2019, an alcoholic beverage manufacturing firm and its two directors were charged with tax evasion of more than Ksh.14 billion (US\$140m.). This was established following an audit that was conducted by the KRA (Obala & Ombati, 2019, August 22. The Sunday Standard). Similarly, another proprietor of alcoholic beverage manufacturing company was also charged with evading tax of Ksh.2.5 billion (US\$20.5m). The suspect omitted to file VAT tax returns and also failed to declare sales to KRA as required in law (Muhindi, 2021, August 10. The Star Newspaper). In yet another incident, two businessmen of Pakistani nationality were charged for evading tax worth Ksh.1.5 billion

(US\$10.5m.). The traders alongside their firm were found to have been importing rice into Kenya while deliberately failing to pay income tax. Between January 2015 and December 2018, they imported rice, sold the same and did not declare the sales proceeds to KRA (Business Today, 2020, February 21).

Finally, in another incident of tax evasion, in April 2019, Kenya re-shipped to the UK four high-end vehicles believed to have been stolen and brought into the country. The vehicles estimated to be worth more than Ksh.40 million (US\$400,000) were stolen from Berkshire, London and Oxfordshire between 11 November 2018 and 7 February 2019. All the vehicles were intended for transit through Kenya and arrival at other destinations in East Africa. A security team drawn from the Kenya law enforcement agencies, INTERPOL and the UK's NCA led the crackdown that led to seizure of the cars (The East African, 2019, November 1).

#### **4.4.6 Wildlife Trafficking or Smuggling/Poaching**

Illicit wildlife trade, killing of wildlife and illegal possession of wildlife trophies are reputed to be some of the most lucrative and profitable crimes in Kenya. As such, it is suspected that most of the proceeds from these crimes are laundered through the financial sector. In this connection, a report - *Special Typologies Project on Poaching, Illegal Trade in Wildlife and Wildlife Products and Associated Money Laundering in the Region* by ESAAMLG revealed that porous borders provide easy access to Kenya's national parks. Additionally, relatively high demand and increase in prices for rhino horns and elephant tusks are some of the factors that contributes to the illegal wildlife crime in Kenya. This is because poachers kill mostly rhinos and elephants and sell game trophies to Chinese nationals and other Asian countries such as Vietnam, Thailand, Singapore and Hong Kong. In these countries, the wildlife products are traded and used in some instances for cultural, traditional medicinal and religious purposes. Likewise, ivory is sought after for jewellery and decorative objects and much of it is smuggled to China, where many increasingly wealthy shoppers are buying ivory trinkets as a sign of financial success (ESAAMLG, 2016, pp.6-7; The Citizen, 2014, December 24).

This is an example of a transnational organized wildlife crime, which is Kenya's largest ivory trafficking case. In August 2018, a leader of an international poaching syndicate and mastermind behind ivory trafficking across the East African region was sentenced to 20 years imprisonment and fined Ksh.20 million (US\$200,000) after he was found guilty of illegally possessing wildlife trophies and dealing in ivory unlawfully. He was allegedly found in

possession of 228 tusks and 74 ivory pieces weighing over two tonnes without a permit at his business premises, a motor vehicle warehouse, in Kenya's port city of Mombasa. These game trophies which were also forfeited to the Kenya government were equivalent to at least 114 poached elephants. The suspect was earlier arrested in Dar – es - Salaam, Tanzania. The crime was investigated and well-coordinated by bringing together various government agencies, Tanzania police, INTERPOL and Lusaka Agreement Task Force (Kenya Wildlife Service, 2016, July 22). In conclusion, the last source of illegal funds to be discussed in this section is human trafficking.

#### **4.4.7 Human Trafficking**

Section 2 of NRA report indicates that human trafficking and smuggling of persons are rated medium-low risk. This is because of the geographical circumstances that Kenya occupies in a politically volatile region where many economic immigrants and others fleeing political instability in their countries. As a result, according to the National Police Service Annual Crime Report 2018, there have been increasing influx of illegal aliens and undocumented immigrants mainly from Tanzania, Ethiopia, Somalia and South Sudan but also from other countries including Nigeria, Rwanda, Burundi, Congo and China. Below is a human trafficking case that occurred in Kenya recently.

In November 2021, a businessman from South Asia who held Canadian and UK passports was jailed for 30 years for trafficking 12 Nepalese women into Kenya for sexual exploitation. He was found guilty of recruiting, facilitating travel, receiving, keeping in slavery and using women and girls to make a living against local and international laws. His criminal activities were conducted or based in exclusive night clubs at the coastal city of Mombasa, Kenya where sexual exploitation of poor and vulnerable Nepalese minors by foreigners happened. These night clubs are said to be open only to the rich who can afford the hefty entrance fees and tips to sexual workers. In addition to the jail term, the suspect was also fined between Ksh.100,000 (US\$1,000) and Ksh.1 million (US\$10,000) on each offence for being in possession of proceeds of crime, engaging in business without a work permit and unlawfully employing foreign nationals (Newszetu, 2021, November 29).

#### 4.5 Laundering Methods

Again, in the survey questionnaire 11 common methods used to launder illicit funds in the financial sector in Kenya were listed. Accordingly, respondents were asked to choose 5 of the most likely ones. Responses received are detailed in the Table 7 below which indicate that, in rank order, 83% respondents selected real estate transactions as the most likely method followed by 80% whose choice was cash intensive businesses. Lawyers and accountants were selected by 69% respondents and structuring or “smurfing” by 67%. The fifth one, purchase of high-value goods was chosen by 44% respondents. The least likely method that was selected by 17% respondents is ‘hawala’ or informal funds transfer.

**Table 7**

*Laundering Methods*

Rank	Methods	N	%
1	Real Estate Transactions	53	83
2	Cash Intensive Businesses	51	80
3	Lawyers & Accountants	44	69
4	Structuring or “Smurfing”	43	67
5	Purchase of High-Value Goods	28	44
6	Offshore/Front Companies	27	42
7	Wire Transfers	24	38
8	Foreign Currency Exchange Bureaus	13	20
9	Cash Smuggling	13	20
10	Casinos/Gambling	13	19
11	Hawala (Informal Funds Transfer)	11	17

Here are comments made by a law enforcement officer demonstrating how real estate industry can be used for laundering proceeds of corruption.

The CBK should look at real estate industry because much of this money is obtained through money laundering and is cleaned through the real estate industry. Here besides the buildings, it is important to interrogate the suppliers of building materials because they should be responsible for questioning the source of the money from clients. (Interview, 16)

Again, in the survey questionnaire, respondents were asked whether there are any other measures for combating money laundering besides those detailed in the evaluation chapter of this thesis (Table 18). Through “free text response”, on purchase of high value goods – second-hand vehicles, one respondent argued that;

Money laundering is a big problem in Kenya but asset laundering is even bigger i.e. where launderers return illicit funds to Kenya as goods (e.g. second-hand vehicles) akin to the black-market peso exchange in Latin America. The current initiative is to ensure that importers have paid duties and have the profile to import such goods but in reality, the government cares more that tax is paid than goods are from legitimate funds.

Also, on cash intensive businesses, a scholar, an AML specialist remarked that;

There are sectors from my own analysis and investigation that we are not carefully looking at, cash intensive businesses. That is another area where money is being laundered. In one area you find there 3 pharmacies or 5 pharmacies, what all these pharmacies for? To serve within a certain block of apartments? These small sprouting clinics and hospitals. I don't think the government is really looking and addressing this issue of cash intensive businesses, even the car dealers. That's another thing, car dealers are not reporting agents under our proceeds of crime act. So that's another major loophole that we have, and those are areas we need to focus into. (Interview, 4)

In conclusion, here are comments made by the scholar referred to above regarding involvement of lawyers as facilitators of illicit funds.

They (lawyers) are misused in the placement, in the integration, in the movement of the money. Placement, where you'd hear anecdotal evidence within the legal circles, especially when piracy was rife in Somalia, that somebody would come to your office saying they want to purchase a building with money in cash. Why would you walk around with millions in cash that we need to get money counting machine? Then that money is placed in the advocate's account and moved on and on to the next person. Lawyers are a key body that needs to be brought into this fight of money laundering. If you ask me, lawyers need to stop hiding behind that advocate-client privilege would be interfered with. That to me is a probability, but they're using that to hide. Because if you really look and investigate what advocate-client privilege is, there's advocate-client confidentiality and advocate-client privilege, very different, two very different principles and how they are applicable is different. (Interview, 4)

Finally, with relevant examples, these main methods of laundering illegal funds are the subject of the last section of this chapter. The first method to be considered is the cash intensive businesses followed by betting in Kenya.

#### **4.5.1 Cash-Intensive Businesses**

As Ridley & Gilmour (2015, p.295) have noted, cash-intensive businesses are simply another option through which illicit money can enter the regulated financial system. They are businesses which in certain circumstances lack any form of legitimate activity, instead existing

exclusively to provide cover for money laundering activities. According to Riccardi & Levi (2018 p.145), a business could be considered highly cash-intensive if (a) it operates mainly on cash-transaction basis; (b) its assets consist mostly of cash or liquid (current) assets. In Kenya, some of the cash-based businesses which can be used to disguise “dirty cash” are supermarkets, petrol (gas) stations, sale of second-hand vehicles and so on. Illustrated below is a money laundering case that demonstrates how a supermarket used lawyers’ client accounts as a conduit for money laundering. The details of this case are from a newspaper article (Kisero, 2020, January 9. Nation Media) whose source was from reports and a special audit which was conducted by PricewaterhouseCoopers (PwC) on behalf of the CBK, regulator.

One of the leading supermarkets in Kenya, Tanzania, Uganda and Rwanda was engaged in a complex money laundering syndicate that had operated in Kenya for more than 30 years. Initially, to facilitate the scheme, the supermarket was a main shareholder of a commercial bank which operated like the supermarket’s in-house bank - with branches located within the premises of the supermarket chain. Consequently, the bank was closed by the government in 2006 over claims of money laundering. It was then that the supermarket resorted to use lawyers’ client accounts as trading accounts. The supermarket was liquidated by the government in 2018 on allegations of fraud, theft and money laundering amounting to Ksh.18 billion (US\$180m.)

To execute the crime, the supermarket engaged in “trade-based money laundering”. First, it created an elaborate system and network of related businesses that trade with one another. Second, for its suppliers, the supermarket targeted companies and businesses that generate a lot of cash and sell mostly imported products. With a good proportion of its suppliers based abroad, it was able to launder money through bogus invoices and to move money in and out of the country through fake payments, trade misinvoicing etc.

The *modus operandi* on the use of lawyers’ client accounts as trading accounts was as follows. A system was devised where money for trading and paying creditors was banked in a lawyer’s client account. Such accounts enjoy legal protection because of the principle of lawyer-client confidentiality. Notably, lawyers in Kenya are not a reporting institution under POCAMLA. This way, the supermarket managed to convert trading transactions that would ordinarily be open to scrutiny by auditors into confidential transactions. The audit report showed how huge sums of cash from the supermarket and other sources were deposited into these lawyers’ client accounts and then moved around in accounts belonging to companies with which the

supermarket had common owners. There were instances where large cash transactions were made on the secretive accounts without supporting documents, making it impossible to know who was being paid and the reason for payment. In several cases, large cash deposits would be made only to be withdrawn the following day.

Since the KRA does not have powers to access lawyer's client accounts, the billions running through the accounts also remained beyond the taxman's scrutiny. In one case, a lawyer's client account was opened and on the very same day reflected a cash deposit of Ksh.32 million (US\$32,000). In the following days and months, millions were channelled through the account. In other cases, huge cash payments channelled through some of these secret accounts would be disguised as payments to legitimate suppliers of the supermarket. This begs the question: Why would you pay your regular suppliers through lawyer client accounts if your intention isn't to misrepresent and deceive?

As noted above, when the commercial bank collapsed, the supermarket was forced to operate transparently. This was because no other bank would provide the secretive services the bank had been providing to it. The business model had to be changed since transactions would now be done in the open. The lawyer-client accounts model had to be dropped. Therefore, what the supermarket group did was to go into a massive expansion drive, opening stores and branches all over Kenya and within East Africa, in the process creating a giant cash generating machine.

Secondly, to finance working capital, the supermarket decided not to own any assets or stocks but sold for cash what they received from suppliers. Then they would withhold payments for between 6 and 9 months. They kept trading with money belonging to suppliers while making sure that they remained completely asset-light. This way the supermarket built a massive cash machine of which it misappropriated and laundered as indicated above Ksh.18 billion (US\$180m.) from the business. In May 2017, many suppliers stopped supplying goods to the retailer for non-payment, while others sought legal action. The government too placed the supermarket under receivership (Kisero, 2020, January 9. Nation Media).

#### **4.5.2 Betting in Kenya**

As will be shown in the next chapter, which is on AML policing institutions in Kenya, betting, involving major British football premier clubs is a popular activity among the youth in Kenya. Thus, due to the large amounts of cash handled, the sector is susceptible to money laundering.

Here is an illustration of the nature of a money laundering case involving a betting firm that forfeited to the government more than Ksh300 million (\$3m.) after the court ruled that the funds, which were frozen, are proceeds of crime.

In April 2022, a Nairobi court ruled that the money held in 3 bank accounts was part of a money-laundering scheme and should be forfeited to the government. Evidence presented in court by ARA show that the betting firm, in contravention of cash US\$10,000 reporting threshold used mobile money services to send funds to a shell company, whose ownership is also the same betting firm. The highest amount sent was Ksh.50 million (US\$50,000) in a single day while the lowest was Ksh,1.8 million (\$10,800). Within 5 days, the betting firm sent to the shell company a total of Ksh.256 million (\$2.56m) which raised suspicions. Thereafter, funds were moved to a fixed deposit account which was in the name of the betting firm at another bank in Nairobi. The rest were distributed to various companies associated with directors and shareholders of the betting firm.

In mitigation, the betting firm defended the transactions stating that it had contracted another firm to supply an IT software for use in the betting business. It also claimed that the money was contributions from their shareholders. However, ARA had adduced evidence that the recipient of the funds from the betting firm was a shell company incapable of even paying rent for the premises it occupied. The shell company too could not even avail the agreement or contracts for the supply of the IT software. Finally, ARA noted that the bank accounts and mobile money transfer services were used as conduits of money laundering. ARA reiterated that this method was adopted to circumvent or evade the regulators reporting threshold for account holders to declare the source of funds.

Likewise, the trial judge wondered why the betting firm would pay a third party to procure the software, from a sister company, unless the intention was to launder money. In addition, the judge said that it was instructive that some of the funds also ended up in the pockets of some directors of the betting firm including a former Member of Parliament (MP).

“Clearly, the fact that the 1st respondent (shell company) filed nil return to the KRA during the period in issue is sufficient proof that it was not engaged in any business,” the judge said. Cash smuggling, e-money transfers and credit card payments are to be explored next.

### **4.5.3 Cash Smuggling**

Cash facilitates the laundering of illicit funds because it is anonymous and cannot normally be traced. It is a bearer negotiable instrument which gives no details either on the origin of the proceeds or on the beneficiary of the exchange. This makes it harder for law enforcement to follow the audit trail (Riccardi & Levi, 2018, p.135). The transfer of cash across the border in violation of currency reporting requirements, that is, above the permitted maximum threshold and without justification, is usually referred to as “bulk cash smuggling” (Riccardi & Levi, 2018, pp.135, 143). In Kenya, under section 8 of the POCAMLR, 2013, the cash reporting threshold is US\$10,000. Here is a case that demonstrates how this threshold is violated.

In January 2022, a Bahraini national arrived in Nairobi, Kenya from Germany but failed to declare that he was carrying bulk cash amounting to US\$977,075. When the customs officials noticed and questioned why he was carrying such cash, he failed to give a reasonable explanation. He could also not produce supporting documents to support the source or legitimacy of the cash which raised suspicion that the funds were proceeds of crime. He was taken to court for failure to declare the cash and the court allowed the funds to be transferred to the accounts of ARA pending determination whether the same are to be forfeited to the government (Kiplagat, 2022, February 16. Business Daily).

### **4.5.4 Mobile Money Transfer Services**

Mobile money systems or m-money permit individuals to transmit funds from person to person, from one jurisdiction to another as well as performing banking activities through the telephone. It is a low-cost, safe and quick means of sending money (Mas and Morawczynski, 2009, p. 77 cited by Vlcek, 2011, pp. 417 & 422 - 423). It is estimated that 96% of Kenyan households use mobile payment, called M-Pesa (*M* for mobile, *Pesa* is Swahili word for money). This is because the service allows customers to send, receive and store money through their mobile phones safely and securely. The system can also be used to pay for goods and services and perform banking services (Owigar, 2017 July 31. URBANET). Some of the challenges of using m-money are identity theft and use of unregistered subscriber identification module (SIM) cards (Vlcek, 2011, pp. 415-416) as detailed in the case below.

As was demonstrated in the literature review chapter of the study, in January 2019, a bank manager, in Nairobi was charged in court with aiding and abetting a terrorist attack which claimed the lives of 21 people in a hotel in Nairobi. Additionally, the manager was jointly charged with another suspect for involvement in money laundering and suspicious M-Pesa (m-

money) transactions, in which the cash to finance the terror attack was received and withdrawn at the bank. These transactions were conducted 3 months prior to the attack. Through numerous mobile telephone numbers, the suspect's daily m-money mobile transactions were around Ksh.2 million (US\$20,000). He also received large amounts of funds from South Africa, which would be withdrawn through a specific cashier (till) at the bank before being sent to Somalia. In one instance, he received Ksh.9 million (US\$90,000) from South Africa, which amount was withdrawn through that specific till at the bank and sent to al *Shabaab* headquarters in Somalia. To facilitate these suspicious mobile transactions, the suspect was said to have registered 52 accounts using two handsets, different identity cards and names – 3 months prior to the terrorist attack (Mutuko, 2019, February 20. Pulsive; Kakah, 2019, January 23. Business Daily; Awich, 2019, February 26. The Star).

#### **4.5.5 Credit Card Payments**

Illustrated here is a case reported in a newspaper article in 2018 of a Chinese criminal syndicate being involved in credit card fraud, money laundering and tax evasion in Kenya. A suspected international money laundering syndicate involving Chinese nationals has been operating in Nairobi targeting businesses out to make a quick buck. The scam involves credit cards believed to have been stolen or cloned from leading companies in China. Kenya has become a favoured operational point for the syndicate, due to its well-developed economy, modern banking systems and fairly developed IT systems. How it operates is simple: A Chinese gang member lands in Kenya with multiple credit cards belonging to one or several leading companies operating in either mainland China or Hong Kong. They then approach a Kenyan business owner, preferably those whose daily turnover is in hundreds of thousands, and whose clients prefer to pay using credit or debit cards. Alternatively, they target high-end hotels and luxury resorts, whose main clientele are foreigners who prefer using plastic cash as opposed to hard cash. Typically, such businesses operate point of sale (POS) terminals — which are usually portable machines issued by local banks depending on the volume of their transactions. The POS devices are used to process card payments at retail locations and they accept all card types and prints receipts.

After that, the Chinese syndicate run a credit card loaded with cash on these machines purporting to be purchasing goods or services rendered by the Kenyan businessman — yet in actual sense they end up buying nothing. In a matter of minutes, the money will reflect in the Kenyan businessman firm's accounts. But in reality, no actual business — that is purchase of

goods or services that has taken place. Interestingly, most of the amounts entered into the machine supposedly for ordinary goods are huge and inflated. What has happened is that the Chinese national and the Kenyan businessman have simply engaged in money laundering and tax fraud.

After the money is credited in the Kenyan businessman account, it is withdrawn and shares it with the Chinese in the ratio of 60:40. For example, if the Chinese had run the card for Ksh.1 million (US\$10,000), he will be given back Ksh.600,000 (US\$6,000) while the Kenyan businessman remains with Ksh.400,000 (US\$4,000) for his troubles (Some, 2018, October 13. Nation Media). Structuring, purchase of high value goods, real estate and the professionals are the other laundering methods to be considered.

#### **4.5.6 Structuring or “Smurfing”**

This involves breaking down cash deposits into amounts below the reporting threshold of \$10,000. Couriers (“smurfs”) are used to make or bank these small deposits in several banks or to buy cashiers (bankers) cheques in small denominations. In other words, to “smurf” is to divide large illicit bank deposits into several deposits, each less than \$10,000, so they will not be subject to cash transaction reporting. Secondly, it is a slang for a courier who makes such structured deposits (Reuter & Truman, 2004, pp. 30 & 207; Ryder, 2012, p.1).

On smurfing, a senior manager, risk and compliance of a commercial bank and an AML consultant remarked that:

This is whereby, individuals have committed the crime and they want to launder, so they have to deposit it in a financial institution. What they do, they now find ways of getting that money into a financial institution without the institution detecting it. So, it can be through structuring, where they break the transaction down to small amounts that are not easily detectable - they break this amount below the reporting threshold”. (Interview, 2 & 6)

#### **4.5.7 Purchase of High-Value Goods**

Facilitating the laundering of illicit funds through purchase of high value goods such as motor cars is another method that criminals may have at their disposal to place dirty cash in the legitimate economy (Riccardi & Levi, 2018 p.147). It is to be noted that in Kenya, under the proceeds of crime legislation, motor car dealers are not a reporting institution. For this reason, because the sector is not inspected by regulators, it offers “extra” situational opportunities,

helping to advertently prevent unwarranted suspicion (Ridley & Gilmour, 2015, p.300). Excluding motor car dealers from legal reporting obligations has raised concern and the newspaper article below highlights how the Kenya government intends to target motor car dealers in the fight against money laundering.

The National Treasury wants car dealers to be legally compelled to report suspicious transactions as part of reforms backed by the IMF to seal loopholes used by criminals to launder cash. This was after the Treasury published the NRA report that reveals the cash-intensive sectors being used by money launderers. The IMF has been pushing Kenya to tighten the regulatory and monitoring loopholes that have allowed corrupt government officials to run amok and bleed public coffers dry. IMF argued that NRA assessment should be published to raise risk awareness.

Treasury has put motor car dealers among the biggest threats to curbing illicit transfers of dirty cash. The increase in the number of motor vehicles imported into the country averaged 1.6 million units from December 2004 to December 2018, marking out the sector as among the most lucrative to launder dirty cash. Official data shows there were 3.2 million motor vehicles registered in the country, a growth of more than 300,000 units within a year. Treasury says the high volume of cash being handled by motor vehicle car dealers has seen the sector emerge as a hotbed of money laundering, drug trafficking, tax evasion and theft. “There are huge volumes of cash involved in this industry, especially the second-hand car dealers, some of which could be proceeds from other predicate offenses like drug trafficking. On the other hand, tax-related crimes have been reported in relation to second-hand car dealership,” stated the report.

Treasury now wants motor vehicle car dealers – like accountants – to report all suspicious transactions. This is amid fears that the fast growth of the sector could leave it even more vulnerable to abuse by money launderers, aided by weak regulation. “The money laundering threat in second-hand car dealership is rated as medium-high due to the weak regulatory controls. There is likely increase in the level of threat in the future due to the lack of clear regulations of monitoring the sector,” adds the report (Ambani, 2022, July 28, Nation Media).

#### **4.5.8 Real Estate Transactions**

Real estate is one of the fastest growing sectors in the Kenyan economy which is currently dominated by Chinese investors who bring in illicit funds. Naheem (2017, p.15) claims that the source of most of China’s illicit flows are believed to be from corruption and financial

crime offences. Since the Chinese investors' entry in the real estate market in Kenya a few years ago, prices of land and houses in the capital city, Nairobi have skyrocketed. Real estate is also one of the most vulnerable sectors targeted by corrupt public officials in Kenya seeking to hide tainted money. They mainly purchase land or houses in a family member's name or associates. Subsequently, most of the illicit cash either obtained through corruption, financial fraud, tax evasion and so on is laundered through this sector.

Although real estate agencies are a reporting institution in Kenya under section 2 of POCAMLA, there is lack of regulatory oversight, hence they rarely report suspicious transactions. In this regard, the following were comments that were made in a "weblog". In 2020, experts had warned Kenyans on the rise of goods and services as dirty money made its way into the property market with the aim of laundering to beat the CBK currency reporting requirements. It is to be noted that individuals who have acquired illegal wealth are on their way to launder the money into the real estate business. This is due to lack of clear regulations requiring any investor to follow before investing in real estate property. Such regulations should include disclosure which is very necessary for high prices. The Kenyan property market should follow the example set by the South African government where buyers are supposed to make specific disclosures to a real estate agent. As a result, their property market has never again been the target of financial criminals (Ikiara, 2020, July 22. Commercial Property Kenya).

#### **4.5.9 The Legal Profession**

In many jurisdictions across the globe, lawyers are categorized as reporting institutions with obligation to report money laundering. However, in Kenya, under POCAMLA lawyers are omitted, with the result that they are under no obligation to report suspicious transactions. This is notwithstanding the potential misuse of their role (Gikonyo, 2018, p. 66). Misuse of lawyers' role(s) is possible when facilitating the purchase of real estate or using the client's account to undertake the placement of proceeds of crime in the financial system (Choo, 2014; Middleton, 2008 cited by Gikonyo, 2018, p. 66). The non-inclusion of lawyers as reporting institutions constitutes a major hurdle for detecting potential laundering of criminal proceeds. This gap militates against the aims of POCAMLA primarily because, knowingly or otherwise, the potential of abuse for laundering exists in undertaking their professional duties (FATF, 2012; Middleton and Levi, 2015 cited by Gikonyo, 2018, p. 66). Moreover, as Middleton and Levi

(2003) have argued, the legal profession is designated as a “vulnerable” profession because of solicitors' ability to place large amounts of money from clients in client accounts.

Although it is acknowledged that imposing reporting requirements on lawyers may interfere with the legal professional privilege, it is important that they be categorized as designated non-financial businesses and professions (DNFBPs) with reporting requirements. This is because failure to impose reporting requirements will mean that lawyers remain more attractive to money launderers, as they can avoid disclosing suspicion to the relevant authorities (Middleton and Levi, 2005 cited by Gikonyo, 2018, p. 66). Appropriately, the provisions incorporating lawyers as DNFBPs under POCAMLA can be drafted in such a manner as to ensure that the disclosure requirements imposed are compatible with the basic principles of legal confidentiality and professional privilege (Terrill and Breslow, 2014/2015 cited by Gikonyo, 2018, p. 66). A possibility is to obligate lawyers to report suspicious transactions, or any transactions paid in cash above a specified minimum (Gikonyo, 2018, p. 66).

This is a case where a lawyer was charged in court for handling stolen money which he kept in a client account. In December 2016, a Nairobi lawyer was charged with theft and handling stolen property. He dishonestly kept Ksh.10 million (US\$100,000) in a client account, funds that he knew were stolen from a bank. He received the funds after they were stolen by his client from a bank where he was working (Munguti, 2016, December 2015. Nation Media).

#### **4.5.10 Accountants – AML Obligations**

White-collar crime is increasing in the Western world. It has been estimated that some £500 billion of hot money is laundered through the world's financial markets each year. Such huge amounts of money cannot be successfully laundered without the involvement of accountants (and other professionals) who use their expertise to create the complex webs of transactions whose purpose it is to conceal and obscure illegal activity (Mitchell *et al.*,1998, p.589; McBamet, 1991 cited by Mitchell *et al.*,1998, p.590).

In Kenya, under section 48 of POCAMLA, accountants whether in public or private practice are the only professionals that have reporting obligations imposed on them. This is when they are preparing or carrying out transactions for their clients. For instance, when buying and selling of real estate or a business entity, management of client money (cash or savings account) or other assets and organizing contributions for the creation, operation or management of

companies. When conducting these transactions, accountants must report any suspicious activities or transactions and cash transactions exceeding US\$10,000 to the FRC (POCAMLRA, ss.36,44; Fourth Schedule; POCAMLR, s.34; AMLGA, 2020, pp.8, 10,23; Gichuki, 2013, pp.288,290). In addition, accountants are legally required to verify the identity of their customers and keep customer records of all transactions conducted. Moreover, they have an obligation to have an internal policy that enables employees to report their knowledge or suspicions of money laundering (POCAMLRA, s.47; POCAMLR, ss.9,10; AMLGA, p.23; Gichuki, 2013, p.290).

Despite having the above rules, Gikonyo (2018, pp.65-66) argues that there are fundamental issues arising. For example, the professional accountancy body, Certified Public Accountants of Kenya (ICPAK) as the supervisory body mandated to regulate the activities of the accountants, has a crucial role to play towards effective implementation of the law. This is by assisting the FRC in ensuring that accountants comply with the above prescribed regulations. Bearing this in mind begs some questions. Does their supervisory body have the capacity to monitor and ensure enforcement of these rules? Furthermore, are its members informed and trained on these compliance obligations? If these questions are not properly addressed, it would hamper the effectiveness of the reporting obligations imposed on accountants, as a means of preventing money laundering. The last laundering methods to be discussed in this chapter are the insurance policies, shell corporations, wire transfers, forex exchange bureaus and hawala.

#### **4.5.11 Insurance Policies**

Again, Reuter & Truman (2004, p. 30) states that single premium insurance policies, for which the premium is paid in an upfront lump sum rather than in annual instalments can be used to launder illegal funds. Launderers or their clients purchase them and then redeem them at a discount, paying the required fees and penalties and receiving a “sanitized” cheque from the insurance company. During interviews, a similar example was also given by a MLRO working in an insurance company stating that,

We have a lot of life customers who would actually take a single injection policy and that's where you put in a large sum of money into an insurance policy. Then after a few, let's say after 6 months you opt out, that means you take the money out, you decide that you're suspending the policy. So definitely as a company, you pay back the money. (Interview, 9)

#### **4.5.12 Offshore or “Shell” Companies**

These exist on paper, with no physical presence but transact either no business or operate minimal business. The companies are set up, usually offshore, complete with bank accounts in which money can reside during the layering phase (Reuter & Truman, 2004, p. 31). Under section 25 of POCAMLR, financial institutions in Kenya are prohibited from opening a foreign account with a shell bank. They are also required not to permit its accounts to be used by a shell bank or enter into a correspondent banking relationship with such an institution.

#### **4.5.13 Wire and Electronic Funds Transfers**

These refer to a method through which banks transfer control of money by sending notification to another institution electronically. Such transfers remain a primary tool at all stages of the laundering process, but particularly in the layering operations. Funds can be transferred through several different banks in several jurisdictions to blur the trail to the source of the funds (Reuter & Truman, 2004, p. 30). As was shown throughout this thesis, wire transfers seem to be common in transferring illegal proceeds obtained from corruption, drug trafficking, wildlife trafficking, human trafficking and so on in Kenya.

#### **4.5.14 Currency Exchange Bureaus (Forex Bureaus)**

Reuter & Truman (2004, p. 31) argues that these are not as heavily regulated as banks and in some countries, de facto (in practice, in fact) may not be regulated at all, so they are sometimes used for laundering. Likewise, Warutere (2006), observes that in Kenya, some of the channels for legitimising laundered money are forex bureaux which are particularly attractive because they do not involve the kind of cumbersome exchange procedures that banks usually require, including the range of questions asked, before converting funds from one currency to another. In addition, these bureaux offer a particularly important conduit for clients who handle large cash transactions and do not wish to leave a trail that may be used by the tax authorities to compute tax due. The last method to be considered in this chapter is “*Hawala*”, which is also used to illicitly move funds.

#### **4.5.15 “Hawala”**

“*Hawala*” is basically a form of money laundering that involves transfer of funds from one location to another or from one person to another. It is an underground banking system or an

informal method of transferring money without physical transfer of the funds taking place. INTERPOL'S definition of hawala is "money transfer without money movement." The hawala system is heavily based on trust; thus, a client does not need to produce any identification documents to facilitate the transfer of funds (Redin *et al.*, 2014 cited by Gikonyo, 2018, p. 64). Debt between hawala dealers can be settled in cash, property, or services.

“*Hawala*” provides anonymity in its transactions, as official records are not kept and the source of money that is transferred cannot be traced. In addition, corrupt politicians and the wealthy who would prefer to evade taxes use hawala to anonymize their wealth and activities. Money transfer in hawala is arranged through a network of hawaladars or hawala dealers. Hawala is practiced mostly by Asian, Chinese and Islamic communities around the world, which includes Kenya which hosts a large number of them. (Blunden, 2001, pp. 113-114; Kagan, 2020).

#### **4.6 Conclusion**

In this chapter, the nature or scope of money laundering in Kenya was explored. This was from the literature review, the results of the survey questionnaire and views from participants which demonstrate that money laundering is a major problem in Kenya. Then the two most famous money laundering cases in Kenyan history were presented - the NYS I and II scandals. Subsequently, an analysis of responses received in the survey questionnaire and participants views revealed that corruption, drug trafficking, fraud and theft, criminal tax evasion, cybercrime and terrorism are the five main sources of illicit funds laundered in the financial sector in the country. Equally, an analysis of data from the questionnaire and interviews indicated that the five main methods used to launder illegal funds were identified as real estate transactions, cash intensive businesses, lawyers and accountants, structuring or “smurfing” and purchase of high-value goods. In affirming these findings, several reported cases on the nature of money laundering in Kenya were also highlighted. The next chapter will discuss AML policing institutions in Kenya.

## Chapter 5: Institutions Policing Money Laundering in Kenya

### 5.1 Introduction

The focus of this chapter is to consider the policing institutions whose mandate is to prevent money laundering in the financial services sector in Kenya. Before these are considered, for better understanding of how these policing bodies are engaged in policing it is important first to briefly explain the meaning of *policing*, *private* and *hybrid* concepts. In this chapter, which comprises of four sections, these policing bodies will be explored in depth under four broad headings – state police bodies, hybrid policing bodies, voluntary policing bodies and private policing bodies.

As indicated in Table 8 below, under state police bodies, the National Police Service (NPS) will be the first institution to be considered. This will be followed by several hybrid policing bodies which comprises of state public policing bodies (non-police). These are mainly government institutions which undertake many important policing functions (Button, 2019, p.67). They are the CBK, FRC, EACC, ARA, office of the DDPP, AG and AML Advisory Board (AMLAB). Other state public policing bodies (non-police) which will be examined in the chapter are statutory bodies whose main focus is regulatory and preventative. These are the Estate Agents Registration Board (EARB), Institute of Certified Public Accountants of Kenya (ICPAK), Insurance Regulatory Authority (IRA) and the Betting Control and Licensing Board (BCLB). Again, as illustrated in Table 8 below, these policing supervisory bodies oversee or regulate “reporting institutions” which the law places on them a plethora of AML obligations.

Another category of hybrid policing bodies that will be considered in this chapter are the specialised police bodies (public). These are the Directorate of Criminal Investigations (DCI), Banking Fraud Investigations Unit (BFIU) and the Insurance Fraud Investigations Unit (IFIU). The officers in these organisations are public police officers with special status and powers such as arrest and search of premises. They are investigators who do not wear police uniforms due to nature of their work. Under the NGO policing bodies, NGOs Coordination Board (NGOCB), which regulates NGOs in Kenya will be examined. Finally, voluntary bodies such as the Law Society of Kenya (LSK) and private policing bodies such as banks - compliance staff, Kenya Bankers Association (KBA), commercial audit and private investigations companies will be discussed.

### **5.1.1 Policing defined**

As, Button (2019, p.7) has noted, it is important to define what is meant by “policing” as it is a term that is often misunderstood. Policing is often seen as little more than what *the police* do. It was only after the mid-eighteenth century that the word “police” begin to be associated with the maintenance of order and crime prevention. It was only natural then to define the “police” as the body of men and women which had recently formed to undertake these functions (Johnston, 1992 cited by Button, 2019, p.7). A problem that has emerged as a consequence is the assumption that solely “the police” undertake policing. Button observes that it is important that these terms are differentiated because there are many other organisations engaged in the policing process. “The police” refers to a particular organisation while “policing” refers to a social process of which the former *and other phenomena* are a part (Reiner, 1994 cited by Button, 2019, p.7). It has indeed been argued that the vast bulk of policing is carried out by people and organisations other than the police (Rawlings, 1995 cited by Button, 2019, p.7).

Again, according to Button (2019, p.8) policing, however, is much more difficult to define. It is essentially a function of society that contributes to a particular social order and which is carried out by a variety of different bodies and agents. It is clear, however, that the police and many of the other bodies involved are part of the apparatus of social control. This gives a clue to the essence of policing as it must be a specific aspect of social control. Policing is an aspect of social control encompassing systems of surveillance combined with the threat of sanctions for the breach of a particular order with the ultimate aim of maintaining the security of that particular order. Also, policing is “partly” related with the concept of regulation. The essence of regulation is the control of an activity by systems of rules backed by sanctions. Policing can also be carried out by technology with little or no human intervention. Closed-circuit television (CCTV) is a good example where the presence of such cameras may deter deviant behaviour (*prevention*). Its recordings can also be used for investigating and prosecuting criminals (Button, 2019, p. 11).

### **5.1.2 What is private?**

On the face of it, Button (2019, pp. 13-14) states that the distinction between public and private seems clear cut. Public and private are distinguished by the sector to which they belong. If

they are part of the government and funded out of taxation, they are public. If they are provided by companies through fees, they are private. Here is an illustration of the characteristics that distinguish the degree of “*publicness*” and “*privateness*”. First is *location*, where at the public end of the spectrum would be an entity that is part of the state such as government body or a state-owned company. In Kenya, as indicated in Figure 8 below, such bodies are created directly by an act of parliament. For example, the National Police Service (NPS), the public police, is a state body created under the NPS Act 2011. Likewise, at the private end of the spectrum there are for-profit companies as for instance commercial banks. The *funding* of policing can also vary in degrees of “publicness” and “privateness”. At the public end, for example, FRC which is a government institution is funded by taxation. On the other hand, NGOs secure funding through charitable donations. At the private end of the spectrum private investigation companies are funded through charging of fees.

Additionally, Button (2019, p.15) observes that the *relationship* also varies according to the degree of “publicness” and “privateness”. At the public end, services are provided to all free of charge. Thus, the NPS provide services to all the members of the public in Kenya and do not serve a specific group. Many private bodies also have their own policing body, such as banks which have security, fraud and compliance departments. At the other end of the spectrum are policing services provided to only those who can pay for it, such as private investigation companies. Also, the *status* of the staff also varies. Some policing staff have special standing, such as that of a *police officer*, which provides status and special powers. Any special powers given in legislation such as arrest and search indicate a degree of “publicness”. At the other extreme there are staff such as those working in financial institutions with no special powers.

Finally, is *spatial context* which is the spectrum of space from highly public to private: public space open to all such as the DCI; quasi-public or hybrid space, which is private space freely open to the public, such as the BFIU, which is a specialised police unit for banks but also responds on bank fraud cases reported by the public. Regarding private space, it is where entrance is open to those who have secured the right to entrance – usually by paying a fee – such as the accountancy profession who pay subscription and membership fees to retain membership. In this space entrance is based upon a “contractual licence” – contract (Button, 2019, p.16).

### 5.1.3 Hybrid Policing Bodies

As, Button (2019, p.67) has argued, in all countries there are bodies which are part of the state and engaged in policing/regulation which could not be considered the public police. Such bodies exist at most levels of government from central to local levels. These bodies are generally clearly at the public end of the spectrum, although some do exhibit varying degrees of privateness, as will be illustrated in this chapter. They are, however, significantly different from the public police in a number of ways:

- they are not called the police nor do they look like them (ie they do not wear police uniforms in most cases);
- they do not possess the office of a police officer or their powers (although they may hold special powers); and
- criminal prosecutions do not as strongly underpin their approach in most cases, with regulatory and preventative action usually much stronger.

They are thus classed as hybrid policing bodies for these main reasons. Several such bodies with mandate to detect, regulate and prevent money laundering exist in Kenya. Accordingly, these policing bodies which are shown in Table 8 below will be examined in this chapter. First to be considered are state police bodies followed by hybrid policing bodies and so on.

**Table 8**

*A Classification of Policing*

Adapted from Button (2019, p.24).

CATEGORY OF POLICING	ESTABLISHMENT	FUNDING	LOCATION	RELATIONSHIP	STATUS	SPACE
<u>STATE POLICE BODIES</u>						
National Police Service (NPS)	NPS Act 2011	Public funds-taxation	Government body	Services provided to all for free	Special powers - arrest, search, detain etc.	Public space - open to all

<b><u>HYBRID POLICING BODIES</u></b>	<b>ESTABLISHMENT</b>	<b>FUNDING</b>	<b>LOCATION</b>	<b>RELATIONSHIP</b>	<b>STATUS</b>	<b>SPACE</b>
<b><i>State Public Policing Bodies (non-police)</i></b>						
Central Bank of Kenya (CBK)	CBK Act 2014, s.3	Public funds – taxation	Government body	Services provided to financial institutions/ public for free	Statutory powers - license, inspect, supervise, sanction, vetting	Quasi-public space – open to financial institutions/ Public
Financial Reporting Centre (FRC)	Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) 2009, s.21	Public funds – taxation; donations	Government institution	Services provided to financial institutions/government bodies free of charge	Statutory powers – inspect, search premises, access accounts	Quasi-public space – reporting institutions/ Public
Ethics & Anti-Corruption Commission (EACC)	Constitution, 2010, a.252; EACC Act 2011; Anti-Corruption & Economic Crimes Act 2003	Public funds – taxation; donations	Government body	Services provided to all free of charge	Special powers – arrest, detain, seizure	Public space open to all
Assets Recovery Agency (ARA)	POCAMLA, s.53	Public funds – taxation; Criminal Assets Recovery Fund	Government Agency	Services provided to all for free	Statutory powers – arrest, recover, seize, confiscate	Public space open to all
Office - Director of Public Prosecutions (ODPP)	Constitution 2010, a.157; ODPP Act 2013	Public funds – taxation, Prosecutions Fund	Government agency	Services provided to all for free	Statutory powers – prosecute, initiate, take over, discontinue	Public space open to all

					criminal cases	
Attorney – General (AG)	Constitution, a.169; Office of the AG Act 2012	Public funds – taxation	Government body	Services provided to all for free	Statutory powers – government legal adviser	Public space open to all
Anti-Money Laundering Advisory Board (AMLAB)	POCAMLA, s.49	Public funds – taxation	Government Body	Services provided to FRC free of charge/public	Statutory powers – advise director FRC, formulate AML policies	Quasi-public space – open to FRC, AML experts
Estate Agents Registration Board (EARB)	Estate Agents Act (EAA), 2019	Public funds – taxation; fees	Government agency	Services provided to estate agents for a fee	Special powers – impose fines, de-registration	Quasi-public space – open to estate agents, public
Institute of Certified Public Accountants of Kenya (ICPAK)	Accountants Act (AA), 2012, s.3	Public funds; fees; subscriptions	Statutory body	Services provided to accountants and auditors	Statutory powers - issues practising certificates/ Licences	Private space, open to members – ICPAK
Insurance Regulatory Authority (IRA)	Insurance Act (IA) 2021, s.3	Public funds – taxation; fees	Government body	Services provided to insurance firms, policyholders, beneficiaries	Special powers – investigate, penalties, inspection of records	Private space, open to insurers, policyholders
Betting Control and Licensing Board (BCLB)	Betting, Lotteries and Gaming Act (BLGA), 2012	Public funds - taxation; licence & permit fees	Statutory entity	Services provided to casinos, betting firms	Special powers – enter premises, impose fines	Quasi-public space – open to licensees/ public

<b><i>Specialised Police Bodies (Public)</i></b>	<b>ESTABLISHMENT</b>	<b>FUNDING</b>	<b>LOCATION</b>	<b>RELATIONSHIP</b>	<b>STATUS</b>	<b>SPACE</b>
Directorate of Criminal Investigations (DCI)	NPSA, 2011, s.28	Public funds – taxation; fees & donations	Government body	Services provided to all for free	Special statutory powers - arrest, search, enter premises	Public space open to all
Banking Fraud Investigations Unit (BFIU)	NPSA 2011, s.28	Public funds – taxation	Government institution	Services provided to financial institutions; parastatals for free	Special statutory powers - arrest, search/ access bank accounts	Quasi-public space - financial institutions/ public
Insurance Fraud Investigations Unit (IFIU)	NPSA 2011, s.28	Public funds – taxation	Government body	Services provided to insurance sector which is private	Status & special powers - arrest, search, detain	Quasi-public space – insurance sector/ public
<b><i>NGO Policing Bodies</i></b>						
NGOs Coordination Board (NGOCB)	NGOs Co-ordination Act 2012	Public funds – taxation; charity funding; fees; fines; trust fund	Government agency	Services provided to NGOs which are private entities	Statutory powers - registration, deregistration, expulsion, impose fine	Private space (contract) - NGOs
<b><u>VOLUNTARY POLICING BODIES</u></b>						
Law Society of Kenya (LSK)	LSK Act 2014, s.3	Annual subscriptions; fees	Association	Services provided to members/public ( <i>pro bono</i> )	No special status or powers	Private space – society members

<b><u>PRIVATE POLICING BODIES</u></b>	<b>ESTABLISHMENT</b>	<b>FUNDING</b>	<b>LOCATION</b>	<b>RELATIONSHIP</b>	<b>STATUS</b>	<b>SPACE</b>
Banks – Compliance Staff	POCAMLA, s.47; CBK Prudential Guidelines, s.5	Direct funding; charging fees & commissions	Private company	Banks- in-house security, fraud investigation & compliance departments	No special status or powers eg. arrest	Private space (contract) – customers
Kenya Bankers Association (KBA)	Labour Relations Act 2007	Subscriptions from member banks	Industry Association	Services provided to member banks	No special status or powers	Private space- member banks
Commercial Audit eg. PWC	Accountants Act (AA), 2012, s.3; Companies Act 2015	Payment of audit fees	Private company	Services provided to clients only	No special status or powers	Private space - clients
Private Investigations Companies eg. Kroll	Private Security Regulation Act 2016	Charging fees	Private company	Services provided to clients only	No special status or powers	Private space (contract) – clients

## 5.2 STATE POLICE BODIES

### 5.2.1 National Police Service (NPS)

The National Police Service (NPS) is established under the National Police Service Act (NPSA) 2011 and its chief executive officer (CEO) is the Inspector-General of Police (IG). This is a government body tasked with the investigation of all types of crimes in Kenya, which include money laundering. Its other functions are the maintenance of law and order, prevention and detection of crime and protection of life and property amongst others. The NPS is deployed throughout the country and operate on all public and private space - it serves all members of the public. The staff, a majority of whom wear police uniforms hold special status of a “*police officer*” with associated special powers of arrest, search, detain etc. These powers are significantly above that of an ordinary citizen (Button, 2019, p.19). In performance of its functions, the NPS is funded mainly from public funds raised through taxation since it serves the general public. These funds are allocated by Parliament on annual basis. Given these characteristics, the NPS exhibits a high degree of publicness (NPSA, 2011, ss.6, 24, 56, 58, 116; Button, 2019, p.84). Next to be considered are the hybrid policing bodies.

## **5.3 HYBRID POLICING BODIES**

### **5.3.1 State Public Policing Bodies (non-police)**

#### **5.3.1.1 Central Bank of Kenya (CBK)**

The CBK, the regulator, which regulates the financial services sector in Kenya is one of hybrid policing bodies. It is established under section 3 of the CBK Act 2014. Its core function is to license and supervise financial institutions, forex bureaus and money remittance providers (CBK, 2014, s.33; Banking Act 2015, s.5). CBK is managed by a board of directors comprised of 11 members who represent the government and the public (CBK, 2014, ss.10,11). The Governor is the CEO of the bank and is responsible for its effective management (CBK,2014, ss.4,4A,13). To combat money laundering, CBK issues policy guidelines and circulars to financial institutions as for instance the CBK/PG. As was noted in the previous chapter (NYS I and II scandals), the bank may impose cash penalties for failure to comply with these guidelines (CBK, 2014, s.57; Banking Act 2015, ss.49-50). Staff of the CBK come from different backgrounds, which include accountants, financial analysts and lawyers etc. They do not hold special status or powers of a “*police officer*”. For its operations, CBK receives public funds collected through taxation. With these attributes, CBK exhibits a high degree of publicness and some degrees of privateness.

#### **5.3.1.2 Financial Reporting Centre (FRC)**

The FRC which is a government institution is one of the most significant and important money laundering policing hybrid bodies in Kenya. It was established in 2012 to assist in the identification of the proceeds of crime and the combating of money laundering. As was noted FRC is Kenya’s FIU. It is an independent body with mandate to receive, analyse and interpret reports of unusual or suspicious transactions and cash transactions made by financial institutions. It also receives and analysis cross border cash declarations equivalent to or exceeding US\$10,000 from Kenya Revenue Authority (KRA) which are made at the ports of entry or exit (POCAMLTA, ss.12,23,24,44, Second Schedule; FRC, 2021).

Other functions of the FRC are to disseminate suspicious transactions reports to the relevant law enforcement agencies for investigations. Second, to create and maintain a database of all reports of suspicious transactions. Third, to provide or exchange such information to relevant foreign FIUs. Fourth, to ensure that financial institutions comply with international standards

and best practice in AML measures. Finally, to develop AML training requirements and provide such training to financial institutions. The training should include identification of suspicious transactions, record-keeping and legal reporting obligations. Every financial institution is required to register with FRC and to report suspicious transactions (POCAMLA, 2009, ss.23, 24, 36, 40; POCAMR, ss.3-4; Gichuki, 2013, p.287).

According to section 4 of the POCAMLA (Amendment) Act 2017, FRC has powers to impose penalties for non-compliance or breach with its regulations or rules. In this regard, if it is an individual, a fine of Ksh.5 million (US\$50,000) while that of corporate body is Ksh.25 million (US\$250,000). These penalties form part of the funds of the FRC. Moreover, FRC can request CBK for revocation of licences of financial and real estate institutions involved in money laundering activities.

Staff of FRC come from a mix of backgrounds - financial intelligence analysts, seconded law enforcement officers (investigators), lawyers and accountants. The FRC has a wide range of powers which include inspection and supervision of the financial sector to ensure compliance with AML reporting obligations. It also enjoys powers of search of the premises to recover documents or records relating to an investigation (POCAMLA, ss.24, 37). FRC is financed by funds appropriated by Parliament, government grants and donations (POCAMLA, s.40). Thus, FRC is at the public end of the spectrum and exhibits a high degree of publicness and some degree of privateness.

The role of FRC in reducing money laundering was highlighted by an AML analyst who is familiar with its operations:

The objective of FRC is to identify the proceeds of crime and prevent money laundering. How do we do this? We do this by receiving these suspicious transactions, all cash transactions, all cross-border money declarations from reporting institutions. Once we receive those reports we analyse them, and then we see whether there's anything which is detected in relation to money laundering, and then we dispatch them to law enforcement agencies. For us to be effective, we have trained the banks on what to report, how to detect, and the report must be timely so that we can prevent money laundering. We collaborate with law enforcement agencies --- on how to curb money laundering before it takes place and forfeiture of the assets which have been purchased through the proceeds of crime. (Interview, 18)

### **5.3.1.3 Challenges - FRC**

The POCAMLA 2017 seeks to give FRC operational independence on the one hand by removing the FRC from the executive control, thus giving it power to determine its own staff establishment for the proper discharge of its functions. However, there is likelihood of

executive interference with its mandate since the minister for finance in consultation with the AMLAB, determines and approves the terms and conditions of service of the CEO and staff of FRC. Secondly, its CEO performs his or her functions subject to the policy framework prescribed by the minister and the AMLAB (POCAML, 2017, s.11; POCAML, ss.25, 28).

Another challenge is that FRC does not have investigative, prosecutorial or asset forfeiture powers but relies on the cooperation of other law enforcement agencies and the DPP to prosecute and sanction individuals who commit offences under POCAML. Second, on discovery of suspicious transactions, FRC forwards the same to these agencies for investigations. This is a lengthy process and delays are likely to occur leading to audit trail evidence being interfered with. Third, FRC lacks qualified and skilled personnel to carry out its mandate. Fourth, FRC lacks coordination and does not provide financial institutions with feedback after receiving reports of suspicious transactions or cash transactions. In addition, FRC does not adequately analyse CTRs and cross-border currency reports to identify suspicious transactions. Lastly, FRC financial intelligence triggers very few money laundering investigations (ESAAMLG, MER Report, 2022, p.12).

#### **5.3.1.4 Ethics and Anti-Corruption Commission (EACC)**

The EACC is another most significant and important hybrid policing body in the country. It is the main anti-corruption watchdog in Kenya. It is a government institution funded by public funds which are allocated by Parliament and raised through taxation, grants and donations. EACC derives its mandate from Article 252, Constitution of Kenya 2010, EACC Act 2011 and the Anti-Corruption and Economic Crimes (ACECA) Act 2003. It is managed by a chairperson and three other members appointed by the President for a period of 6 years, following recommendations made by representatives from the government, human rights, media, professional bodies and religious organisations (EACCA, 2011, ss. 4,6,7,16,18, 28).

The work of EACC is to conduct investigations relating to corruption, bribery and economic crimes which includes money laundering in the public and private sectors. All evidence gathered is submitted to the DPP for prosecution. Its other role is preventative, which is to raise public awareness and educating the public on the adverse economic effects of corruption. Moreover, EACC is mandated to conduct mediation, conciliation and negotiation (EACCA, 2011, ss.11,13; Button, 2019, p.84)).

In addition, EACC have the powers to take legal action for purposes of the recovery or protection of public property. It can initiate court proceedings to freeze or confiscate proceeds of corruption and forfeiture of unexplained assets. These are assets which were acquired at the time the offender committed the offence. Second, they are assets whose value is disproportionate to the offender's known sources of income at the time the offence was committed. Third, they are assets which the offender cannot account how they were acquired - in that there is no satisfactory explanation (ACECA, 2003, s.2; EACCA, 2011, s.11).

Staff of EACC do not wear police uniforms but have the powers, privileges and immunities of a "*police officer*" when conducting investigations – arrest, detain, search etc. Like the Serious Fraud Office (SFO) in the UK, the staff come from different backgrounds, including traditional investigators, lawyers, accountants and quantity surveyors (ACECA, 2003, ss.23,32; SFO, 2018, p.26 cited by Button, 2019, p.76). Equally, when carrying out inquiries, staff can interview victims, witnesses and suspects and take their statements. EACC too may cooperate and collaborate with domestic and foreign law enforcement agencies in executing its mandate (ACECA, 2003, ss.28-29; EACCA, 2011, ss.11).

Besides preferring criminal charges, EACC can also resort to other sanctions such as deferred prosecution agreements (Button, 2019, p.76). It can legally negotiate and enter a settlement agreement with any person against whom it has brought a civil action. It may undertake in writing not to prefer charges to a person who confesses to having been involved in past corrupt conduct and economic crime. Secondly, with a person who has voluntarily paid, deposited or refunded all property he acquired through corruption or economic crime. Thirdly, with an individual who has paid for all losses occasioned by his corruption conduct to public property. A settlement or undertaking under these circumstances are registered in court (ACECA, 2003, s.51). Considering the above characteristics, EACC exhibit significant degrees of publicness and some degrees of privateness, hence can be termed a "hybrid" policing body.

In connection with the forfeiture of unexplained assets, EACC may commence court action after establishing that the person has unexplained assets. As indicated above, this is after the offender has been accorded a reasonable opportunity to explain the disproportion/discrepancy between the assets concerned and his known legitimate sources of income. Also, EACC is not satisfied that an adequate justification of that disproportion has been given. If after hearing

evidence adduced by both EACC and the offender and on the balance of probabilities, the court is satisfied that the offender has unexplained assets it may order the person to pay to the government an amount equal to the value of the unexplained assets (ACECA, 2003, s.55). Highlighted below is a case relating to unexplained wealth.

In July 2020, EACC obtained a court order to freeze 4 bank accounts over unexplained wealth of a senior government National Treasury official that had nearly Ksh.40 million (US\$400,000). The accounts were preserved on allegations that the official amassed wealth through misappropriation and embezzlement of public funds between April 2015 and April 2020. The official's other assets under investigation were one motor vehicle and 5 parcels of land. The preservation orders were issued for 6 months to enable EACC to complete its investigations before instituting asset recovery proceedings. During subsistence of the orders, the official was barred from dealing, transferring, withdrawing or making any transaction with the funds and the properties.

Investigations that were conducted by EACC established a pattern of frequent large cash deposits made mostly through the automated teller machine (ATM) or the drop box. The official also received numerous unexplained inward remittances, electronic funds transfers (EFT) and cash deposits outside his salary from the National Treasury. During this period, he earned a cumulative net income/salary of Ksh.7 million (US\$70,000). He could not account or justify how he made the additional Ksh.33 m. (US\$330,000) [Cece, 2020, July 24. Nation Media].

#### **5.3.1.5 Assets Recovery Agency (ARA)**

The ARA is among the most important hybrid policing institutions in Kenya. It is a semi-autonomous government body under the office of the Attorney-General (AG). Its main mandate is to confiscate, restrain, seize and recover assets which are from proceeds of crime. ARA is also responsible for handling all cases of property that has been used in the commission of an offence. The agency employs several investigators, who do not wear police uniforms and are drawn from a mix of backgrounds – seconded public police, lawyers, accountants, auditors etc. They have powers, privileges and immunities of a “*police officer*” (arrest, search and seizure). During investigations, ARA is required to collaborate and co-operate with the DCI and DPP who also have investigative and prosecutorial powers respectively. This is despite

ARA being an independent body corporate, yet it cannot undertake investigations alone, since it does not have the requisite manpower, hence it has to rely on DCI and DPP. For its operations, funds are allocated by Parliament, a percentage of the funds it recovers, domestic and foreign grants (POCAMLA, 2009, ss.53, 54-56, 68, 71, 82, 109-110, 123; Gikonyo, 2020, p.11). Thus, ARA is generally at the public end of the spectrum and also exhibit some degrees of privateness (Button, 2019, p.67).

The work of ARA sometimes leads to complex criminal investigations. For example, between October and November 2020, investigations ARA conducted in collaboration with INTERPOL revealed that suspicious cash transfers of more than Ksh.26 billion (US\$260m.) from various suspicious sources was wired from Nigeria to Kenya. Subsequently, some of these funds were transferred to other countries in Europe, Asia and US. Three Nigerians assisted by two Kenyans wired the funds in US dollars and Euros to Kenyan banks through a network comprising more than 10 companies registered in Kenya, Dubai and Nigeria with shared ownership and suspect addresses. To circumvent the cash transactions reporting threshold in those countries, the syndicate wired money into accounts held in their companies' names to create the impression that they were conducting “same company fund transfers”. For instance, once the money got to the US, the companies used Fedwire to send the money to their accounts to avoid detection.

The investigation also disclosed that 2 Nigerian financial technology tycoons could have started this global movement of these illicit funds. They then recruited a Kenyan politician to facilitate, through corruption avoiding CTRs threshold and cross - border currency reporting requirements. Significantly, the illicit funds were used to purchase bitcoins and cryptocurrencies in Kenya, US and Nigeria and was wired from the syndicate’s companies’ bank accounts which were used as a conduit to transfer them. The bitcoins and crypto currencies were then redistributed to individual wallets to make them untraceable (Wangui & Wasuna, 2022, April 27; Wasuna & Ndege, 2022, April 29. Nation Media).

#### **5.3.1.6 Implementation Challenges – ARA**

As was previously noted in the literature review chapter of this study, the mandate for civil forfeiture sits squarely with the ARA and preservation or forfeiture orders can only be done by the ARA director (POCAMLA, ss.82,90; Gikonyo, 2020, p.9). However, as noted above, ARA is required to collaborate with the DCI when conducting investigations and the DPP during

prosecutions. This arrangement may lead to buck-passing, lack of co-ordination in investigations and tampering of evidence. Gikonyo (2020, pp.11-12) further argues that this would eventually cause time to be wasted and lead to the potential for delay in handling investigations.

Another challenge faced by ARA may be lack of independence. This is because the CEO of the agency, as indicated above, is appointed by the AG who also determines his or her terms of service. Likewise, other staff of the agency are also appointed on terms determined and approved by the AG in consultation with the Salaries Remuneration Commission. Finally, policies and regulations made for the effective operation of ARA are approved by the AG (POCAML, s.53A).

### **5.3.1.7 Office of the Director of Public Prosecutions (DPP)**

The office of the DPP is the dominant single body responsible for criminal prosecutions which include money laundering cases in Kenya. It is a government agency created under the office of the DPP Act (ODPPA), 2013. The DPP is responsible for the management of the office and has power to direct the law enforcement agencies to investigate allegations of criminal conduct (Constitution, 2010, a.157; ODPPA, 2013, s.5). Consequently, evidence gathered is submitted to the DPP to assist in prosecution or defence (ODPPA, 2013, ss.26, 32). The DPP has the powers to initiate, take over or discontinue any criminal proceedings with the permission of the court (Constitution, 2010, a.157; ODPPA, 2013, ss.5, 24-25). Where the DPP has prosecuted a matter and the court issues seizure orders his office is also responsible for the recovery or forfeiture of the property on behalf of the government (ODPPA, 2013, s.18).

Further, the DPP is required to cooperate with the police, the courts, the legal profession and other relevant government agencies to ensure fair and effective public prosecutions. Likewise, these agencies have a duty to cooperate with the DPP on matters relating to criminal or civil prosecutions (ODPPA, 2013, ss.14, 27, 50). The DPP is an independent office which does not require the consent of any person or authority to initiate criminal proceedings or prosecute any matter (ODPPA, 2013, s.6). He is accountable and reports directly to the President and parliament on the performance of his duties (Constitution, 2010, a.157). Funds for the operations of the office are allocated by parliament, the prosecutions fund, grants and donations (ODPPA, 2013, ss.40, 45). Staff of the office are legally qualified public prosecutors who do not hold the powers of a public “*police officer*”. Given these characteristics, the ODPP is at

the public end of the spectrum and exhibits high degrees of publicness and some degrees of privateness. It fits the category of a ‘hybrid’ policing body (ODPPA, 2013, ss.29,30,37; Button, 2019, p.67). As will be illustrated here, in execution of its mandate, the ODPP faces several challenges.

### **5.3.1.8 Supremacy War between DPP and DCI**

The row between the DCI and the DPP has escalated recently. In May 2022, the DCI filed a case in court to have DPP arrested and charged with forgery. DCI alleged that the DPP forged an attendance list of a conference that was held to discuss Terrorism and Terror Financing Act in March 2022. DCI filed the suit after the DPP released a statement blaming him for the dismissal of the multibillion case against a businessman who was facing over a Ksh.40 billion (US\$400m.) tax evasion suit. The case was thrown out by the judge on the grounds that the charge sheet instituting the criminal charges emanated from the DCI whereas the Constitution requires all criminal prosecutions to originate from the DPP. In this regard, DPP lamented that DCI made a mistake by preparing the charge sheet which his office is not constitutionally mandated. In an attempt to address the confusion and supremacy wars, DPP noted that his office will continue collaborating with other agencies as stipulated by the law to avoid losing cases on unconstitutional grounds (Lutta, 2022, May 31. Kenyan News).

The following are comments which appeared in a local newspaper editorial in July 2020 made by a judge in a ruling clarifying and affirming the roles of the two agencies - DCI and DPP.

“A court that has blocked the DCI from prosecuting criminal cases marks a milestone in the administration of justice. This week, a judge made a ruling that serves to settle jurisdictional disputes and brings clarity to the roles of DCI and the DPP, which offices are key to the justice system. At the heart of the dispute is the role each plays in handling criminal matters. Precisely, there has been concern that the DCI has been taking matters to court without going through the DPP, yet that is the office constitutionally mandated to prosecute cases. Often, several such cases have collapsed in court because the evidence presented never met the threshold for conviction. This creates a situation where criminals walk away free and that undermines the war against crime.

The DCI draws its mandate from the National Police Service Act, which, among others, commits it to collect and provide criminal intelligence and undertake criminal investigations. Significantly, the law mandates it to act on directives given to the IG by the DPP. On this score, the DCI is required to conduct investigations and provide information to the DPP to litigate cases in court. In principle, the two offices play complementary roles and, therefore, should not compete or seek to outdo each other”. (Sunday Nation, 2020, July19)

This is another incident in court that was highlighted in the local newspapers under the heading, “*The turf wars between DCI and DPP have now played out in court in a rather embarrassing scenario*”. In April 2020, DCI officers arrested six senior government officials in connection with fraud in the construction of dams and charged them without DPP’s approval. However, when they were presented in court, the charge sheet did not have the approval of the DPP with all the charges drawn by DCI officers. The case could not proceed as the DPP’s team insisted that the case file must be submitted to the DPP for perusal and approval. This was the second time that the DCI and the DPP’s teams had conflicts in court after a previous similar incident when officers from the DPP and those from the DCI clashed in court over the status of an ongoing investigations against the CEO of Kenya Ports Authority (KPA) who was accused of abuse of office and tender fraud. The trial magistrate had to release the suspect after the investigating officer produced a charge sheet authorized by the DCI but which was disowned in court by the DPP office (Mukere, 2020, April 18. Pulselive).

Later in a television interview, the DCI complained that his officers had been frustrated and humiliated in the war against corruption. He was quoted as saying,

"My officers are now getting frustrated daily. They spend a lot of time investigating crime, risking their lives — and even after getting all the evidence required to prosecute cases, they are reduced to carrying files. It is important for Kenyans to know that my officers have done their level best. They feel betrayed. My worry is when suspects tell my officers “You are going nowhere” and then it comes to pass. (Mukere, 2020, April 18. Pulselive)

### **5.3.1.9 Blame Game – DPP or the Judiciary**

In November 2018, during a television interview, the DPP complained that the Judiciary was frustrating the fight against corruption. He took issue with courts for granting suspects conservatory orders stopping investigations against the individuals. His other concern was that after senior public officials are charged in court with serious economic and corruption crimes the suspects still remain in office where they could interfere with evidence and intimidate witnesses. He added that some of the bail terms given to such suspects are also wanting. Regarding one of the suspects who was given by the court lenient bail terms, the DPP made the following remarks:

“We saw him making presentations before international development partners and this is somebody who is facing a murder charge, has an ongoing investigation into allegations of corruption and was also found with unexplained guns in his premises. We must have standards and those standards need to be applied across board and the courts need to help us”. (Menya, 2018, November 24. Nation Media)

In light of those comments, the Chief Justice (CJ) issued a statement to the media and stated that,

"As I have said many times, if a case is properly investigated and sufficient evidence gathered and presented in court, the people of Kenya can expect a conviction and punishment. First and foremost, those doing investigations and prosecution must do their work properly". (Menya, 2018, November 24. Nation Media)

Also, the LSK is of the view that the tensions between the Judiciary, DPP and the police are just but a reflection of what is happening generally in government. Every arm of the government and agency is fighting for its place in an attempt to control the other. Judiciary in particular has been on the receiving end particularly from the Executive not particularly happy with some of the decisions from the courts, with the nullification of the August 2017 presidential election often used to define the Judiciary (Menya, 2018, November 24. Nation Media).

Again, in January 2019, a multi-sectoral conference against corruption and economic crime, which brought public and private sector institutions together was held in Nairobi, Kenya. At the conference, participants told the CJ to clamp down on judges aiding suspects by giving ridiculously low bail terms because this was seen as stumbling block in the fight against corruption. They added that the courts are issuing anticipatory arrest orders and giving injunctions arbitrarily. In response, the CJ indicated that the courts will act independently and abide by the rule of law. The CJ defended the Judiciary saying the accusations are ill intended as their hands were tied by the Constitution, a debilitating budget and incompetent prosecutions. However, the then President of Kenya laughed off the many excuses telling the CJ to put his house in order if he is serious about the war on corruption or someone will do it for him. The President cited instances where the judiciary have failed.

According to the President, the country almost lost Ksh.7 billion (US\$70m.) in an irrigation scheme project after the courts issued injunctions against it. The project, which was due to be sponsored by the Japanese government, dragged on for more than 10 years. The President also wondered why individuals who had been given favourable bail orders by the Kenyan courts were remanded in the US for more than 2 years as the matter progressed in court. In this connection, a participant who concurred with the President stated,

"Why are suspects found guilty in the US, New York ... yet they cannot be convicted here? The lenient bail orders have made the work of the DCI and the DPP very difficult. We have a president of South Korea, who was impeached by parliament and sentenced

to 25 years in jail by the courts in that country. Can that happen here in Kenya?” the participant posed. (Mwere, 2019, January 26. Nation Media)

In the same meeting, the office of the DPP, the AG and that of the DCI also blamed the Judiciary against the lenient bail orders. DPP lamented how a suspect was granted bail to access his office and within a week, a computer containing incriminating evidence against him went missing. However, the CJ defended the Judiciary, saying even the accused have the right to bail as provided for in the Constitution. He added that convictions are made based on the weight of the evidence provided by the prosecution and not by Friday arrests, constant blame game and bashing of the courts. He argued that,

“The war against corruption is not going to be won by blame games. The war will be won by the application of the law. If we are given half-baked cases, we will dismiss them firmly”. (Mwere, 2019, January 26. Nation Media)

The CJ also alleged that the DPP was framing cases poorly and failing to provide witness statements on time, denying those accused the ability to defend themselves. He told participants that the Constitution of Kenya guarantees the accused the right to be heard and (to) bail. The CJ also decried the poor funding of the Judiciary, noting it had delayed the installation of technology in courts that would allow records to be automated.

The judges have also been accused of taking bribes to influence their rulings, a claim that the CJ said will always remain unresolved unless there is tangible evidence to nail the offending judges. He asked the public to channel evidence of corruption through the Judicial Service Commission that he chairs, and the Judicial Ombudsman, so that the offending judges could be dealt with. On allegations of corruption of judges, the CJ concluded and stated that,

“This war will also be won through courage and I appeal to the public and anybody else who has information of judges taking bribes to bring it to us so that we can investigate. What we have is people just talking, which is not actionable evidence”.

(Mwere, 2019, January 26. Nation Media)

#### **5.3.1.10 Attorney-General (AG)**

The office of AG is established under Article 156 of the Constitution of Kenya 2010 and the office of the AG Act (OAGA) 2012. The Attorney-General (AG) is appointed by the President with the approval of parliament. The AG is the principal legal adviser to the government. In connection with this, he represents the government in court or in any other legal proceedings to which the government is a party, other than criminal proceedings. The AG have authority, with the leave of the court, to appear as a friend of the court in any civil proceedings to which the government is not a party. The AG too has the responsibility of promoting legal aid, good

governance, anti-corruption strategies, ethics and integrity and legal education in the country. Additionally, all quarterly reports prepared by EACC and submitted to DPP on corruption and economic crime investigations and annual reports on prosecutions are tabled before parliament by the AG (ACECA, 2003, s.36; ODPPA, 2013, s.37). Also, the AG has the powers to facilitate mutual legal assistance (MLA) in relation to investigation and prosecution of money laundering matters (POCAMLTA, 2009, s.115). There is also an anti-corruption department in the office of the AG which is responsible for educating the public in the fight against corruption and developing anti-corruption campaign strategies and policies (State Law Office, 2020).

Staff of the AG's office are lawyers and are referred to as State Counsels. There are other staff who are recruited for the operations of the office (OAGA, 2012, pp.21,25). These staff members do not hold special status or powers associated with a "*police officer*". The AG's location is within the public sector, as it is a non-ministerial department of government. It is funded predominantly from public funds; it ultimately serves the general public. As such the AG's office exhibits a high degree of publicness and some degree of privateness (Button, 2019, p.84). Here is an illustration of a case that demonstrate the conflict between the AG and the DPP on extradition matters.

#### **5.3.1.11 Extradition – Who is responsible?**

As was indicated in the previous chapter, in April 2011, a court in Jersey had issued a warrant for the arrest of two Kenyan senior public officials over alleged theft and money laundering charges. Consequently, a request to extradite the officials was made to the AG, Kenya by the British High Commission on behalf of the AG of Island of Jersey. Thereafter, the AG forwarded the request to the office of the DPP which was then a department in the AG's office (*as indicated above DPP became an autonomous office in 2013*). Accordingly, the DPP commenced extradition proceedings in court. Later, the two officials successfully challenged their extradition to Jersey with the Court of Appeal ruling in their favour in 2018. The ruling by the Court of Appeal had quashed a High Court judgment made in 2015 that allowed the DPP to institute extradition proceedings of the two officials. This ruling was successfully challenged by the AG at the Appellate Court. The court stated that it is the AG and not the DPP who has the powers to institute extradition proceedings. The DPP then appealed this decision to the Supreme Court, the highest court in Kenya and requested the court to determine

whether it is the AG or the DPP who have the powers to initiate and conduct extradition proceedings. DPP requested the Supreme Court to uphold the High Court decision.

In October 2021, DPP made submissions before the Supreme Court maintaining that the powers to initiate extradition proceedings are vested in his office and not at the AG's office. He argued that extradition proceedings are criminal in nature and therefore fall under the mandate of the DPP. But the AG maintained that neither the constitution nor the ODDP Act expressly confers on the DPP the responsibility to conduct extradition or to conduct foreign relations on behalf Kenya.

In November 2021, the Supreme Court allowed the appeal by the DPP and ruled that the case facing the two officials is criminal in nature and that the authority to extradite lies with the DPP and not the office of the AG as had previously been held by the Court of Appeal. The judges said that the fact that extradition proceedings are criminal in nature, divests the AG of any authority to involve himself in their initiation. The Supreme Court reiterated that the powers to prosecute any conduct of a criminal nature is the exclusive preserve of the DPP. The court noted that the case had taken unnecessarily too long to resolve having commenced over 10 years ago. The judges observed that the delay in deciding which one of the two offices is responsible for matters of extradition is "absolutely ludicrous". This is because, in what appeared like a supremacy battle or ego fight, none of the two top legal offices appeared to agree on who should take up the role of initiating extradition proceedings (Biegon, 2021, November 5. Kenya Broadcasting Corporation; Kevin, 2021, November 5. The Star; Kiplagat, 2021, October 21. Business Daily).

#### **5.3.1.12 The Anti-Money Laundering Advisory Board (AMLAB)**

Another policing institution in Kenya, which is a government body, is the AMLAB. It is established under section 49 of POCAMLA. The AMLAB consist of 10 members who are appointed by the government from both the public and private sectors. These members come from different backgrounds and professions and are required to have knowledge and expertise in money laundering matters. The director, FRC is the secretary of this board (POCAMLA, 2009, s.49; Gichuki, 2013, pp.290-291).

The main functions of AMLAB are to advise the director, FRC mainly on matters relating to the identification of the proceeds of crime and the combating of money laundering in Kenya. The board also assist FRC in formulating AML policies for implementation by reporting institutions. Equally, it recommends the appointment and determines terms of service of the CEO and senior management of FRC (POCAML, ss. 24, 25, 49, 50). It is funded by public funds raised through taxation. Except for the Commissioner of Police (currently IG), the other members of the AMLAB are not public police. Considering the above characteristics, the AMLAB therefore exhibits both degrees of publicness and privateness. The next section will examine supervisory bodies and reporting institutions which are hybrid policing bodies created under different statutes.

## 5.4 Supervisory Bodies and Reporting Institutions

Before considering other hybrid policing bodies, it is important to explain what is meant by a supervisory body and a reporting institution which are illustrated in Table 9 below. This is because the law places on them several AML obligations which will be discussed later in this chapter. Under the AML legislation in Kenya, a “supervisory body” is defined as an institution specified in the First Schedule of POCAMLA (2009, s.2). These supervisory bodies play an oversight role of regulating or supervising reporting institutions.

**Table 9**

### *Supervisory Bodies & Reporting Institutions*

<b>Supervisory Body (Regulator)</b>	<b>Reporting Institution</b>
Central Bank of Kenya (CBK)	Financial institutions
Estate Agents Registration Board (EARB)	Estate agents
Institute of Certified Public Accountants of Kenya (ICPAK)	Accountants and Auditors
Insurance Regulatory Authority (IRA)	Insurance companies
Betting and Licensing Control Board (BLCB)	Casinos and Betting firms
Non-Governmental Organizations Co-ordination Board (NGOCB)	NGOs
Retirement Benefits Authority (RBA)	Fund managers and custodians
Capital Markets Authority (CMA)	Stockbrokers and investment banks

Again, under the same section, a “reporting institution” means a financial institution and designated non-financial business and profession (DNFBP). A financial institution is defined as a person or entity which accepts deposits from the public, lending, including mortgage credit and transferring electronic money etc. Whereas DNFBP are certain types of “non-financial” businesses that have been identified as being susceptible to money laundering due to the nature of their business and the transactions activities that they may conduct (Gikonyo, 2018, pp.65-66). Examples of such businesses are the accountancy and legal professions. Where a sector is regulated, the FRC works with that regulator to ensure that the reporting institution properly implement their AML obligations. Otherwise, the FRC engages the reporting institution directly (Nyiha, 2020, July 30). This section will therefore explore the role of these hybrid policing bodies which pursues a more regulatory and preventative-focused approach (Button,

2019, p.73) rather than investigation or prosecution in fighting money laundering. However, due to space constraint, CMA and RBA will not be considered.

#### **5.4.1 Estate Agents Registration Board (EARB)**

The EARB is a policing body which regulates the estate agency practice in Kenya. It is established under section 3 of the Estate Agents Act 2019, with a mandate to register qualified estate agents. The other role of the board is to protect members of the public by ensuring that estate agents conduct their business professionally. The EARB consist of 9 members who represent both the interests of the government and the public. They are recruited from the public service and private practice and are members of the Institution of Surveyors of Kenya (ISK). One member is appointed to represent the legal profession (Schedule, EAA, 2019). These members and staff of the board do not hold special status or powers of a “*police officer*”.

The EARB possess a significant range of powers, some of these include imposing a fine or imprisonment in several instances. For example, if unregistered individual or company practice as an estate agent. Second, practicing as an estate agent without an insurance policy to cover financial loss against fraud or professional misconduct. Third, if a registered estate agent is convicted of an offence involving dishonesty or fraud. Funds are allocated by Parliament to enable the board to discharge its functions (EAA, 2019, ss. 18, 19, 23-25, 27). As such, the EARB exhibits some degrees of publicness as well as some degrees of privateness.

#### **5.4.2 Real Estate in Kenya**

In Kenya, real estate is one of the most popular sectors for investment with good rates of return especially as economic indicators show the sector contributing up to 8% to the country’s Gross Domestic Product (GDP). Unfortunately, while there are significant capital inflows in real estate, this in turn exposes the sector to the risk of money laundering where parties may use the sector to legitimize funds obtained illegally whether through criminal activity, corruption or other vices (Mwaki, 2018, November 28. LinkedIn).

Additionally, it is claimed that land in the capital city, Nairobi is more expensive than other world cities in more developed countries. A Nairobi-based real estate agent attributed this to corruption and money laundering, advancing that;

“But perhaps the elephant in the room when it comes to hiking land prices has got to be corruption. A lot of dirty money is finding its way into real estate, creating a situation where a lot of money is chasing limited resources. Since banking the money is difficult, corrupt government officials have resorted to buying land and building rental properties with cash” (Mugo, 2019, July 24. Nation Africa).

#### **5.4.3 AML Obligations - Real Estate Agencies**

As was noted in the literature review chapter of this study, under POCAMLA, reporting institutions such as real estate agencies have several AML obligations. These requirements were explored in detail in that chapter and some of them will be briefly mentioned here.

- To report to the FRC immediately or within 7 days any suspicious transactions that the estate agency may encounter during the normal course of business (POCAMLA, 2009, ss.36, 44; Gichuki, 2013, p.288).
- To file reports with FRC of all cash transactions equivalent to or exceeding US\$ 10,000 immediately or within 7 days (POCAMLA, 2009, s.44, Fourth Schedule; POCAMLR, 2013, s.34).
- Verify identity of its customers seeking to enter into a business relationship or carry out a transaction. This is through production of a passport or ID and in the case of a company certificate of registration (POCAMLA, 2009, s.46; POCAMR, 2013, ss.12-14).
- To undertake a money laundering risk assessment to enable it to identify, assess, monitor, manage and mitigate the risks associated with money laundering (POCAMR, 2013, ss.6, 7).
- To establish and maintain internal controls and internal reporting procedures for combating money laundering. This include appointing a MLRO (POCAMLA, 2009, s.47; POCAMR, 2013, ss.9, 10; Gichuki, 2013, p.290).
- Finally, not to open a foreign account with a shell bank or permit its accounts to be used by a shell bank (POCAMR, 2013 s.25).

#### **5.4.4 Challenges - Real Estate Agencies**

In Kenya, besides real estate industry being vulnerable to money laundering and corruption as indicated above, the sector faces other challenges. For instance, there are hundreds of unregistered real estate agencies making it difficult for the supervisory body, EARB to monitor their compliance with these AML obligations. As noted in the previous chapter, the regulator lacks the capacity to monitor and ensure enforcement by its members of these obligations. Overall, there are weak regulatory controls in the real estate sector.

Secondly, the researcher in his previous profession investigated several cases of land fraud relating to unregistered real estate agents. These are commonly referred to as “*briefcase*” agents who disregard the AML obligations while conducting their business. They do not even have a physical office. Most of them are involved in the fraudulent sale of non-existent properties particularly in urban areas where vacant land is in high demand in Kenya. Illustrated below is an example of how dishonest real estate agents in collusion with government officials and lawyers defraud Kenyans through land transactions.

#### **5.4.5 Fraudulent Land Transactions**

In January 2019, a reputable newspaper in Kenya reported that officials at a government department are conniving with fraudsters to rob Kenyans of land and huge sums of money. The syndicate comprise real estate agents, lawyers, police officers, government officials in administration, cybercafé operators and some staff at lands registries. They forge land ownership documents (title deeds) which are used to defraud unsuspecting Kenyans. These fraudsters mostly target dormant parcels of land and those whose owners have died.

The fraudsters move around in urban and agricultural areas identifying the properties to defraud. Then they buy the physical planning maps of the area to identify the registered number of the property. After identifying the number of the targeted property, they then approach a corrupt lands official. Aided by this official at the land’s registry, the syndicate obtain the “*green card*” (record) which contains the history of the land such as sub-division or transfer of ownership. The “*green card*” also has details of the land’s acreage, registration number, names of the registered owner, address, ID, title deed number and when it was issued, and the signature of the land registrar. With such information, the real estate agent embarks on forging documents similar to the originals.

They forge the title deed, ID card and signature of the land registrar who signed the last entry of the genuine proprietor. Using the ID card, they then create or generate online the Personal Identification Number (PIN) certificate issued by the Kenya Revenue Authority (KRA). This is done in cybercafés. After forging the documents, the real estate agent later comes in with innocent potential buyers. Subsequently, the buyer is given the documents, unaware they are forgeries, to conduct his or her own search (due diligence) at the lands registry and compare the details.

Some real estate agents are so brave and confident that they escort the buyer to the ground to view the property but claim to be in a hurry. If the buyer is satisfied, the two moves to a lawyer, in most cases a member of the syndicate for drawing and signing of a sale agreement. The real estate agents demand cash payments and avoid bank transactions. Some claim not to have a bank account while others contend, they have a patient and want to settle medical bills urgently. They never mind instalment payments but they insist it must be in two or three instalments (Wangui, 2019, January 1. Nation Media).

#### **5.4.6 Institute of Certified Public Accountants of Kenya (ICPAK)**

In Kenya, as was noted in the previous chapter, accountants are the only professionals that have legal reporting requirements imposed on them. The ICPAK, is the only professional organisation that is mandated to regulate the activities of all accountants and auditors in the country. This hybrid policing body is established under section 3 of the Accountants Act (AA), 2012. It has a wide range of responsibilities such as promoting accounting and auditing standards. In addition, the institute advises the government on matters relating to financial accountability in public and private sectors (AA, 2012, ss.8, 17).

#### **5.4.7 Membership of the Council**

The ICPAK is governed by a Council which is responsible for issuing standards of professional conduct. It also issues accounting and auditing standards, bye-laws, regulations and guidelines that govern its members (AA, 2008, s.9). The Council consist of 11 members who represent the interests of the members of ICPAK, government and the general public. The Council members should be of high integrity and not involved in fraud or corruption (AA, 2012, ss. 9 & 11, Second Schedule).

Staff of the institute, including Council members do not hold special powers or status of a “*police officer*”. Auditors and accountants require a practising certificate and a licence to work, and not having one is an offence punishable with a fine or imprisonment of 3 years. Holders of practising certificates who intends to practise as accountancy or audit firms are also required to have an annual licence, failure to which amounts to professional misconduct (AA, 2008, ss.18, 22, 30 & 43). ICPAK is funded through taxation, by public funds which are appropriated by Parliament, grants (AA, 2008, s. 39), members’ subscriptions, fees and licenses. It operates on private space since it is only open to the members of the accountancy

and audit profession. Thus, ICPAK exhibits some degrees of privateness and degrees of publicness.

#### **5.4.8 AML Guidelines for Accountants**

Given the crucial role the accountants play in reducing and disrupting money laundering, ICPAK in collaboration with the FRC launched the AML Guideline for Accountants (AMLGA) in October 2020. The first objective of the guidelines is to educate or enlighten accountants on their obligations to report suspicious transactions as required under the POCAMLA. In short, the guidelines assist FRC in ensuring that accountants comply with POCAMLA. Second, they are designed to reduce the possibility of the accountancy profession being knowingly or unknowingly used for purposes of facilitating the commission of economic crimes, namely fraud, theft or money laundering. Third, they are intended for use by accountants when they are preparing or carrying out transactions for their clients as was discussed in the previous chapter. Some weaknesses relating to the effective implementation of these guidelines by ICPAK were also considered in the previous chapter. For example, lack of oversight capacity to monitor and ensure enforcement of these obligations by the supervisory body, ICPAK. The next hybrid policing body to be considered is the IRA.

#### **5.4.9 Insurance Regulatory Authority (IRA)**

In Kenya, there is also another policing body called the IRA which is established under section 3 of the Insurance Act (IA) 2021. The IRA pursues a more preventative-focused approach (Button, 2019, p.73) with the aim of regulating the insurance sector. The mandate of IRA is to supervise and regulate the insurance business in Kenya (IA, s.3A, 2021). Supervision entails protecting the interests of the insurance policyholders and beneficiaries. In addition, IRA is responsible for licensing persons involved in the insurance business and educating the public on selection of underwriters or brokers who are licensed (IA, 2021, s.3A).

The IRA is managed by a board of directors (BOD) which comprises of 11 representatives – 6 from the government, 1 from the Insurance Institute of Kenya and 4 from the general public. Parliament allocates funds to IRA and its other sources are grants, donations and fees. The legislation gives IRA a wide range of powers – it can investigate an insurance firm if it is found conducting business without a licence. It can impose penalties which include fine and imprisonment if an insurance company make false statement in annual returns (IA, 2021, ss.4,

9, 66-67, 204). Staff of IRA do not wear police uniforms nor hold special status or powers. Thus, IRA exhibit degrees of privateness and also some degrees of publicness.

#### **5.4.10 IRA - AML Guidelines**

The products and transactions offered in the insurance sector can be prone to money laundering. As a result, an insurance firm can be involved, both wittingly and unwittingly, in money laundering activities. For this reason, in June 2011, IRA, pursuant to its mandate developed guidelines to regulate money laundering in the sector. Under the guidelines, insurers are required to develop policies for detecting, deterring and reporting possible incidences of money laundering (IRA, 2011, pp.1-2). Equally, insurance firms are required to conduct EDD in transactions where for example, there is change of beneficiary in life policies before it matures or is surrendered. Second, lump sum top-ups are made to an existing life contract or contributions to personal pensions contract. Third, inflated and bogus claims are made e.g. making fake claims citing arson etc (IRA, 2011, p.4).

#### **5.4.11 Insurance Firms – AML Obligations**

It is a legal requirement that insurance firms establish internal controls to reduce money laundering. Two, train staff who handle policyholders, collect premiums and the settlement and payments of claims. Three, promote close co-operation with law enforcement authorities. Four, detect suspicious transactions and cash transactions exceeding US\$ 10,000 and report same to the FRC. Fifth, appoint an AML reporting officer to whom the employees will report such transactions. Lastly, to maintain and keep up to date records of their customers and transactions (IRA, 2011, pp.5-8,13-14). Illustrated below are two examples of fraudulent insurance claims that occurred in Kenya.

#### **5.4.12 Vehicle Fraud and Money Laundering Scheme**

In April 2017, it was reported that insurance companies in Kenya were losing substantial funds due to a well-coordinated fraud involving false claims on high-end vehicles said to have been stolen or written off due to accidents. The syndicate involved motor vehicle owners, assessors, staff of insurance firms, police, garage owners and spare parts dealers. They were using fake accidents, armed robberies, car thefts and intentional damaging of high-end cars to claim

compensation. For example, a fraudster would purchase a high-end car, insure it with as many as three insurance firms, claim its loss through theft or write-off and ends up with three new cars and the “wreckage”. Another key point is that after these fraudulent claims were made, in some instances, payments received were used to buy vehicles through proper channels effectively cleaning the “dirty money”.

In a typical case involving a Range Rover Vogue, the claim was processed as a write-off and ended up hitting four insurers. Insured in May 2014, the car was reportedly damaged from an accident six months later and taken to a garage where an assessor recommended it for a write-off. Since the owner gets priority to buy the salvage, he retained the original logbook (ownership document) in the first and the second case and even retained it after buying the salvage in the third. Unsatisfied with the hefty compensations, the greedy fraudster secured two more covers for the car still in the garage and promptly claimed for write-offs. He succeeded in one. In the second, the assessors were shocked to find the Range Rover they had recommended for a write-off three months earlier was claiming the payment in a different insurance firm (Okoth, 2017, April 8, Nation Media).

#### **5.4.13 “Murder for Profit Fraud”**

Again, in July 2017, the IRA fraud investigation unit also uncovered incidents involving relatives who take multiple life insurance covers on their unsuspecting kin and plan their murders to claim millions of shillings from insurance firms. One such case involved a former insurance manager who managed to take two life insurance covers for a nephew but is suspected to have planned his murder and the body dumped on a busy highway before he claimed for compensation. The manager raised suspicion after he piled undue pressure for compensation, saying he needed the money to travel to Australia. He had taken a Ksh.10 million (US\$100,000) cover for his nephew, aged 27 years old, and another one for Ksh.1 million (US\$10,000) at a separate insurance firm. He had only made one premium payment before the murder happened. Consequently, he succeeded in lodging a claim for the first policy and was in the process of pushing for the approval of the second one when he raised suspicions.

Evidence gathered linked the manager to the murder of his nephew with whom, mobile telephone call data revealed, they were together moments before he disappeared despite him denying it in sworn statements. An autopsy report disclosed that the young man died from severe head injuries secondary to trauma from a blunt object. Surprisingly, the manager was

also found with two death certificates having two different serial numbers which he was preparing to use to lodge other claims (Okoth, 2017, July 15. Nation Media).

#### **5.4.14 Betting Control and Licensing Board (BCLB)**

The BCLB is the regulatory body for casinos and betting firms operating in Kenya. It is a policing body established under section 3 of the Betting, Lotteries and Gaming Act (BLGA), 2012. Its functions are to regulate, supervise, issue permits and licences, at a fee, for betting, lotteries and gaming. The board has 9 members who represent both the government and members of the public (BLGA, 2012, ss.3-4, 13). The BLGA gives the board wide powers of enforcement, regulatory sanctions and prosecutions. Typical of some of these cases which it handles and are punishable by fine or imprisonment is the prosecution of a person who conducts betting business in unlicensed betting premises. Secondly, betting or gaming in public places or with young persons who are under the age of 18. Third, operating unlicensed gaming premises (BLGA, 2012, ss.11, 14, 28, 29, 44 - 45, 53, 55, 58).

The board can exercise special powers of a “*police officer*”- for instance search of premises - when investigating an offence under this legislation (BLGA, 2012, s.63). It is a public body and is funded by the state through taxation. It operates on quasi-public space – it is open to licensees and members of the public. Accordingly, the board exhibits some degrees of publicness and some degrees of privateness.

#### **5.4.15 Betting in Kenya**

According to the NRA report, there are 43 casinos operating in Kenya. Additionally, as of June 2022, there were 100 betting firms according to the list of licensed betting firms published by the BCLB. In the NRA report, the money laundering vulnerability in the gaming industry in Kenya was assessed as high due to the large amounts of cash involved. Sports betting (involving major British football premier clubs) is one of the most popular activities among young people in Kenya. It is facilitated by good internet connectivity and the use of e-money services. Betting firms are the biggest beneficiaries of the betting craze but all of them are private firms which are not required to make their accounts public.

Again, in July 2022, while launching the NRA report, the government minister responsible for betting industry identified the popular pay-outs by betting firms as risks for money laundering. In this regard, a newspaper article highlighted how in the report, the mega jackpots paid to punters (*a person who gambles, places a bet, or makes a risky investment*) in Kenya have been

flagged as possible avenues for laundering proceeds of theft, drug dealings and terrorism as the government heightens focus on the sector. That this has been illustrated by purchase of homes in leafy suburbs of the capital city Nairobi and luxury cars. The newspaper article quoting from the NRA report added that,

“The money laundering risk was noted where proceeds from sports betting could be co-mingled with funds from predictable crimes and passed off as genuine winnings with a possible collusion on who takes the winnings which are later either reverted into the syndicate or transferred outside the country”. (Ngugi, 2022, July 28. Business Daily)

Also, in July 2019, some 27 betting and gaming companies had their licences deferred or cancelled following findings by a government appointed multi-agency team. Among the findings, it was found that most firms were not tax compliant. In addition, most of the revenue made was wired to accounts abroad since the ownership structure in the sector is 90 % foreign owned or these firms are registered in tax havens. This ownership structure makes it easy for the betting firms to be used as avenues for money laundering. Kenyans who are directors of most of these companies mostly own no shares. As it stands, Kenya has the third-largest betting market in Africa after South Africa and Nigeria. To many young people, it has turned from an obsession or a mere game to an income-generating activity (Wanga & Achuka, 2019, July 8; Achuka & Wafula, 2019, July 10. Nation Media).

#### **5.4.16 Limitations – BCLB**

As previously pointed out, casinos and betting firms have AML obligations as provided for under sections 44-48 of POCAMLA. They are required to monitor and report suspicious transactions or activities and cash transaction reports to FRC, verify their customers identities, establish and maintain customer records and internal reporting procedures. Also, they have an obligation to register with FRC. However, it was illustrated in the NRA report (2021, pp.130-132), that some of the challenges faced by the board is that it lacks the requisite AML technical capacity (knowledge and skills) and has therefore, not imposed any administrative sanctions or administrative action on violations of POCAMLA. Secondly, staff who process the relevant licenses do not undergo frequent AML training. Thirdly, the board does not vet directors and senior staff members in the gaming industry before they are hired as required. Lastly, the board does not have AML guidelines which are specific to the gaming industry. Demonstrated below is a case relating to betting firm involvement in money laundering in Kenya.

#### **5.4.17 Betting Firm Involvement in Money Laundering**

In November 2020, FRC was investigating a sports betting firm for possible money laundering in the wake of claims the firm wired \$278 million (Ksh.30b) from its local accounts to offshore banks. The FRC sought to establish if the billions of shillings earned from the online betting in Kenya were declared to the gaming regulator, the BCLB. Further, FRC was to inquire whether the betting firm paid taxes on the \$278 million that is said to have been transferred to tax havens of Isle of Man, the Canary Islands and Dubai over a three-year period. Nearly all the foreign shareholders of the betting firm reside outside Kenya. An American and a Bulgarian used to live in Kenya until 2019 when they were reportedly deported alongside other foreign investors in betting firms whose licences were revoked over billions of shillings in unpaid taxes (Juma, 2020, November 16, Nation Media). The outcome of the investigation is yet to be released by FRC to the media. The next section will explore specialised police bodies (public) which are also involved in the investigation of serious crimes such as money laundering.

## **5.5 Specialised Police Bodies (Public)**

### **5.5.1 Directorate of Criminal Investigations (DCI)**

The DCI is a specialised police body which works under the direction, command and control of the IG. Its main mandate is to investigate serious crimes such as homicide, drug trafficking, corruption, money laundering, cyber-crime, terrorism, human trafficking, etc. throughout Kenya. In addition, the DCI also collect and provide criminal intelligence, conduct forensic analysis and co-ordinate Kenyan INTERPOL affairs (NPSA, 2011, ss.28, 35).

Most of the staff of the DCI are police officers, detective investigators who do not wear police uniforms due to the nature of their work. They also hold special status and powers of a “*police officer*” - arrest, search, enter premises and so forth, significantly above that of an ordinary citizen. There are other staff who come from a mix of backgrounds such as document examiners, forensic crime scene and fingerprints identification experts, lawyers and forensics ballistics. Staff of the DCI are employed predominantly to serve the general public in both private and public sectors (NPSA, 2011, s.33; Button, 2019, p.19).

The funds for the management of the DCI’s office are provided by Parliament, through taxation, local and foreign donors (NPSA, 2011, s.36). Although the DCI is largely located at the public end of the spectrum, as indicated above, it also exhibits some degrees of privateness. Hence it is in the “hybrid” category (Button, 2019, p.85). There are other two specialised police units under DCI that are to be considered, but before that it is important to illustrate below some of the challenges faced by the DCI when executing its mandate.

### **5.5.2 Conflicts between EACC and DCI**

The conflict between the DCI and EACC appears to have escalated in 2018 when EACC is said to have NPS barred from conducting investigation of corruption cases. As pointed above, this is despite both DCI and EACC having mandate to investigate economic crimes such as money laundering and corruption. At the time, the DCI had been seen as usurping the EACC’s powers in investigating corruption cases, even though graft is a serious criminal matter, hence the overlapping mandates. Notably, all major corruption cases in the country were being

investigated by the DCI and with the DPP's approval. The EACC appears to have been isolated even though it felt that given its legal mandate, it should solely handle corruption cases. There was also a feeling that the DPP and the ARA were comfortable working with DCI on corruption and economic crime matters, yet EACC is mandated to handle corruption and economic crime cases. On the other hand, there were claims of biased funding. DCI office felt that the EACC was well funded and its officers are well trained and remunerated, yet they had posted a dismal performance. This is compared to the DCI that has a wider investigative mandate of investigating serious crimes, yet its officers are poorly paid and its budget lower than that of EACC (Standard Team, 2018, November 30. Standard Media).

### **5.5.3 Banking Fraud Investigations Unit (BFIU)**

This is a specialised police unit under the DCI. According to the Directorate of Criminal Investigations (2020), the core functions of this unit are as listed below.

- To receive and investigate fraud, including money laundering complaints from commercial banks, other financial institutions and parastatals (government owned companies)
- To advise the financial sector on fraud prevention and detection strategies
- To sensitize the public on common types of frauds
- To liaise with other law enforcement agencies on financial fraud prevention strategies
- To recover stolen funds and assets and return the same to the victims through the legal system
- To undertake other duties which are assigned by the IG, Director of CID or the Governor, CBK respectively.

The unit operates on private space (its operational offices are located in a property owned by the CBK). It uniquely, as noted above – for public police bodies in Kenya – can conduct investigations assigned by the Governor, CBK, who is not on the public police chain of command. Staff of the unit are investigators, seconded from DCI who hold special powers of a “*police officer*” and do not wear police uniforms. The unit has a wide range of powers, which include arrest, search and access to banking accounts and records during the investigations. Also, staff are employees of the state and the unit is funded by public funds which are raised through taxation. Moreover, it serves the members of the public. Given that this unit operate on both public and private space, as such, it exhibits a high degree of publicness and some degree of privateness.

#### **5.5.4 Insurance Fraud Investigations Unit (IFIU)**

The IFIU is another public specialised police unit under the umbrella of the DCI. In support of the public police, the unit is mandated to undertake investigation of insurance fraud and other offences such as money laundering. It advises the IRA, the regulator on insurance fraud cases that warrant investigation and prosecution. Finally, in execution of its mandate, the unit protects the interests of policy holders, insurance stakeholders and the general public (DCI, 2020; Button, 2019, p.83).

Staff of the unit are seconded police officers (investigators) with powers of a “*police officer*” – arrest, search and detention of suspects. They do not wear police uniforms. The IFIU’s location is within the public sector and is also funded predominantly from public funds by taxation though it serves the insurance industry which by extension is the general public. Moreover, the unit operate on both public and private space. As such the unit exhibits a high degree of publicness and some degree of privateness (Button, 2019, p.84). The NGOs Coordination Board (NGOCB) is the next policing body to be examined in this section.

### **5.6 NGOs Policing Bodies**

#### **5.6.1 NGOs Coordination Board (NGOCB)**

Again, NGOs Co-ordination Board (NGOCB) is another hybrid policing body in Kenya. It is a state corporation established by section 3 of the NGO Co-ordination Act (NGOCA) 2012. Its key mandate is to collect and report to the FRC information on money laundering activities in the charitable sector. As earlier noted, NGOs are also categorised as a “reporting institution” with a plethora of AML obligations such as reporting suspicious transactions and identification of customers etc. The board has 10 members appointed by the government and 8 others appointed by the government to represent the NGOs interests. These members are appointed by virtue of their knowledge or experience in development and welfare management matters (NGOCA, 2012, ss.4 -5).

#### **5.6.2 Mandate of the NGOCB**

Some of the functions of the board as provided under sections 7, 10 and 17 of the NGOCA include registration, co-ordination and regulating the activities of both the national and international NGOs operating in Kenya. According to the NGOCB Annual Report for 2018-

2019, by June 2019, there were a total of 11,262 registered NGOs in Kenya. The board is vested with a wide range of powers such as refusal to register an NGO if its proposed activities are not in the national interest or if it submits false information for that purpose (NGOCA, 2012, ss.10, 14). The board is funded by public funds through taxation. Other sources of its revenue are fines, registration and renewal fees (NGOCA, 2012, s.28). Thus, the NGOCB exhibits some degrees of publicness as well as some degrees of privateness.

### **5.6.3 Challenges - NGOs**

As noted in the NRA report (2021, pp.184 - 186), most of the NGOs operating in Kenya are financed by donations from international sources. This exposure to international funds may expose the vulnerability of the NGOs to abuse by terrorist organisations seeking opportunity to plan and finance terrorist activities in the country. Moreover, the inadequacy of oversight and supervision by the board affects the country's ability to account for utilisation of funds by the NGOs operating in the country. It is also difficult to monitor the diversion of funds, if any, to finance terrorist activities or to establish the source of funds. In this connection, while the NRA report was being launched by a government minister in July 2022, below are some of the comments he made that were highlighted in a newspaper article.

“Falsely declared or undeclared cross-border cash transactions by NGOs have been flagged for confiscation by the Kenya Revenue Authority (KRA) as potential channels of laundering proceeds of terrorism, theft or drug dealings. The NRA report therefore recommended that KRA temporarily confiscate suspected dirty cash to enable FRC to establish the source of funds. Likewise, heightened pressure be exerted on NGOs to improve disclosure of the billions of funds transacted across the borders” (Ambani, 2022, July 29. Nation Media).

Similarly, the ESAAMLG, MER report (2022, p.12) argued that the FRC and the NGO Board do not have coordinated engagement with the non-profit organisation (NPOs) sector or conduct extensive outreach, or issue useful guidance. The board states they are understaffed. Furthermore, NPOs in Kenya are registered under different laws and others are created as informal associations. The non-unified and uncoordinated registration regime negatively impacts on the ability of the board to effectively monitor and supervise them.

## **5.7 VOLUNTARY POLICING BODIES**

### **5.7.1 Law Society of Kenya (LSK)**

The LSK is one of the voluntary policing bodies in the country. It is an association that was established under section 3 of the LSK Act 2014. It is funded by members' annual subscription

fees. The LSK location is within the private space, it predominantly serves the society members although it provides legal services to some vulnerable members of the public on voluntary (“*pro bono*”) basis. The staff of LSK do not hold special status or powers. Nevertheless, a member may be expelled from the society for breach of code of conduct or professional misconduct (LSK 2014, ss. 3, 8, 11). Hence, LSK exhibits a high degree of privateness and some degree of publicness.

LSK mandate is to protect and assist the general public in Kenya in all matters relating to the law (LSK, 2014, s.4). Typical of the work they do is illustrated by a press conference held on 13 October 2022 relating to withdrawal in court by the Director of Public Prosecutions (DPP) of high-profile corruption and money laundering cases.

The LSK has slammed the DPP for withdrawing major corruption and money laundering cases against top officials saying the trend is detrimental to the fight against graft in the country. The LSK President told journalists that the move poses a grave danger to the rule of law calling on DPP to come out publicly and reveal the reasons behind the successive withdrawal of high-profile cases. He stated that in exercising his powers of discontinuing criminal cases under the Constitution, the DPP is bound to consider public interest, the interest of the administration of justice, and prevent and avoid abuse of the legal process.

The LSK President particularly singled out the corruption and money laundering cases against the government ministers who were pending to be vetted by Parliament to join the Cabinet of the new government. He added that the profile of the suspects invites significant public interest as to the motives of the discontinuation of the cases and further poses serious credibility concerns in the investigative capacity of our institutions. He also urged the judiciary singling out the magistrates handling different cases to insist on the DPP providing credible and cogent reasons before allowing the discontinuation of the cases. He argued that this is to assert the independence of the Judiciary and prevent the courts’ being an arena for settling scores and abuse of judicial time and resources. The LSK is yet to decide what action to take against the DPP if a satisfactory explanation for withdrawals is not given (Makong, 2022, October 13. Capital News). Private policing bodies are the last organisations to be considered in this chapter.

## **5.8 PRIVATE POLICING BODIES**

### **5.8.1 Banks – Compliance Staff**

As was indicated in the introduction chapter of this study, most of the financial institutions in Kenya (banks, insurance companies etc) are private commercial companies. They are “for - profit” companies and are funded directly by charging fees and commissions from their customers. They operate on private space since they only serve their clients at a fee (contract). Since these institutions are private bodies, they also have their own money laundering policing

bodies such as banks which have in-house security, fraud and compliance departments. Indeed, as was demonstrated in the literature review of this thesis, it is a requirement that banks should appoint a compliance officer or MLRO to monitor AML internal controls and internal reporting procedures (POCAML, s.47; CBK/PG, s.5). Staff of these institutions do not hold special status or powers eg. arrest. Given these characteristics, financial institutions exhibit a high degree of privateness.

### **5.8.2 Kenya Bankers Association (KBA)**

The KBA, the financial sector industry lobby is an association of 46-member banks who are represented by their CEOs. It is the “voice of banks” and its activities are managed through committees such as the bank fraud and risk committee and legal affairs and compliance committee. KBA core focus include lobbying and promoting or championing financial sector industry development, innovation and economic growth by engaging the government and sector regulator, CBK. Additionally, KBA coordinates the members and partners with stakeholders on strategic initiatives (KBA, 2022). Also, as was previously noted in the literature review chapter of this thesis, in an effort to curb money laundering, KBA issues guidelines, circulars and rules such as a requirement for financial institutions to report suspicious transactions and threshold on large cash transactions (Genghis Capital, 2018, June 26). The chairman, KBA too is a member of the AMLAB which advises the director, FRC on matters relating to fighting money laundering in the country.

KBA was established under the Labour Relations Act 2007 and it is funded through subscriptions raised from member banks. Its location can be described as industry association. Thus, KBA provides services to member banks only. It does not serve the members of the public, so it occupies private space. The staff of KBA have no special status or powers such as search of premises or arrest. Consequently, KBA exhibits high degrees of privateness.

### **5.8.3 Commercial Audit eg. PWC**

As illustrated above, the audit profession is among the occupations in Kenya that are subject to statutory regulation, the Accountants Act (AA) 2012. One of the major commercial audit firms that is engaged in policing money laundering in the country is KPMG East Africa whose Nairobi office in Kenya serves as the regional coordinating hub for its 29 partners and over 1,000 professional staff. The firm provides investigation and AML assessments to financial

institutions (KPMG, 2022). As earlier noted, to practice as an auditor, it is a requirement that you must have a licence to work, and not having one or breaching conditions can result in regulatory sanctions and in some cases criminal penalties too (AA, 2012, p.18; Button, 2019, p.78).

Commercial audit firms earn their revenue through payment of audit fees for the services that they provide. They operate on private space since they are only open to the clients whom they provide auditing services. Staff do not possess special status or powers of a “*police officer*”. Thus, commercial audit firms exhibit high degrees of privateness.

#### **5.8.4 Private Investigation Companies**

There are many commercial bodies providing to individuals and organisations services such as the investigation of fraud and other workplace crimes, intellectual property investigations, the vetting of employees and due diligence investigations (Gill and Hart, 1997; Prenzler and King, 2002; Button and Brooks, 2016 cited by Button, 2019, pp.155-156). The sector includes private investigation firms and limited liability practices, such as EY and KPMG, which provide such services (Button, 2019, p. 156). Similarly, in Kenya, Kroll, LLC is one of the global private investigation companies that offers money laundering investigations services to financial institutions (2022, Kroll, LLC).

In Kenya these private investigation companies are regulated by the Private Security Regulation Act 2016. They are funded by charging fees for the investigation services that they provide to their clients. Since these companies are “for-profit” companies, they are therefore at the private end of the spectrum. In relation to money laundering policing, they offer services to only those customers who can pay for it. Staff of these firms have no special status or powers. They operate on private space – investigation services with their clients are offered on contractual terms. Accordingly, private investigations companies too exhibit a high degree of privateness.

#### **5.9 Conclusion**

In this chapter, the definition of *policing*, *private* and *hybrid* which are important in understanding policing were first considered. Thereafter, state police bodies, hybrid policing bodies, voluntary policing bodies and private policing bodies which are involved in policing

money laundering were examined. In particular, the chapter explored the legal framework establishing these institutions, their mandate, special powers or status, services that they provide and location and degree of “publicness” and “privateness”. It was shown that each institution has a clear mandate which is spelt out in respective legislation. Regarding government policing agencies, they are required to work harmoniously if the fight against money laundering in the financial services sector is to be won in Kenya. However, what this chapter has demonstrated is that these agencies are engaged in blame games, tensions, conflicts and competition. They are pulling in different directions and undermining each other which is not a conducive environment for combating money laundering in the country. Their roles should be complementary and facilitative. For supervisory and reporting institutions, it was shown that their focus was regulatory and preventative and to achieve this have to effectively implement AML obligations imposed on them by the legislation. Finally, the role of voluntary policing bodies and private policing bodies in policing was also discussed in this chapter. The next chapter is on evaluating AML strategies in Kenya.

## **Chapter 6 - Evaluating Anti-Money Laundering (AML) Strategies in Kenya**

The focus of this chapter will be to evaluate responses received from questionnaire responses and the themes that emerged from interviews that were conducted in the research study in relation to the evaluation of anti-money laundering (AML). In the study, the researcher will first report the quantitative statistical results and then discuss the qualitative findings (i.e. themes) that either confirm or disconfirm the statistical results. Thus, the researcher will make a comparison within a discussion, presenting first quantitative findings and then the qualitative findings. Consequently, the results findings from the two research approaches – qualitative and quantitative - are complementary of each other (Creswell & Creswell, 2018, p. 220).

This chapter will commence by briefly illustrating some of the demographic information that was received from the respondents. As indicated above, it will then, in much more detail discuss both the quantitative and qualitative findings and then integrate both findings and present the results. Specifically, these findings relate to AML strategies that are in place in financial institutions in Kenya. A discussion on the effectiveness of these tools will then follow and finally consider other issues that emerged in the study such as political will, civic education, socio-economic impact of money laundering and so on.

It is argued that “--- it is hard to find any clear methodology on evaluating effectiveness of the AML regime—” (Halliday et al., 2019; Levi et al., 2018, cited by Button, Hock & Shepherd, 2022, p.179). Further, Levi (2020; Levi et al., 2018 cited by Button et al., 2022 p.179) observed that “the effectiveness of the AML regime in terms of decreasing levels of money laundering is difficult to assess”. The English Cambridge dictionary defines “effectiveness” as the degree to which something is effective; how well a particular treatment or drug works when people are using it, ---- (Cambridge University Press, 2023). In the context of money laundering policing, in this study, “effectiveness” will be used to illustrate how well a particular strategy or tool works in reducing money laundering according to participants and respondents’ views who are AML experts in Kenya.

### **6.1 Demographic Information**

#### **6.1.1 Job Titles of Respondents**

As was noted in the research methodology chapter of this study, quantitative data for the research was obtained from responses received from a sample of 64 respondents who have experience and expertise in combating money laundering in the financial services sector. Table

10 below shows the job titles of the respondents who for instance hold senior management and investigation AML positions.

**Table 10**

*Job Titles of Respondents*

<b>Job Title</b>	<b>Respondents (N)</b>
Risk and Compliance Managers/MLROs	25
AML Specialists	10
AML Investigators	9
AML Consultants	8
Financial Crime Managers	8
Financial Crime Specialist	1
Money Laundering Reporting Officer (MLRO)	1
Other	2
<b>Total</b>	<b>64</b>

**6.1.2 AML Responsibilities**

When respondents were asked whether they had responsibilities related to dealing with money laundering issues, as illustrated in Table 11 below, 98% indicated “Yes” and 2% “No”. Two respondents did not respond to this question.

**Table 11**

*AML Responsibilities of Respondents*

<b>Option</b>	<b>N</b>	<b>%</b>
Yes	61	98
No	1	2
<b>Total</b>	<b>62</b>	

**6.1.3 Work Experience**

In addition, as indicated in Table 12 below, responses received relating to work experience indicate that over 54% respondents possess 1–5 years’ experience working in AML and 41% reported that they had similar experience of between 6 -10 years. It was only 5% respondents who have AML work experience of between 11-15 years. One respondent did not answer this question.

**Table 12***Work Experience of Respondents*

<b>Years</b>	<b>N</b>	<b>%</b>
1-5	34	54
6-10	26	41
11-15	3	5
<b>Total</b>	<b>63</b>	

**6.1.4 Age Group**

The age of the respondents is detailed in Table 13 below. Most of them, 64% were aged between 31- 40 years and those below 30 years were 22%. The rest, 14% were aged between 41-50 years. One respondent did not indicate his or her age group.

**Table 13***Age Group*

<b>Age - Years</b>	<b>N</b>	<b>%</b>
Below 30	14	22
31-40	40	64
41-50	9	14
Over 51	0	
<b>Total</b>	<b>63</b>	

**6.1.5 Gender**

In connection with gender of the respondents, Table 14 below show that male respondents in this study were 63% while females were 37%. It was only one respondent who did not indicate his or her gender.

**Table 14***Gender*

<b>Gender</b>	<b>N</b>	<b>%</b>
Male	40	63
Female	23	37
<b>Total</b>	<b>63</b>	

### 6.1.6 Level of Education

Also, according to the responses received, the level of education of the respondents as indicated in Table 15 below was 52% undergraduate and 48% postgraduate. There was no response from one respondent.

**Table 15**

*Level of Education*

<b>Education Level</b>	<b>N</b>	<b>%</b>
Undergraduate	40	52
Postgraduate	23	48
<b>Total</b>	<b>63</b>	

### 6.1.7 Sector Representation

Regarding sector representation, Table 16 below illustrates that most of the respondents, 84% work in the private sector, in particular the financial institutions such as banks and insurance companies. This is followed by those working in the public sector, 10% drawn mainly from the law enforcement, asset recovery and regulatory bodies. Finally, 6% respondents came from the Non-Governmental Organisations (NGOs). One respondent did not answer this question. It was not possible to conduct statistical analysis of the different sectors because the number of responses (ie.64) is not enough to conduct statistical tests.

**Table 16**

*Sector Representation*

<b>Sector</b>	<b>N</b>	<b>%</b>
Public: Regulator, Police, Asset Recovery	6	10
Private: Financial Services	53	84
Third: NGO, Professionals	4	6
<b>Total</b>	<b>63</b>	

## **6.2 Participants: Semi - Structured Interviews**

In relation to qualitative data, 20 semi-structured interviews were conducted mostly with individuals working in financial institutions in Kenya. As was shown in the research methodology chapter of this study, Table 2 details the particulars of those participants who will be referred to as *Interview, 1; Interview 2* etc. in subsequent sections of this chapter. These individuals are experts on matters relating to detection, investigation and prevention of money laundering. The next section will identify, consider and evaluate the effectiveness of the AML strategies and tools for fighting money laundering.

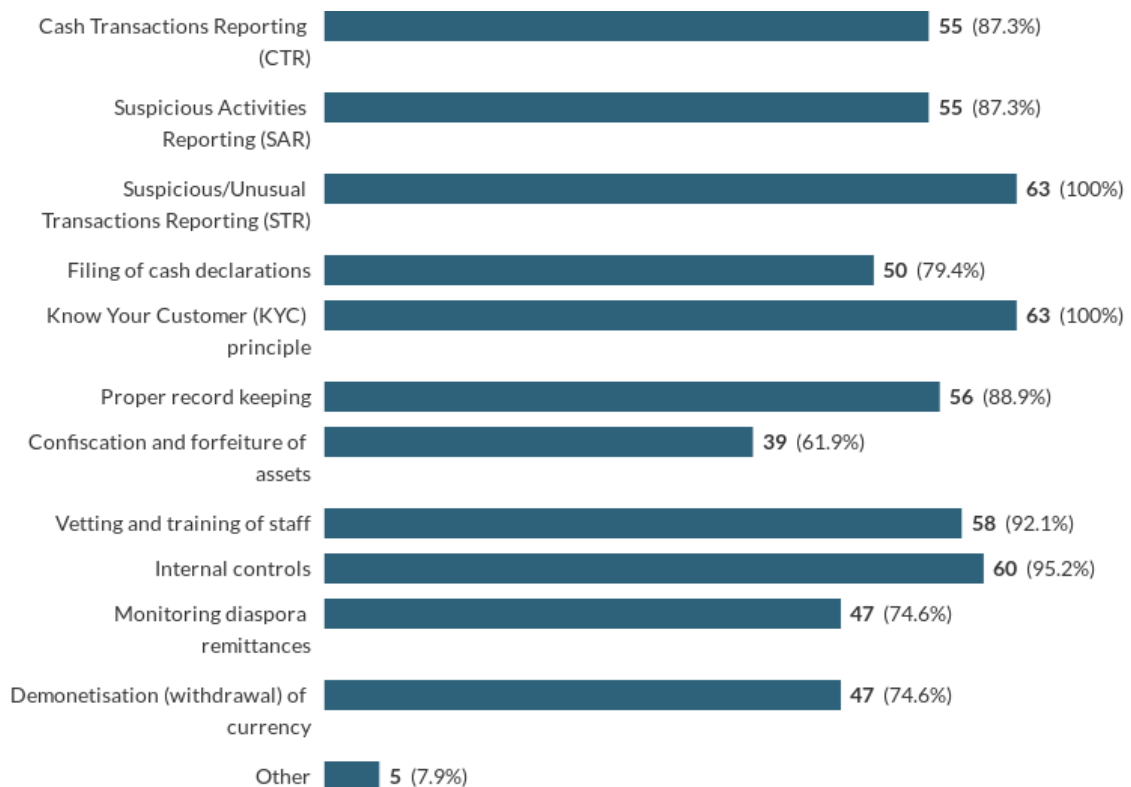
### 6.3 AML Strategies

In addressing the first research question which relates to identifying AML preventative strategies and tools that are in place in the financial services sector, respondents were asked to indicate the measures that have or are being taken to prevent money laundering in financial institutions in general in Kenya. The data in Figure 4 below illustrate responses received from 63 respondents out of 64 who completed the survey questionnaire. It shows that 100% respondents indicated that the main common strategies that are used to fight money laundering in the financial services sector were Know Your Customer (KYC) and suspicious transactions reporting (STRs). Second, 95% respondents selected internal controls which were closely followed by vetting and training of staff whose score was 92%. Proper record keeping had a score of 89%, cash transactions reporting (CTRs) and suspicious activities reporting (SARs) 87% each. This was followed by 79% respondents who selected filing of cash declarations. Monitoring diaspora remittances and demonetisation (withdrawal of currency) were other important tools that were identified by 75% respondents.

Surprisingly, confiscation and forfeiture of assets was ranked the lowest tool for reducing money laundering by 62% respondents. It is surprising because, as will be discussed later, interviews conducted with participants and responses received from a related question in the questionnaire (asset recovery) demonstrated that this is one of the most important strategies in combating money laundering in Kenya. Finally, “*Other*” 8% respondents through “free text responses” indicated sanctions screening, risk assessment, lifestyle audits and targeted regulatory inspections as additional tools for countering money laundering which were not included in the survey questionnaire. It is also instructive to note that the above AML strategies have been considered in detail in the literature review of this thesis, including highlighting the benefits and constraints relating to each strategy. Thus, the researcher is of the view that there is no need of repeating the same in this section. An evaluation of the effectiveness of these strategies is considered below.

**Figure 4**

*AML Strategies in Financial Institutions*



**6.3.1 Overall Effectiveness - AML Strategies/Tools**

After identification of the strategies, in the survey questionnaire, respondents were asked on a scale of 1 to 5 where 1 is not very effective and 5 is very effective, to rank the effectiveness of the above AML strategies/tools for combating money laundering in the financial services sector in Kenya. The results are as shown in Table 17 below.

**Table 17**

*Overall Effectiveness - AML Strategies/Tools*

Scale	N	%
1	1	2
2	4	6
3	27	43
4	27	43
5	4	6
<b>Total</b>	<b>63</b>	
<b>Mean Score</b>	<b>3.4</b>	

Thus, 6% respondents were of the view that the strategies and tools were “*very effective*”, followed by 43% who scored them at 4. It was only 6% respondents who ranked these AML measures at 2 and 2% who ranked them at 1 – “*not very effective*”. The mean score for these strategies is 3.4.

#### **6.4 Evaluation - AML Strategies/Tools**

The discussion that follows is an evaluation of the effectiveness of each of the above strategies or tools. This will be done from the highest ranked strategy to the lowest one as detailed in Table 18 below. In addition, other key themes that emerged in the study will also be discussed and evaluated. These are information sharing, domestic cooperation – police, prosecution and judiciary, multi-agency team approach, international and regional AML initiatives, political will and so on.

Also, in carrying out this evaluation, as previously noted, the researcher will integrate responses from both the survey questionnaire and interviews and relate the same with the literature that is presented in this study. The first strategy to be considered is KYC which will be followed by suspicious transaction reporting (STRs) – legal reporting obligations. Both strategies tied in ranking and as indicated in Figure 4 above and Table 18 below were selected by 100% respondents.

**Table 18**

*Evaluation - AML Strategies/Tools*

<b>Rank</b>	<b>Strategy/Tool</b>	<b>No. of Respondents</b>	<b>Response Rate (%)</b>
1	Know Your Customer (KYC) Principle	63	100
2	Suspicious/Unusual Transactions Reporting (STRs)	63	100
3	Internal Controls	60	95
4	Vetting and Training of Staff	58	92
5	Proper Record Keeping	56	89
6	Cash Transactions Reporting (CTRs)	55	87
7	Suspicious Activities Reporting (SARs)	55	87
8	Filing of Cash Declarations	50	79
9	Monitoring Diaspora Remittances	47	75
10	Demonetisation (Withdrawal) of Currency	47	75
11	Confiscation and Forfeiture of Assets	39	62
12	Other	5	8

#### 6.4.1 Effectiveness - Know Your Customer (KYC)

Table 19 below presents responses received when respondents were asked to rate on a scale of 1 to 5 where 1 is not very important and 5 is very important, the importance of “Know Your Customer” (KYC) principle as a tool in countering money laundering in financial institutions in Kenya.

**Table 19**

*Effectiveness - KYC*

Scale	N	%
1	0	
2	0	
3	3	5
4	13	20
5	47	75
<b>Total</b>	<b>63</b>	
<b>Mean Score</b>	4.6	

The data from the table above clearly demonstrates that this is one of the most important tools in preventing money laundering in the financial services sector. 75% respondents scored this tool at 5 – “*very important*” followed by 20% with a score of 4. There was no respondent who scored the tool at 2 or 1 – “*not very important*”. The mean score for KYC was 4.6. In addition, interviews conducted with participants and the literature previously presented on KYC in the study support this finding. In this regard, an AML consultant remarked that;

Regarding KYC in preventing money laundering, let me just say its impact is huge. Actually, that is like the backbone of a good AML programme or framework. It has an impact because it is like the first line of defence. That is the time the bank comes to know, or make a decision - is this the person or an entity that we want to do business with. (Interview, 2)

Also, a money laundering reporting officer (MLRO) working in the insurance industry echoed the same sentiments stating that:

KYC principle has a great impact in preventing money laundering because if you don't know your customer, the probability of you underwriting business that is a proceeds of money laundering is very high. The more you know your customer and the more you

understand your customer's behaviour, the better it is you can serve your customer and protect your business. (Interview, 9)

Equally, a compliance and risk manager working in a commercial bank emphasised the importance of KYC stating that:

KYC is very important in preventing money laundering in the financial services sector. It's the key thing. The moment your KYC is wrong on a customer, then you'll never know that customer. From simple documentation of identification for both individuals, as well as registered entities. For individuals, they will give you their ID, their PIN, and a passport size photograph and their source of income. So if they're employed they'll give you either a letter of appointment or the latest pay slip. If they're in business, then the bank official opening the account needs to do a call visit just to make sure that actually the business exists and to even see where the business is, so that you are just not opening accounts for non-existing businesses. (Interview, 1)

However, a very experienced law enforcement officer with mandate to investigate AML matters had reservations on the effectiveness of KYC arguing that:

KYC has challenges in the sense that, financial institutions are in business, they're more interested in ensuring that they get clients. Therefore, the issue of balancing between their businesses and ensuring that something is done as per the law is a big challenge. Because you find at times, we have this issue of where you are told that this is a corporate client. Corporate clients, when you talk to staff of a financial institution, they will tell you that when it comes to KYC issue, and you are relating to corporate clients there's little they do because of the kind of business this customer is bringing into the financial institution. (Interview, 16)

In conclusion, on the effectiveness of KYC in eradicating money laundering, a scholar, AML specialist advanced that,

On paper, the KYC principles are good, and if utilized appropriately, they can have a positive effect. Because it forces a bank to clearly understand its customer and where necessary, for example, if you're dealing with a Politically Exposed Person (PEP) to be alert, but again, it is the issue of implementation. If it's business, what business exactly do you do and where is the documentation to prove that this is the business that generates these funds? Are we serious about how we are implementing these provisions? Do we really seek to know our clients? Because some things are just outright red flags. (Interview, 4)

## **6.5 Legal Reporting Obligations**

As was demonstrated in the literature review of this thesis, to curb money laundering, financial institutions have an obligation to monitor and report all complex, unusual or suspicious transactions or activities to the Financial Reporting Centre (FRC). In this regard, the next strategies to be evaluated are the legal reporting requirements which are suspicious transactions

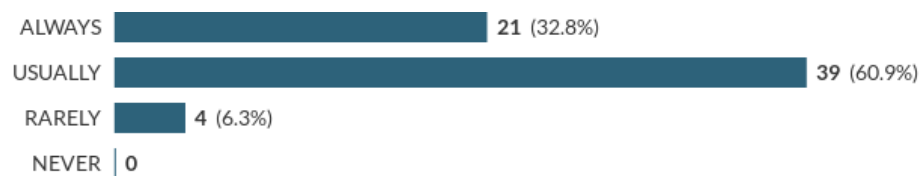
reporting (STRs), suspicious activity reporting (SARs) and cash transactions reporting (CTRs). Though the latter two are not ranked amongst the highest, for consistency, their effectiveness will also be discussed here. It is to be noted that FRC is Kenya’s Financial Intelligence Unit (FIU).

### 6.5.1 Reporting/Monitoring STRs and SARs

In the survey questionnaire, respondents were asked whether organisations in the Kenyan financial sector generally monitor all complex, unusual/suspicious transactions or activities and report to FRC. Figure 5 below, illustrates responses received which shows that most of the institutions in the financial sector monitor and report suspicious transactions/activities as required. 33% respondents answered “Always”, 61% “Usually” and 6% “Rarely”. There was no respondent who indicated that STRs or SARs were not reported to FRC.

**Figure 5**

*Reporting/Monitoring STRs and SARs*

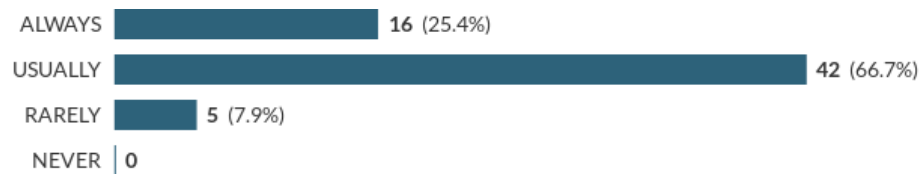


### 6.5.2 Reporting Duration - STRs/SARs

Again, when respondents were asked whether these transactions are reported to FRC immediately or within seven days after the transaction had occurred, as data in Figure 6 below indicate, 25% replied “Always”, 67% “Usually” and 8% “Rarely”. There was no response indicating “Never”.

**Figure 6**

*Reporting Duration - STRs/SARs*



### 6.5.3 Awareness - Paper Trail Evidence

In like manner, in the survey questionnaire, respondents were requested to state whether financial institutions are aware that they report suspicious transactions so that a paper trail of evidence is created. An analysis of the data in Figure 7 below indicate that these institutions were aware that STRs are filed with the FRC so that a paper trail of evidence is created. In connection with this, responses received shows “Always” 40%, “Usually” 57% and “Rarely” 3%. “Never” had a score of 0.

**Figure 7**

*Awareness - Paper Trail Evidence*



### 6.5.4 Validation - Background and Purpose (STRs)

Similarly, respondents were asked whether these organisations examine the background and purpose of suspicious transactions before submitting the same to the FRC. The responses are documented in Figure 8 below as follows: “Usually” 51%, “Always” 41% and “Rarely” 8%. “Never”, was scored “0”.

**Figure 8**

*Validation - Background and Purpose (STRs)*



### 6.5.5 Effectiveness – Reporting STRs/SARs

Finally, on monitoring and reporting STRs and SARs, on a scale of 1 to 5 where 1 is not very effective and 5 is very effective, respondents were asked to rate unusual/suspicious transactions or activities reporting requirements as a tool in preventing money laundering in the financial sector. As can be seen in Table 20 below, scores from all the 64 respondents demonstrated that reporting of STRs or SARs can be an effective tool for curbing the practice of money laundering in financial institutions. 26% respondents scored this tool at 5 – “very effective” followed by 44% with a rating of 4. None of the respondents ranked this tool at 2 or 1 – “not very effective”. The mean score for the tool was 3.9.

**Table 20**

*Effectiveness – Reporting/Monitoring STRs/SARs*

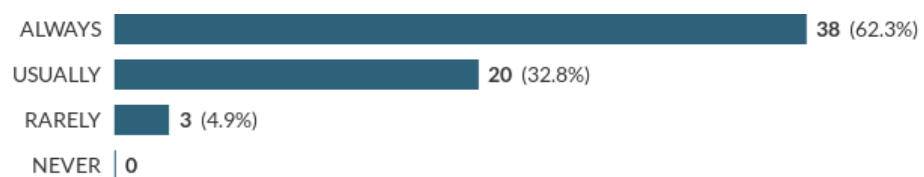
Scale	N	%
1	0	0
2	0	0
3	19	30
4	28	44
5	17	26
<b>Total</b>	<b>64</b>	
<b>Mean Score</b>	3.9	

### 6.5.6 Filing - CTRs

Respondents in the questionnaire were also asked whether financial institutions file reports of all cash transactions exceeding US\$ 10,000 within seven days to the FRC. Responses received which were encouraging are detailed in Figure 9 below: “Always” was scored at 62%, “Usually” at 33% and “Rarely” 5%. None of the respondents scored “Never”.

**Figure 9**

*Filing – CTRs*



### 6.5.7 Effectiveness – CTRs

A follow-up question on effectiveness of CTRs was posed to the respondents thus: “On a scale of 1 to 5 where 1 is not very effective and 5 is very effective, how would you rank the effectiveness of cash transaction reporting of US\$10,000 and above as a tool for countering money laundering in the financial institutions in Kenya?”

The data in Table 21 below illustrates the results in which 14% respondents ranked this tool at 5 – “*very effective*”. Second were 38% respondents with a rank value of 4. The last scores were from 8% and 3% respondents who ranked this tool at 2 and 1 (“*not very effective*”) respectively. The mean score for the tool was 3.5.

**Table 21**

*Effectiveness - CTRs*

Scale	N	%
1	2	3
2	5	8
3	23	37
4	24	38
5	9	14
<b>Total</b>	<b>63</b>	
<b>Mean Score</b>	3.5	

In conclusion, the effectiveness of these legal reporting requirements was noted during qualitative interviews. This was highlighted by an experienced AML investigator who stated that:

These measures such as CTRs, STRs and SARs are effective in that; they deter suspects or fraudsters to approach our banking institutions. Because when you are told to explain, for example, you want to deposit cash Kshs.5 million (US\$50,000) and you are told to explain where you got this money; why are you depositing in cash or who were the ultimate beneficiaries etc. You being a suspect or a fraudster who wants to do this money laundering, you tend to shy away and tend not to go to the banks to make these deposits. And if it's dirty money that probably you are receiving, you tend not to visit the banks to do this transaction. (Interview, 10)

However, a senior manager, risk and compliance of a commercial bank was of the view that:

In connection with the effectiveness of legal reporting requirements of above \$10,000, yes, it works, but I would want to see end results; on the other end, or a feedback telling us, "Fine you have reported--" Not for it to be just like a form filling exercise... We report every week, on Fridays but nothing. Even the STRs. We do not know whether this individual was investigated. For me, complete effectiveness would be get to see the end results of what we are doing from FRC. That, yes, we reported this guy, we see him being taken to court, or penalised, or something like that. There isn't much feedback from the FRC. (Interview, 6)

Also, an asset forfeiture specialist who is a law enforcement officer remarked that:

-----commercial banks are in business. In as much as they have a duty to report suspicious transactions, they also want to protect their customers. And therefore, it may not be as effective as required and money laundering still exists because this department, compliance, may not effectively perform its duty because of one thing, the owner of the bank wants big customers who can earn them interest and therefore, they do not, they don't sieve/screen dirty money as required because they also want that customer. (Interview, 5)

During interviews, an issue that emerged which is closely related to STRs, SARs, CTRs and FRC is information sharing amongst various stakeholders in the fight against money laundering. Again, for consistency, there is need to consider it here before evaluating other strategies which are detailed in Table 18 above.

## 6.6 Information Sharing - FRC and Financial Institutions

### 6.6.1 Action and Feedback - FRC

After financial institutions submit unusual or suspicious transaction reports to FRC, respondents were requested to indicate whether appropriate action was taken on these reports by FRC and whether feedback on the same was provided to financial institutions in a timely manner. As illustrated in Figure 10 below, the response rate was discouraging. It was only 24% respondents who answered “Yes” and the rest, 36% and 40% replied “No” and “Don’t Know” respectively. These scores are supported by the remarks of a money laundering reporting officer (MLRO) working in an insurance company who stated that;

I have not seen any feedback in relation to suspicious transactions that we report from FRC unless it's provided to maybe legal department, I don't know, but it would be nice to know, especially even for we people in operations, that this person has been blacklisted for this reason - money laundering, or this person has been flagged for this reason. We don't know what the FRC does with that information. (Interview, 9)

**Figure 10**

*Action and Feedback – FRC*



A risk and compliance officer working in another insurance firm supported these sentiments and stated that,

At some point we file the returns, we file the reports of cash transactions and suspicious transactions, but we do not get feedback from FRC - this kills morale of the financial institutions. So as a matter of fact, remember that feedback is very much key in dealing with money laundering. ---I think what I would propose is, you see, fighting money laundering is not a one man’s show, it is a concerted effort. What we need to have is a strong partnership between the FRC, the law enforcement agencies and financial institutions so that they have a kind of collaborative approach in fighting money-laundering. (Interview, 3)

In like manner, a compliance manager, working in a commercial bank too concurred stating that:

Among the measures that the Central Bank of Kenya (CBK) should take to improve the fight against money laundering is timely responses of suspicious transaction reports (STRs) done. We can go for a long time without getting a report over the STRs that are filed every so often to FRC. (Interview, 15)

### 6.6.2 Dissemination and Feedback - FRC

Another question that was posed to respondents was whether information received regarding STRs/SARs by FRC is promptly disseminated to the appropriate law enforcement authorities and the outcome of the investigation is disclosed to the affected financial institution. Again, as indicated in Figure 11 below, responses from respondents seem somehow disappointing in that 30% answered “Yes”, another 30% replied “No” and 40% indicated that they “Do Not Know”. In connection with this, a law enforcement officer with a mandate to investigate money laundering matters noted;

There is a disconnect between the FRC and the security agencies whereby FRC does not really submit these reports fully. At the same time, you find that the FRC in terms of personnel, I don't think they are well established. The number of personnel FRC has cannot effectively manage to handle all these transactions. Further, some of the financial institutions take advantage arguing that because FRC has been overwhelmed with these transactions it cannot manage to cope – i.e check transaction by transaction. You find most of these banks or financial institutions do not disclose fully such suspicious transactions because they know little action will be taken against them. (Interview, 16)

**Figure 11**

*Dissemination and Feedback – FRC*



Similarly, a senior AML investigator pointed out challenges relating to poor communication between banks and law enforcement agencies stating that;

I'll honestly tell you the conservative nature of the banking industry, the confidential process governing their operations sometimes makes it hard for these banks to share information directly with law enforcement, but in few instances where now they feel there's a need for them to report, they do report on the need basis - for instance where the client has refused cooperating with them. But where the client is cooperating it will be rare until-- So this information sharing currently, I would say, has been handicapped by lack of a structure which can really bring onboard, all these key players from the financial sector and investigations or reporting institutions. (Interview, 20)

### 6.6.3 Sharing FRC Database

Likewise, respondents were also asked whether the database that is created and maintained by FRC of all reports of suspicious transactions is shared with financial institutions. Figure 12 below illustrate that it is only 10% financial institutions that have access to the FRC database, 58% had no access and 32% did not know whether it is shared. Regarding this, an AML consultant reported that,

What I can say about FRC not sharing information with financial institutions is that, I can't blame the FRC because, number one, we do not have a framework. They are not supposed to be sharing that information with a financial institution. Actually, that takes me back to the question you had asked, one of the things that the government needs to do? They need to come up now with a law on how to share that information. So that the sharing information is two ways, not just financial institution sharing with FRC but the other way, FRC also sharing with the financial institution and also financial institutions sharing information amongst themselves. (Interview, 2)

**Figure 12**

*Sharing FRC Database*

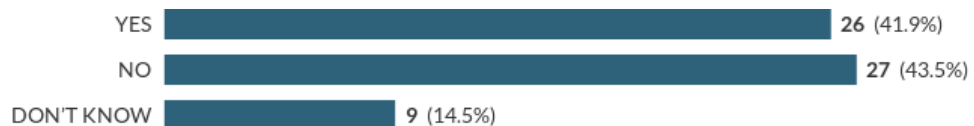


**6.6.4 Inspections - FRC**

Also, respondents were requested to indicate whether on a regular basis, FRC conducts inspections to ensure that financial institutions comply with international standards and best practice in AML measures. Responses received are detailed in Figure 13 below which show that 42% respondents answered “Yes”, followed by 44% response of “No” and 15% of “Do Not Know”.

**Figure 13**

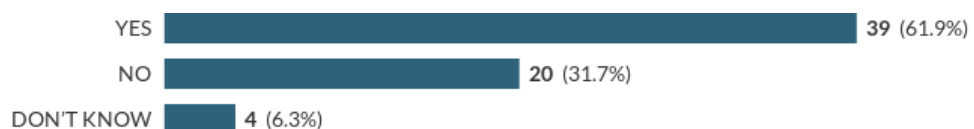
*Inspections - FRC*



**6.6.5 FRC Training**

As was previously pointed out in the policing institutions chapter of the study, FRC is required to develop AML training requirements and provide such training to financial institutions. In this regard, respondents were asked whether FRC conducts training to staff of financial institutions on identification of types of activities or transactions which may indicate possible money laundering activities. Data in Figure 14 below indicate that on a positive note, 62% respondents answered “Yes”, 32% replied “No” and 6% indicated that they “Don’t Know”.

**Figure 14: FRC Training**



### 6.6.6 Effectiveness – FRC Sharing Information with Stakeholders

In conclusion, respondents were asked to rank on a scale of 1 to 5 where 1 is not effective and 5 is very effective, the effectiveness of FRC in implementing the above measures as a tool in combating money laundering in financial institutions in Kenya. Though two respondents did not answer this question, the results are documented in Table 22 below which show that there are challenges in information sharing relating to STRs/SARs between FRC and financial institutions. It was only 10% respondents who ranked this tool at 5 – “*very effective*” followed by 13% with a rating of 4. Others 24% and 5% ranked the tool at 2 and 1 (“*not very effective*”) respectively. The mean score for the tool, which was the lowest was 2.9. Concerns relating to poor communication between FRC and the financial services sector were raised with the researcher during qualitative interviews as noted above.

**Table 22**

*Effectiveness – FRC Sharing Information*

<b>Scale</b>	<b>N</b>	<b>%</b>
1	3	5
2	15	24
3	30	48
4	8	13
5	6	10
<b>Total</b>	<b>62</b>	
<b>Mean Score</b>	2.9	

Here are suggestions made by an AML consultant on information sharing among stakeholders in the fight against money laundering.

Banks actually have a forum within the KBA that brings all the compliance matters to the table. However, I may say it is a cultural issue where banks, even if they have that forum, the intelligence that they have regarding customers who are presenting significant money laundering risks, they cannot openly share that information because: one, they do not have a platform to do so; two, they do not have regulation protecting them should they divulge this information to other bankers and data confidentiality catches up with them. My view is that, if the Central Bank of Kenya (CBK) together with FRC and the KBA, could create a safe platform and support this with the regulation that allows banks to share intelligence, banks will be more comfortable to share

information about their clients, information that could support other banks in mitigating money laundering risks that those customers and their associates could be presenting. Therefore, a proper platform supported by a regulation will go a long way towards strengthening this initiative. (Interview, 12)

### **6.7 Partnership – Financial Institutions**

For the effectiveness of AML strategies, another issue that emerged from qualitative interviews is that besides financial institutions sharing information with FRC, also FRC should share its information with these financial institutions. Additionally, financial institutions should also share information amongst themselves. In this connection, the same AML consultant advanced that;

A key challenge for financial institutions is data confidentiality. For banks to be able to fight this vice of money laundering effectively, they need to collaborate and share information. However, banks in this market have been known to hold their information close to their chests. So, when a customer is having suspicious activity, the bank will exit that customer from its books. But because that bank will not share that information with the other banks, that customer will walk into the next bank and get banked and perform their illicit activity in the next bank. When the next bank exits them, that customer will walk into the next bank and Kenya has 42 banks. Therefore, this customer is spoiled for choice in terms of where they can bank. So long as this information is not shared, banks will continue exchanging these dirty customers in their books and the vice will not be fought. (Interview, 12)

Likewise, on information sharing in the financial sector, a risk and compliance officer from the insurance industry argued that:

Another issue is communication. The moment we have communication breakdown between the enforcement agencies and the financial institutions, I can assure you that we cannot fight this monster – money laundering. We need a horizontal kind of communication and a vertical one. Where we are communicating to the government, the government is communicating to us, and even these financial institutions they are communicating amongst themselves. Jesse (researcher), we realize that financial institutions, once we flag out a money launderer, these financial institutions don't communicate. I can say there is that, kind of, a closed door communication amongst the financial institutions that needs to be enhanced. (Interview, 3)

In like manner, a compliance and risk manager working in a commercial bank suggested that;

To address the practice of money laundering, both the government (FRC) and financial institutions should share information. We do it unofficially and this is where maybe you have a suspicion of something or you want to even alert your friend in the other bank to be careful. So, I think we should have a specific official channel for information sharing, which again, should be anchored on the data protection regulations. So that again, you don't breach customer confidentiality, but if it becomes a law for government and financial institutions then it makes it easier. (Interview, 1)

Lastly, another participant, a scholar, AML expert, expressed her views thus;

The government and the private sector need to find a way to collaborate. Because also the private sector is feeling, "Look, we are being made gate keepers by the government. It is not our work. It is the government work. They're the ones trying to prevent the crime." But proceeds of crime is one of those things that different entities need to work together. It cannot be one entity working on its own or telling one entity do this. It is actually all of them coming together and saying, this is how we are going to work together. (Interview, 4)

Closely related to information sharing is domestic cooperation AML strategy which will be examined next before evaluating internal controls which are ranked among the highest in Table 18 above. In evaluating domestic cooperation, other related initiatives that will be explored are the multi-agency approach, AML round table meetings and fragmented AML enforcement.

## **6.8 Domestic Cooperation –Police, Prosecution and Judiciary**

### **6.8.1 Effectiveness – Investigation, Prosecution and Punishment**

Again, respondents were asked on a scale of 1 to 5 where 1 is not very effective and 5 is very effective, to rank the effectiveness of investigation, prosecution and punishment of offenders as a tool in minimising money laundering. Responses received are documented in Table 23 below, which reveal that it is only 27% respondents who ranked these tools as being “*very effective*”. Second, 16% respondents rated the tools at 4 whereas 22% ranked them at 2 and 12% at 1 – “*not very effective*” respectively. The mean score for the tool was 3.2, which was the second lowest.

**Table 23**

*Effectiveness – Domestic Cooperation*

<b>Scale</b>	<b>N</b>	<b>%</b>
1	8	12
2	14	22
3	15	23
4	10	16
5	17	27
<b>Total</b>	<b>64</b>	
<b>Mean Score</b>	3.2	

An analysis of this data shows that there are challenges in investigation, prosecution and determination of money laundering cases in the judiciary. In support of this argument, the previous chapter on AML policing institutions clearly demonstrated that there is poor collaboration, coordination and information sharing between the government agencies responsible for policing money laundering. It was noted that these agencies do not work in harmony and are engaged in turf wars, blame games and competition which undermines the fight against money laundering. It was illustrated in detail that their roles should be complementary and facilitative rather than attempting to outdo each other. Nevertheless, an AML investigator had the following suggestions on prosecution and punishment;

The government institutions, first of all, should ensure these suspects of money laundering are heavily fined, their cases are prosecuted to due conclusion. The Proceeds of Crime and Money Laundering Act (POCAMLA) provides heavy fines, but at the same time you find that some of these cases of money laundering they drag in court or they take long time before they are concluded. And during this process, maybe the suspects are disposing off their properties and you may end up with nothing to recover at the end of the day. That's what I mean with the cases to be going to final conclusions. (Interview, 10)

These sentiments from AML investigator were supported by a risk and compliance officer of a commercial bank who stated that;

Regarding money laundering, it is the enforcement which is a challenge because the laws and regulations are there. Secondly, the assets recovery authority needs to, in my view, be firmed up so that it can take more action in regard to recovering proceeds of crime, basically assets that have been gotten through money laundering and illegal activities. From the judicial system, I think we need to see more prosecutions on issues of corruption, issues of financial crime. (Interview, 13)

### **6.9 Multi – Agency Team (MAT) Approach**

As previously noted, another significant issue that emerged from the interviews is the creation and effectiveness of the Multi-Agency Team (MAT) in fighting economic crimes such as money laundering in Kenya. The MAT is not anchored in law and was created out of a Presidential directive in November 2015. This was after the task force formed to undertake a thorough review of the legal, policy and institutional framework for fighting corruption in Kenya made several recommendations. One notable recommendation was the lack of proper coordination and duplication of efforts among various agencies thus making the investigation and prosecution of economic crimes – corruption, money laundering etc cases difficult. Specifically, it was noted that the lack of synergy and inter-agency cooperation among law enforcement agencies was compromising the fight against corruption, economic crimes such as money laundering and other related offences.

Illustrated below is the membership of the MAT.

- Ethics and Anti-Corruption Commission (EACC)
- Office of the Director of Public Prosecutions (DPP)
- Directorate of Criminal Investigations (DCI)
- National Intelligence Service (NIS)
- Financial Reporting Centre (FRC)
- Asset Recovery Agency (ARA)
- Kenya Revenue Authority (KRA)
- Office of the President (OP)

The essence of the MAT is to ensure that corrupt individuals have no leeway to escape when caught. All agencies go for the culprit simultaneously, for instance: the DCI and EACC will conduct the investigations, the police would arrest, the KRA will go after taxes and revenue, the ARA/EACC will trace, identify, freeze and preserve or recover assets. Therefore, this would corner the culprits and ensure they cannot run. For its effectiveness, the MAT enjoys support and good will from the government, donors and international agencies. The MAT has been largely successful in recovering and forfeiture of unexplained assets. However, the biggest challenge facing it is the lack of legal framework and hence the legality of some MAT joint operations are challenged by culprits in court. Thus, there is need to anchor MAT in law to protect it from any external influences like change of government (Nyaga, 2017, Office of the Attorney-General (AG), Kenya). An asset forfeiture specialist who is also a law enforcement officer and is familiar with the operations of the MAT noted:

As constituted, the multi-agency team (MAT) assisting in preventing money laundering is formed between the KRA, EACC, ARA, DCI and NIS, chaired by the Attorney General. This institution, as it is, has been operationalized. It puts us together, the investigative agencies so that what ARA is doing is known by the other agencies. In other words, when the team meet, they share information about investigation cases that they are handling. Thereafter the team strategizes and delegates or allocates cases to various teams who are tasked to give a report every week on the progress. Since this is a high-level decision-making body, we'll always give the report, and we are all at par – each agency knows what the other agency is doing. Prior to the formation of the MAT, there was duplication because several agencies would be investigating the same person on similar cases due to lack of sharing of information. (Interview, 5)

Another AML investigator, who is a member of the MAT highlighted challenges facing this initiative stating that;

To address the practice of money laundering, there's an approach that our nation is taking known as the multi-agency team (MAT) approach. This is where different officers from different agencies conduct investigations as a team. I'm part of a multi-agency team. But in my view, it's not working as it should be working because first, there are no legal structures or framework for working. I say so because you find in a situation where I'll pull the string where it fits me well and the institution that I represent is not blamed. Secondly, coming from different government agencies with our different backgrounds, there are issues of motivation (remuneration). We are motivated by different institutions differently. So I'll feel that you are at the end of the day, you are motivated more than me, why should I go an extra mile like you are doing? You see there's that inequality. Thirdly, the MAT approach from experience, it's a reactive kind of strategy. It should be proactive and well-structured. As the multi-agency team, take the officers to a training institution, train them together. Emphasize on the different roles that each agency should play so that there should be harmony. But in the current situation, I'm not comfortable working with this team, there is no that harmony. (Interview, 14)

### **6.10 AML Round Table Meeting**

Closely related to the multi-agency team is another forum which brings together financial sector stakeholders with the aim of creating awareness on AML issues. It also trains reporting entities, law enforcement authorities and personnel in the FRC on AML issues. The *Round Table* is now a national forum for information sharing, developing common approaches to issues relating to money laundering and promoting desirable policies as well as standards. It draws membership from the EACC; Office of the AG; DPP; NIS; KRA; CBK; ARA; Insurance Regulatory Authority (IRA); DCI; banks and mobile money service providers (Nyaga, 2017, AG's Office).

### **6.11 Fragmented AML Enforcement**

As was noted in the AML policing institutions chapter of this thesis, several law enforcement agencies are involved in the investigation of money laundering matters such as the EACC, DCI, Banking Fraud Investigation Unit (BFIU) and so on. When interviewed, some participants were concerned that the work of these agencies is duplicated and hinders effective investigations to be conducted. In this connection a participant, an AML consultant reported that,

We also have a challenge in Kenya because of our multi-disciplinary investigation arms. Because, for example, should there be a matter on a PEP reported by a bank, a suspicious activity report is raised, we find that the EACC will review that report. The DCI will review that report. The BFIU will also review that report. Because these law enforcement agencies sometimes do not speak to each other, you will find that each of these organizations visits the bank on separate times on the same investigation, which then results in the bank,

either giving information to the first investigator. Later, another investigator comes through and evidence is therefore interfered with in this matter.

There were conversations around the law enforcement coming together and building a taskforce that will deal specifically with money laundering matters. However, this has still not been established and we are still finding multifaceted investigations within the same matter. This therefore creates many handles and the effectiveness of the investigation and the prosecution is therefore hampered with. Hence by the time the matter is getting to the Director of Public Prosecutions (DPP), either the law enforcement agency does not have enough evidence or that evidence and the integrity of the process has not been managed well. Therefore, the case collapses on technicalities because prosecuting such a matter becomes difficult. It would be more effective if a taskforce was created, banks will liaise specifically with one entity when it comes to a certain matter – avoiding the duplicity and expending of resources unnecessarily. (Interview, 12)

## **6.12 Internal Controls**

### **6.12.1 AML Policies and Procedures**

As indicated in Table 18 above, internal controls, which are ranked number 3, are among the most effective tools for reducing money laundering in the financial services sector. Accordingly, these tools are to be discussed in this section. In the literature review of this study, it was noted that the management of a financial institution is legally required to establish AML measures to address potential money laundering risks. In this regard, respondents were asked to indicate the appropriate policies and procedures which are generally undertaken by the board of directors and management of the organisation they work for.

Responses received are documented in Table 24 below. An analysis of this data indicates that over 98% financial firms have initiated internal controls to mitigate money laundering risks. Second, 89% firms ensure that they cooperate with investigation agencies. Third ranked tool at 84% was to train staff on proper identification of customers. Fourth, which was to train staff on identification of source/use of funds, scored at 82%. Fifth at 80% was to report suspicious transactions/activities to regulator. Participants indicated that financial institutions monitor and report suspicious transactions or activities to the regulator to address the practice of money laundering. Training staff on identification of suspicious transactions and in the effective prevention and detection measures were both rated at 79%. Moreover, obtain/maintain customer records and “Other” AML measures were rated at 77% and 8% respectively.

Respondents who selected “Other” were requested to be specific and “free text responses” received are demonstrated below;

- Designate compliance officer who run day to day activities relating to AML matters
- Conduct risk assessment
- Informally collaborate with other financial institutions. There is a lot of exchange of information among banks. If they know a potential money launderer they talk to each other. Time for FRC to formalize this information sharing.
- Carry out audits on the AML program

**Table 24***AML Policies and Procedures*

Rank	Tool	N	%
1	Initiate internal controls to mitigate money laundering risks	60	98
2	Cooperate with investigations agencies	54	89
3	Train staff on proper identification of customers	51	84
4	Train staff on identification of source/use of funds	50	82
5	Report suspicious transactions/activities to regulator	49	80
6	Train staff on effective prevention and detection measures	48	79
7	Train staff on identification of suspicious transactions	48	79
8	Obtain/maintain customer records eg. passports/ID	47	77
9	Other	5	8

**6.12.2 Effectiveness - AML Policies and Procedures**

In like manner, on a scale of 1 to 5 where 1 is not very effective and 5 is very effective, respondents were asked to rate AML policies and procedures as preventative tools for money laundering in financial institutions. An analysis of data in Table 25 below illustrates that though 2 respondents did not answer this question, all the others indicated that these tools were effective in varying degrees. Thus, 26% rated them at 5 (“*very effective*”) followed by 44% who ranked them at 4. Also, 3% respondents rating was 2 and there was no respondent who ranked them at 1 – “*not very effective*”. The mean score for these tools was 3.9.

**Table 25***Effectiveness – AML Policies and Procedures*

Scale	N	%
1	0	0
2	2	3
3	17	27
4	27	44
5	16	26
<b>Total</b>	<b>62</b>	
<b>Mean Score</b>	3.9	

These positive ratings were supported by an experienced AML investigator who stated that;

On effectiveness of internal control procedures some are effective because then they can be able now to monitor what is happening in the accounts of the customers. They can be able to pick those suspicious transactions or unusual transactions, because there are those thresholds which are set for a particular banking institution in line with Proceeds of Crime and Anti-Money Laundering Act (POCAMLA). Therefore, anything unusual, the systems can be able to pick it and when it picks it, the compliance department is able to review that transaction and decide whether it's genuine or suspicious. (Interview, 10)

In like manner, a senior manager, risk and compliance, commercial bank noted that in internal controls, they have three lines of defences, namely:

First line is the staff members, front office there. The tellers. Those ones who are doing the transactions, opening accounts, who have been trained to identify certain trends. Number two, we have risk in the second line of defence. Us, in risk and compliance, we work with the first line to develop these controls to ensure money laundering does not take place. Third line of defence is internal audit. Then they come to test the controls to see whether they are adequate, they are working, any additions should be added, things like that. (Interview, 6)

Equally, a manager responsible for legal and compliance in an insurance firm cited the internal controls that are in place in his organisation and remarked that;

We have various internal controls. There is approvals to be made, there is the screening that is conducted, there is the reviews that are done. There are different levels of approval, there is a committee that sits if there is an instance of we wish to decline or discontinue certain relationships with certain clients. There is a governance structure about it. There's then the cascading of responsibility at different levels. (Interview, 11)

A MRLO working in the same insurance company explained that;

In terms of internal control procedures, for every department, we have what we call proposed process design authority (PDAs), and it details the steps say, for example, whether it's underwriting or finance. All the steps that need to be followed when processing, whether it's claim or underwriting new business. So all these have been documented and that's our control. The PDAs also have what we call the risk and control matrices, which speak to the PDAs and they highlight the different kinds of risks within each process. These processes actually include AML. (Interview, 9)

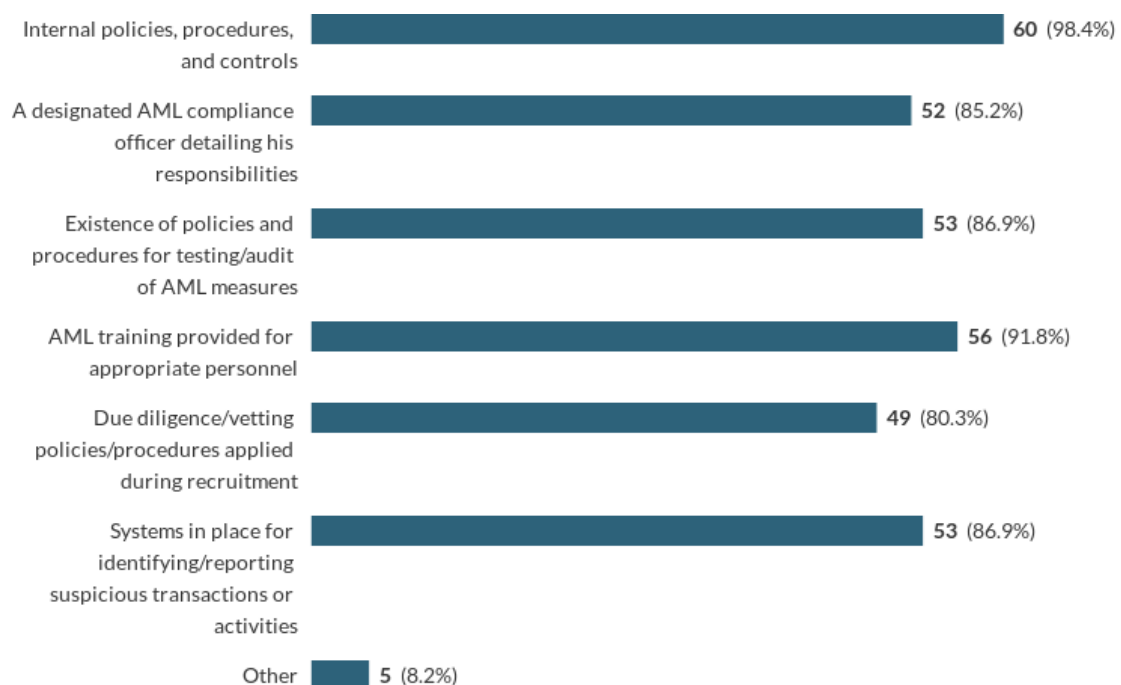
### **6.12.3 AML Compliance Programme**

Again, as was pointed out in the literature review chapter of this research study, financial institutions are required to have other effective internal control measures such as the AML compliance programme to reduce money laundering. In this regard, respondents were asked to select the key components of an effective AML compliance programme that are in their organisations. Responses received are detailed in Figure 15 below. Over 98% respondents selected “internal policies, procedures, and controls”, 92% selected “AML training that is

provided for appropriate personnel” and 87% selected “systems in place for identifying/reporting suspicious transactions or activities”. Similarly, “existence of policies and procedures for testing/audit of AML measures” and “systems in place for identifying/reporting suspicious transactions or activities” components were selected by 87% respondents in each case. This was followed by 85% respondents whose choice was “a designated AML compliance officer detailing his responsibilities”. “Due diligence/vetting policies/procedures applied during recruitment” and “Other” components were selected by 80% and 8% respondents respectively.

**Figure 15**

*Components - AML Compliance Programme*



Respondents who selected “Other” also provided “free text response” as illustrated below.

- Risk assessment
- Extending training to some business partners on AML
- Provide resources required to put into place an effective compliance programme and independence and cooperation to the MLRO
- Independent assessment of the AML compliance programme
- Establishment and promotion of a compliance culture and individual accountability

#### 6.12.4 Effectiveness - Compliance Programme

Likewise, respondents were asked, on a scale of 1 to 5 where 1 is not very effective and 5 is very effective to rank the effectiveness of AML compliance programmes in eradicating money laundering in the financial services sector in Kenya. As can be seen in Table 26 below, an analysis of the ratings indicates that these compliance programmes seem to be effective in combating money laundering – 21% respondents indicated that they were “*very effective*” with a score of 5 followed by 44% respondents who ranked them at 4. Additionally, 8% ranked them at 2 and none selected 1 (“*not very effective*”). The mean score for this tool was 3.7. Two respondents did not answer this question.

**Table 26**

*Effectiveness - Compliance Programme*

Scale	N	%
1	0	
2	5	8
3	17	27
4	27	44
5	13	21
<b>Total</b>	<b>62</b>	
<b>Mean Score</b>	3.7	

During qualitative interviews a participant who is scholar, AML specialist was of the view that compliance programmes are not effective arguing that,

I don't think our compliance programmes are very effective because we are very good at putting in systems, but ensuring that we do what the system requires, our challenge happens there. That to me is the biggest problem. (Interview, 4)

Further, challenges relating to compliance costs were highlighted by a senior manager risk and compliance of a commercial bank thus;

Compliance aspect in terms of effectiveness is a negative because it becomes a bit too costly for banks. To comply, it's a bit of a cost. There has to be a department or there has to be somebody to run up those reports. There's constant monitoring to be done. There's also, every time there is returns to be filed, there's stationary to be used on the declarations. Those become additional costs. But generally, yes, I'd say they're effective. (Interview, 17)

In conclusion, a senior law enforcement officer, an experienced AML investigator advanced that,

In the banking sector, I'll tell you they have some of the robust internal controls. Most of the banks, have proper internal controls, starting from KYC policy, and now AML policy. Those policies if properly implemented are very effective in controlling money laundering. Here is the challenge, financial institutions are doing business and their number one priority is to make profits. So anything that would be curtailing the institution from making profits, will be regarded as negative such as reporting threshold of cash above Kshs. 1 million (US\$10,000). (Interview, 20)

### 6.12.5 Effectiveness - Compliance Officer

Also, in the literature review chapter of the study, it was illustrated that financial institutions are required to appoint a compliance officer or MLRO to monitor compliance and effectiveness of internal controls. In connection with this, respondents were asked on a scale of 1 to 5 where 1 is not very effective and 5 is very effective to rate the effectiveness of compliance officer in preventing money laundering. Responses received are detailed in the Table 27 below which reveals that the compliance officer is a key player in the fight against money laundering in the financial sector. Respondents who indicated that the compliance officer was “*very effective*” and rated him at 5 were 33% while those who rated him at 4 were 39%. Other 8% ranked him at 2 and none at 1 “*not very effective*”. The mean score for compliance officer was 3.9.

**Table 27**

*Effectiveness – Compliance Officer*

<b>Scale</b>	<b>N</b>	<b>%</b>
1	0	
2	5	8
3	12	20
4	24	39
5	20	33
<b>Total</b>	<b>61</b>	
<b>Mean Score</b>	3.9	

A commercial bank manager responsible for compliance and risk illustrated the role of the MLRO and stated that;

The money laundering reporting officer (MLRO) also contributes a lot to those internal controls. You will find like if it's product development, the MLRO is there so that they can see there's any weaknesses that could expose us. If it's cash transactions, that's an internal control within the branches that maybe a teller cannot receive more than Kshs.200,000 (USD 2,000) without validation, the MLRO will be involved in that process. If it is a new account, I may not accept a cheque until maybe a search has been done for that company. (Interview, 1)

### 6.12.6 Effectiveness – AML Risk Assessment

Risk management was explored in the literature review chapter of this study, hence AML risk effectiveness is to be considered here. As noted above, in the first research question of the survey questionnaire on identification of AML preventative strategies and tools through “free text responses” a respondent added “*risk assessment*” as an AML preventative tool. Further, on risk assessment, respondents were asked on a scale of 1 to 5 where 1 is not very effective and 5 is very effective to rate AML risk assessment undertaken with specific customers and transactions as a preventative tool for money laundering in the financial services sector. The results are documented in Table 28 below which show that that though 2 respondents did not answer this question, all the other 62 illustrated that this tool was effective in varying degrees. Consequently, 26% respondents rated the tool as “*very effective*” – 5 followed by 39% who ranked the same at 4. Finally, 11% rated the tool at 2 and it was encouraging that there was no respondent who rated it 1 (“*not very effective*”). The mean score for this tool was 3.7.

**Table 28**

*Effectiveness – AML Risk Assessment*

Scale	N	%
1	0	0
2	7	11
3	15	24
4	24	39
5	16	26
<b>Total</b>	<b>62</b>	
<b>Mean Score</b>	3.7	

### 6.13 Vetting and Training of Staff

According to Table 18 above, vetting and training of staff which is to be evaluated in this section is among the highest ranked AML strategies that follows internal controls. Also, as was noted in the literature review of this thesis, the importance of staff training to curb money laundering was considered in detail. In addition, the purpose of pre-employment screening, which is to ensure that financial institutions recruit staff of high integrity, ethical and professional standards was also discussed. Below is an evaluation of the effectiveness of this AML tool.

#### 6.13.1 Effectiveness - Vetting and Training of Staff

In the survey questionnaire, respondents were asked on a scale of 1 to 5 where 1 is not very effective and 5 is very effective to rate vetting (pre-employment screening), lifestyle audit and AML training as a preventative tool for money laundering in financial institutions in Kenya. Responses received from 62 out of 64 respondents are illustrated in Table 29 below. An analysis of this data is encouraging in that 26% respondents ranked these strategies at 5 (“*very effective*”) and 34% rated them at 4. Similarly, 10% ranked them at 2 and 3% at 1 (“*not very effective*”). The mean score for this tool was 3.6. Two respondents did not answer the question.

**Table 29**

*Rating – Vetting and Training of Staff*

Scale	N	%
1	2	3
2	6	10
3	17	27
4	21	34
5	16	26
<b>Total</b>	<b>62</b>	
<b>Mean Score</b>	3.6	

Here is an illustration of comments made by a senior manager, risk and compliance of a commercial bank, on the nature of training offered in the sector to prevent money laundering.

We use training as a tool for preventing money laundering. We train every single staff member, especially the front office staff, on how to identify and detect money

laundering activities. Like for the high main risk category customers, they even do advanced media search. They go online, they check whether there has been any news about you that you have been involved in this scandal, this scam. If all those findings come and you are there, then we don't open an account for you. We just tell you, as per our policy, we are not allowed to open an account for individuals who have been involved in money laundering -- especially at that point you've stopped it. (Interview, 6)

The same manager added that;

We do on-site training, whereby we go to the branches and there is another one that is an online training, they do e-learning where we train you how to identify the red flags. Number one, identifying the customer, the industry they are in. Number two, identifying the trend of the transactions. Customers here in the industry, deposits or withdrawals of amounts above US\$10,000 equivalent, they have to be reported to FRC. What they normally do, they deposit just below we've seen Kshs.900,000 (\$9,000). We even train, if you see that, contact risk. (Interview, 6)

An experienced AML analyst too remarked that;

Training is basically a mandate done by the bank, and it's a requirement by law that at least annually the staff should be trained. So, banks by themselves have the responsibility of training their staff on what to look out for when receiving payments and ways in which they can identify suspicious transactions in an account, be it client facing staff or back-office staff. (Interview, 7)

It was also observed in the literature review of this study that FRC is legally required to offer training to financial institutions on an annual basis. Again, a commercial bank manager responsible for risk and compliance illustrated how this is conducted.

The FRC give the banks training at least once per year. In 2020, they organized two sessions, one which they themselves conducted and then another one with a different supplier. They also collaborate with the World Bank to give trainings, or with [inaudible] FATF. But at least once a year, and that training is both for CEOs of all the banks and all the MLROs. The most recent one for last week was online. So the first session was for CEOs, which lasted about one and a half hours, and then the rest of the day was for the MLROs. It's very encouraging. Positive steps have been taken for sure. (Interview, 1)

However, a senior AML investigator working in cyber-crime investigation unit was concerned by the lack of capacity of the unit to handle increased cases of cyber-crime in Kenya stating that,

We have a cyber-unit here, how many officers have been trained? Less than 30, and in this country, we're talking about a population of 45 million. Yes. The lab is only here at the Directorate of Criminal Investigation Headquarters (DCI), covering the whole country. Any person who is investigating an offense which is committed in Turkana (over 600 kilometres by road), Mombasa (500 kilometres by road), in terms of cyber-crime, they have to come to this headquarters. We as a country need to invest more in

terms of capacity building when it comes to fighting this digital currency and cyber-crime because it is not only on the issues of the banks and also in the investigation departments, also in the prosecution and also the judiciary. Because when we take our cases to the judiciary, they have to understand how this thing (money laundering) is being done, it is being committed. When you take cases there it is as if you are talking Latin language, and even the prosecutors are not aware on how to prosecute these matters. (Interview, 8)

#### 6.14 Record Keeping

As shown in Table 18 above, after vetting and training of staff, proper record keeping was also ranked as an important AML tool. Furthermore, in the literature review of this study, it was demonstrated that to control money laundering, financial institutions have a legal obligation to establish and maintain proper records of all transactions conducted. Below is a question that was posed to the respondents in the survey questionnaire on the effectiveness of this tool.

##### 6.14.1 Effectiveness – Record Keeping

“On a scale of 1 to 5 where 1 is not very effective and 5 is very effective, how would you rate the establishment and maintenance of customer records as a tool for fighting the practice of money laundering in the Kenyan financial services sector?” As illustrated in Table 30 below, affirmative responses were received for this tool from all 64 respondents – 33% selected the tool as “*very effective*” with a rating of 5 followed by 45% with a ranking of 4. The remaining 3% and 2% rated the tool at 2 and 1 (“*not very effective*”) respectively. The mean score for record keeping was 4.0, which was the second highest. Data analysis of the tool tends to show that proper record keeping is an effective tool in reducing money laundering in the financial sector.

**Table 30**

*Effectiveness – Record Keeping*

Scale	N	%
1	1	2
2	2	3
3	11	17
4	29	45
5	21	33
<b>Total</b>	<b>64</b>	
<b>Mean Score</b>	4.0	

The importance of proper record keeping is illustrated here by a branch operations manager of a commercial bank.

One of the means that financial institutions use to prevent money laundering is instituting a strict documentation to support any financial transaction. Where documents are not sufficient or where a client fails to provide the necessary documents to support any transaction, depending on the amount. Then we have to report them to the Financial Reporting Centre so that they're able to monitor the activities of the account. (Interview, 19)

The next strategy to be considered which was rated the lowest in Table 18 above is confiscation and forfeiture of assets.

### **6.15 Asset Recovery**

Confiscation and forfeiture of assets AML strategy was examined in detail in the literature review chapter of this study and it was pointed out that this is one of the most powerful tools that can be used to fight the crime of money laundering.

#### **6.15.1 Effectiveness – Asset Recovery**

In connection with asset recovery strategy, respondents were asked on a scale of 1 to 5 where 1 is not very effective and 5 is very effective, to rank the effectiveness of the strategy as a tool in countering money laundering. Data in Table 31 below illustrate that 30% respondents ranked the strategy at 5 – “*very effective*”, followed by another 30% who ranked the same at 4. However, 5% respondents rated the strategy at 2 and 12% ranked it at 1 (“*not very effective*”). The mean score for this strategy was 3.5. An analysis of these scores are indicative of asset recovery being an effective tool for fighting money laundering in the financial sector. This too was supported by an AML consultant who stated that;

Confiscation and forfeiture of assets is important because it makes financial crime not profitable. If people know that if they end up stealing the money, through whichever predicate crime, whether through corruption, or whether drug dealing and they know the money is going to be taken from them, they know that it is not a very profitable venture. (Interview, 2)

**Table 31**

*Effectiveness – Asset Recovery*

<b>Scale</b>	<b>N</b>	<b>%</b>
1	8	12
2	3	5
3	15	23
4	19	30
5	19	30
<b>Total</b>	<b>64</b>	
<b>Mean Score</b>	3.5	

Further, regarding asset recovery, an asset forfeiture specialist stated as follows:

Preservation, confiscation and forfeiture of assets is a deterrent in nature. The whole concept of forfeiture proceedings is to have the property handed over to the State, which is a deterrent measure. So that those others of the same mind will not do the same. And that is the essence of forfeiture because once the properties are taken back to the State people will learn to know, "If I do it, this property will be taken by the State. So it will be useless to acquire property illegally. Recall initially before the Proceeds of Crime and Money Laundering Act 2009, we used to convict people, but once they got to serve the prison sentence, they come back to enjoy the proceeds of crime. Significantly, forfeiture is based on a principle that crime should not pay. (Interview, 5)

In like manner, a MLRO of an insurance company noted that:

Confiscation and forfeiture of assets has greatly contributed in reducing this issue of money laundering. If you as an individual your assets are confiscated because of money laundering, it reduces that morale of engaging in money laundering. It deters you from engaging in money laundering, because you don't see the need or you don't see its benefit. Because by the end of the day, even if I acquire this much it'll be confiscated. (Interview, 9)

In addition, a senior AML investigator charged with investigating money laundering cases remarked that;

Nowadays the best way of fighting the crime of money laundering is to get back what has been stolen. When we are getting it back, we are getting the total amount, in addition to the interest which is taken back to the government, for the usage by the government for the development of this country. (Interview, 8)

However, a scholar, AML specialist argued that this tool faces many challenges thus,

Asset recovery has not been properly enforced because looking at the jurisprudence, it is still at the preliminary stages. Very few, I think maybe one or two cases and some

were as recent as end of last year (2020), where we now have confiscation orders being granted by the courts. Yet, when you talk to the agencies that are involved in the asset recovery process, most of them will tell you, there are very many challenges they are facing in terms of investigative skills, because unique investigative skills are required. My view is that if forfeiture of assets was actually enforced properly and such forfeitures were made public, it will actually serve as a warning to people. Because as it's known in practice, what people would do, you receive proceeds of crime, but what do you do? You hide it to say under your wife, create companies where you make your children directors, you make your house help a director or something. (Interview, 4)

## 6.16 International and Regional AML Initiatives

Other significant measures that featured in the questionnaire are the global and regional AML initiatives which are to be evaluated here. As previously pointed out in the literature review chapter of this thesis, money laundering is a global phenomenon and no one country can fight it alone. Thus, a concerted effort is required from the international agencies to counter this practice.

### 6.16.1 Effectiveness – Global and Regional AML Initiatives

Regarding these initiatives, respondents were asked on a scale of 1 to 5 where 1 is not very effective and 5 is very effective, to rank the effectiveness of regional and international collaboration as a tool in regulating money laundering. Responses received reveal varying degrees of effectiveness as documented in Table 32 below. They show that these tools seem to be working given that 16% respondents ranked them at 5, “*very effective*” and 37% rated them at 4. It was only 6% respondents who rated these initiatives at 2 and 2% at 1 (“*not very effective*”). The mean score for this strategy was also 3.5. These findings were confirmed during qualitative interviews as illustrated below.

**Table 32**

*Effectiveness - Global and Regional AML Initiatives*

Scale	N	%
1	1	2
2	4	6
3	25	39
4	24	37
5	10	16
Total	<b>64</b>	
Mean Score	3.5	

For instance, a senior manager, risk and compliance of a commercial bank observed that;

In my view, the international bodies, are effective. It is them who pushed for the country (Kenya) to have the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009. Remember, initially, there was no act or legislation for money laundering, even if you would take somebody to court, it was hard to charge them. FATF pushed them. Two, they have that blacklist of theirs. They review countries. If they see that your framework for AML is weak, you're put on a blacklist – 'Name and Shame' list. Once on that black list, there are sanctions. You'll find other countries will not want to engage in trade or business with that particular country. Three, correspondent banks will not want to partner with banks in that country that has been blacklisted. (Interview, 6)

In like manner, an AML consultant supported these initiatives stating that,

I would say that the most effective regional and global initiatives is the international pressure. I am going to give you a very good example, correspondent banks. In Kenya, the correspondent banks like CITI bank, JP Morgan, and the rest are feared more than the Central Bank of Kenya (CBK), the regulator. The Kenyan banks fear the corresponding bank more than CBK because they know if they do not have good compliance programmes, they are going to be at risk and they won't to be allowed to clear the US dollars. So, the international pressure is the one that makes the banks to be more effective. (Interview, 2)

On Mutual Legal Assistance (MLA), a senior AML investigator remarked that,

We also have the MLA tool to confiscate the assets and be returned back. A good example is, we recovered gold which was proceeds of crime, which was coming from Tanzania at our airport (Nairobi), and it was confiscated and taken back to Tanzania. So, we have been having a lot of support and especially from the UK in terms of training and asset recovery into their countries and making sure that they have been returned back to our country. (Interview, 8)

A scholar, AML specialist also highlighted implementation challenges facing the initiatives stating that;

International and regional AML initiatives for combating money laundering can be effective, but they're not very effective. One of the reasons for this is that some of these measures need to be tailor made to suit the specific circumstances within which they're supposed to operate. For example, when the FATF makes its recommendations, we need to come and carefully look at these recommendations and say, in Kenya, in Africa, how are we going to implement these recommendations? How best? Because I feel that at times when they create these recommendations, they are considering the European countries. But what about Africa? Our operating circumstances may be different. (Interview, 4)

By the same token, a law enforcement officer with mandate to investigate AML matters expressed concerns relating to executing mutual legal assistance (MLA) and stated that:

For you to conduct an investigation in another country, there must be this issue of MLA which is so complex or it takes a lot of time to receive a response when a request is

made. In other instances, when you go to a country like China, you are not allowed to involve yourself directly in the investigation and have to be accompanied. Likewise, it's not you who is questioning that person directly. You must allow the police in China to do it due to language barrier though the best way to conduct interviews would be on a one-on-one basis. (Interview, 16)

## **6.17 Other Measures for Combatting Money Laundering**

In this section, other issues for regulating and mitigating money laundering in the financial services sector that emerged during interviews and responses received in the survey questionnaire will be considered. These are political will, civic education and public awareness, politically exposed persons (PEPs), enhanced due diligence (EDD), sanctions screening, whistle blowing and cross border cash declarations exceeding US\$10,000. In addition, the social and economic impact of money laundering will also be explored.

### **6.17.1 Political Will**

During qualitative interviews, participants raised the issue of government commitment in fighting money laundering in Kenya. It was suggested that to curb the practice, adequate budgetary resources should be allocated to law enforcement agencies policing money laundering. This include providing sufficient funds for hiring more investigators with AML expertise. Regarding action required from the government to combat money laundering, a senior manager, risk and compliance of a commercial bank suggested that;

To address the practice of money laundering, from the government, we would want to see swift action on individuals who have been reported to the government and Financial Reporting Centre (FRC). Swift action for cases that have been forwarded to them. We'd also wants frequent and timely feedback on what is happening. Because you could report somebody, one year down the line, they still have a bank account, they still operate the account. We do not know; were they cleared that they were innocent, or is it that maybe they compromised somebody and the case files disappeared? So swift action and timely feedback. (Interview, 6)

A scholar, AML specialist, advanced that besides the government funding policing agencies, it should also deal with conflicts among these agencies stating that,

---to improve the fight against money laundering, one, the government needs to own the process by showing the political will, funding the relevant agencies and deal with the conflicts. Because for example, there's is a conflict between the Director of Public Prosecutions (DPP) and the Asset Recover Agency (ARA). If you read the proceeds of crime act, the asset recovery agency is supposed to deal with all asset forfeiture, but at the same time, the DPP is the only organ permitted to prosecute cases. Now you'll find the tussle between the two, ARA wants to be seen to be working. So, at times you'll find that one entity is investigating a case, another entity is investigating a case and instead of working together-- So really you file different matters in court, which now the accused person or the parties involved will use to fight the suit and say, "You see, we are being pursued." Yet, if these entities were brought together in one now working collaboratively, it would help. (Interview, 4)

A case that illustrates the conflict between two agencies mandated to deal with corruption and money laundering matters which was reported in a reputable newspaper in Kenya is presented here. The Deputy President (DP), Kenya is staring at yet another big win in court after the Asset Recovery Agency (ARA) disowned evidence by the Directorate of Criminal Investigations (DCI), which was used to nail him and his Shs.200 million (US\$2m) which was forfeited to the state in June 2022. ARA stated that the money was legitimately acquired income and not proceeds of crime as had been presented in court, which led to the forfeiture decision. In filings in court, a police investigator attached to ARA, stated that ARA never investigated allegations by the DCI that the DP obtained the money fraudulently from state institutions and counties. He added that ARA seized the wealth without conducting its own investigation.

ARA now concedes that the tenders awarded to the DP's companies were not mired in fraud. The investigator stated that ARA conducted its own independent investigation and established that "the companies performed their obligation as per the terms and conditions of the contracts to the satisfaction of the institutions." ARA says it is ready to let the DP off the hook based on a discovery that the wealth is legitimate. ARA, he says, forfeited the money on the basis of inconclusive investigations conducted by the DCI in a separate case that has since collapsed for lack of evidence (Wangui, 2023, January 2. Nation Media). It is to be noted that in late January 2023, the court ruled that the money should be returned to the DP and many stakeholders such as the Law Society of Kenya and human rights organisations are complaining publicly that the withdrawal of this case along with other corruption and money laundering matters are politically motivated.

### **6.17.2 Civic Education and Public Awareness**

Another issue that emerged during interviews was civic education and public awareness as a tool for reducing money laundering. In this regard, an AML consultant argued that,

---we have all these controls and technology being put in place to fight money laundering, but the best thing the authorities can do is the change of the mindset of the people, the culture. That is the key thing, the people themselves. The way they can change the people themselves is through education. When I talk of education, it is not training the banks or training the CEOs. No, no, no, no. Let us go back to the primary school and come up with a curriculum. Let us come up with a course on anti-financial crime, on ethics. That course on ethics is going to deal with the social consequences of corruption. Because if the children start being trained at that level, by the time they get to our age, they will know it is something bad. Just like the way we had HIV. That is how we fought it. We started having classes in Standard Four teaching kids about dangers of HIV. So, I think the key thing to fight money laundering is actually change

of the mind-set. That one can just come through sensitization of the young people who are in primary school, in secondary schools, because they maybe the people who may end up cleaning up the mess in the country. (Interview, 2)

On public awareness, a manager responsible for legal and compliance in an insurance company stated that;

In general, public awareness is necessary, so educational forums should be run by the governmental agencies in bringing in some sense of appreciation of the risks associated with money laundering. (Interview, 11)

Also, a law enforcement officer was of the view that,

CBK, the regulator should be able to educate members of the public about what it means by money laundering. By empowering the public you'll be able to know what's happening on the ground. But CBK is not really empowering the public. (Interview, 16)

### **6.17.3 Politically Exposed Persons (PEPs)**

As was noted in the literature review chapter of this study, to curb money laundering, if a customer has been established to be a PEP, financial institutions have a legal obligation to undertake customer due diligence (CDD) measures before engaging in a business relationship or transaction. CDD is an integral part of KYC. In connection with this, these institutions are required to establish the source of funds involved in proposed business relationship and determine purpose of account and expected volume/nature of account activity. Accordingly, in the survey questionnaire, respondents were asked, on a scale of 1 to 5 where 1 is not very effective and 5 is very effective, to rank the effectiveness of obtaining source of wealth and determining nature of account purpose and activity of a PEP in countering money laundering in financial institutions in Kenya.

The results of this question are documented in Table 33 below which show that 22% respondents ranked these CDD measures at 5 – “*very effective*”, followed by 35% who ranked the same at 4. Moreover, 11% respondents rated these initiatives at 2 and 6% ranked them at 1 (“*not very effective*”). The mean score for these CDD measures was 3.5. An analysis of these scores seem to indicate that undertaking CDD on PEPs can be an effective tool for regulating the practice in the financial sector.

**Table 33**

*Effectiveness – Obtaining Information – PEPs*

Scale	N	%
1	4	6
2	7	11
3	16	26
4	22	35
5	14	22
<b>Total</b>	<b>63</b>	
<b>Mean Score</b>	3.5	

A further question that was posed to the respondents at the end of the survey questionnaire was whether there were any other measures that are in place to minimise the practice. In relation to PEPs, a respondent suggested that,

To fight money laundering and other financial crimes, there is still a lot of work to be done especially focusing on PEPs and shell companies that are involved in massive corruption in the government. The tone should start from the top starting with the executive, legislature and judiciary.

#### **6.17.4 Enhanced Customer Due Diligence (EDD)**

Also, it was illustrated in the literature review chapter of this study, that EDD measures should be applied to persons and entities that present a higher risk to a financial institution. On these KYC checks, again, in response to the last question in the survey questionnaire, another respondent concurred suggesting that to reduce money laundering in the financial sector EDD should be conducted periodically. This too was supported by a participant, a MLRO working in the insurance industry who stated that:

Due diligence is actually applicable across the board. So, you have your CDD and you have your EDD. The EDD is only for high-risk customers. The continuous due diligence is just for everyone, it's across board. For EDD, it goes a notch higher asking where your funds are coming from? Very high-level detailed questions. It digs further into the politically or high-risk clients. When undertaking CDD or EDD, it's mostly KYC. We want to know whom we're dealing with, who our clients are, what is our client base? It gets very detailed - that way we can be able to, if there are any

irregularities spotted, especially during transaction monitoring, we are able to actually report it to the relevant authority. (Interview, 9)

Likewise, on EDD, a senior manager, risk and compliance of a commercial bank commented that;

For high-risk customers, we do enhanced due diligence (EDD). This individual may not necessarily be a money launderer, but he works in an industry or a company or department or does business that is prone to be abused by money launderers. Once you are in that category, we do EDD. You fill the form. In fact, to open an account, you have to come personally. We see you, interview you. You bring all the forms. So, opening the account, the one in charge of the account, the relations manager, has to do call-backs to let's say maybe where you are working or if it is an embassy, just to confirm: so-and-so has brought a passport here. Is it valid? (Interview, 6)

Finally, the same manager was also concerned that there is no PEPs database maintained by the government making it difficult for the banks to undertake EDD. He advanced that:

If the government can develop a database for PEPs, it should be not just the governor (senior political/public official). The wife is also a PEP as well as the children. I am sure the government can get the names of these individuals. It is hard for me. A high-risk customer has opened an account here and I do not even know they are related to governor so and so, or senator so and so. You do not do the enhanced one because you do not know if this individual is actually a PEP. So, if the government could have a database for such, it would make our work very easy. (Interview, 6)

#### **6.17.5 Sanctions Screening and Blacklisting**

Sanctions screening is a control tool used in the detection, prevention and disruption of financial crime and, in particular, sanctions risk. It is an AML control. It assists financial institutions (FI's) with the identification of sanctioned individuals and organisations. It is required for financial institutions for both transactions and customers. Transaction screening is used to identify transactions involving targeted individuals or entities. Customer or name screening is designed to identify targeted individuals or entities during on-boarding or the lifecycle of the customer relationship with the financial institution. Together, transaction and customer screening are designed to form a robust set of controls for identifying sanctioned targets. Keeping up with sanctions screening can protect the financial sector from high-risk individuals leaving room for legitimate customers (The Wolfsberg Group, 2019).

As noted above, in addressing the first research question of the survey questionnaire which relates to identification of AML preventative strategies and tools, through "free text responses" a participant indicated "*sanctions screening*". Again, at the end of the survey questionnaire,

respondents were asked whether there are any other measures for curbing money laundering in the financial sector and one respondent suggested “*blacklists used to automatically block sanctioned persons*” and another one indicated “*Name screening*”. In addition, during interviews, it was also demonstrated by some participants that sanctions screening is a vital tool for controlling money laundering. This is illustrated below by both a senior manager, risk and compliance and a risk and compliance officer working in a commercial bank.

In the bank, we have systems that detect suspected money laundering activities. We have an AML system whereby we have put in rules; it even has blacklists. Such that, when you are coming to open an account and you were blacklisted somewhere and the person at the customer service keys in your name in the system, the systems comes real-time, our AML system won't allow that process to continue. We also have that system at KYC. It scans once you are trying to open an account. It only allows you if you are not in any of the blacklists. It stops. For the bank we have a financial crime solution where these blacklists are uploaded automatically. We have five major lists: We have the UN list; we have the European Union list. We have Her Majesty Treasury list (HMT), US Office of Foreign Assets Control (OFAC) and we have our own internal black list which we get notifications from newspapers, law enforcement and the regulator. These are updated real time. (Interviews 6 & 13)

On the same tool, a manager legal and compliance of an insurance firm stated that,

When screening clients, the screening tool that we use are programmes such as World-Check. These are service providers that provide a screening platform. Using the tool, we screen PEPs, sanctioned persons and persons with adverse media screening notification. Screening is done against known lists such as the UN sanctions list, HMT list and we even have local terrorist lists that are here in Kenya, and also screening against say media screenings, where we have people mentioned adversely in relation to corruption scandals in Kenya. We undertake enhanced due diligence for high risk individuals, which involves verification of the identification documents, verification of proof of the source of the funds and to proof of residence. Sanctions screening have been effective towards reducing instances of money laundering, the sanctions lists have helped entities avoid transacting with known individuals. I'd say it's truly a deterrent. (Interview, 11)

#### **6.17.6 Whistle Blowing**

In the survey questionnaire, respondents were also asked on a scale of 1 to 5 where 1 is not very effective and 5 is very effective to rate whistle blowing as a strategy for preventing money laundering in the financial services sector in Kenya. As illustrated in Table 34 below, an analysis of the ratings show that whistle blowing can be an effective tool in combating money laundering – 24% respondents rated whistle blowing as “*very effective*” with a score of 5 closely followed by 25% who rated the same at 4. Another, 21% ranked them at 2 and 5% indicated that this tool was “*not very effective*” and gave them a 1. The mean score for this tool was 3.4. One respondent did not answer this question. Also, in the last question of the

survey questionnaire, a respondent suggested that “*whistle blowing is an important tool that can be used to avoid a financial institution being used as a conduit for money laundering*”.

**Table 34**

*Effectiveness- Whistle Blowing*

Scale	N	%
1	3	5
2	13	21
3	16	25
4	16	25
5	15	24
<b>Total</b>	<b>63</b>	
<b>Mean Score</b>	3.4	

#### **6.17.7 Cross - Border Currency Reporting**

In the literature review chapter of this study, it was demonstrated that to reduce money laundering one of the legal tools that can be used is cross-border cash declaration and seizures of over US\$10,000. In the light of this, respondents were requested to rate on a scale of 1 to 5 where 1 is not very effective and 5 is very effective the importance of cash declaration as a strategy for preventing money laundering in Kenya. The data below in Table 35 details the responses received which show that 27% respondents scored the tool at 5 – “*very effective*” followed by 40% with a rating of 4. Likewise, 3% rated the tool at 2 and 1 (“*not very effective*”) respectively. The mean score for the tool was 3.8.

**Table 35**

*Effectiveness – Cross-Border Currency Reporting*

Scale	N	%
1	2	3
2	2	3
3	17	27
4	25	40
5	17	27
<b>Total</b>	<b>63</b>	
<b>Mean Score</b>	3.8	

Here is a case that illustrates the importance of the cash declarations - US\$ 2 million cash seized at the airport in Nairobi, Kenya last year.

In February 2022, Kenya Revenue Authority (KRA) customs officers based at Nairobi airport intercepted cash US\$2 million (Ksh238m.) from a passenger who had arrived in the country from Bujumbura, Burundi. The money packed as a parcel, was seized following false declaration on the intended destination. Upon arrival, the passenger declared that the source of the funds was a bank in Bujumbura and the recipient a company in Kenya. However, after clearance by customs officers at the airport, the traveller later presented the same funds at the Swissport Cargo shed with different export documents for shipment to Global Services, UK. The documents produced to support the export request were different from those produced on entry into the country. After noting the inconsistencies in information provided by the passenger, KRA invited Assets Recovery Agency (ARA) to assist in investigating the matter as a possible money-laundering attempt. The money was seized and the matter is under investigation (Ouma, 2022, February 17. The Standard Gazette).

### **6.18 Socio - Economic Implications: Money Laundering**

In the introduction chapter of this thesis, the social and economic impact of money laundering was examined in detail. This too was an issue that emerged in qualitative interviews as illustrated below by a commercial bank senior manager, risk and compliance who stated that,

In terms of the economic impact, I think it has its negative impact in terms of investments. If we are known as a money laundering haven, then we won't get investments, may be external investments, foreign direct investment, such maybe in impacted on. Regarding social impact – erosion of moral fabric/societal values. Because again, there are countries that are quite strict in those terms. So, if you come from a country where money-laundering is taken seriously, you won't come and invest in a country where money laundering is the norm. yes. Also, in terms of investments, I don't think money laundered is invested probably in areas where it should give the maximum returns or the best returns. It's only invested for the sake of safety of the money or preserving the money, but not adding more or creating the wealth (Interview, 17)

Equally, an asset forfeiture specialist indicated that;

The impact of money laundering is that the money which ought to have gone to the society, they don't get it as a result of this practice. This translates to poor infrastructure, poor amenities, poor development. In other words, the standard of living is low because you find people are very poor, they have no water, they have no medical facilities, they have no education, there are no schools as a result of this, but the wealth is in the hands of a few individuals. (Interview, 5)

In like manner, a scholar, AML specialist remarked that,

Also look at businesses, honest businesses have been driven out because they cannot keep up with these businesses that may be are dealing with money that is unclean. So, the distortion of the market forces has had a very significant and negative effect on the country as a whole, and on honest citizens who work hard, and even on our social values. As Kenyans, people look at everyone, "*Mheshimiwa*" (Honourable) and they respect you when we see you have money, but no one sits to ask, "But hold on, where's that money from?" We know this person is a clerk. I mean, when we honestly look at this person, their source of income and the things they purport to do with their wealth, don't add up. Children are going to a very expensive school. This person has two or three guzzlers. ----- These are the people we even now want to politically to elevate. (Interview, 4)

## 6.19 Summary – Mean Scores: Effectiveness

**Table 36**

*Summary - Mean Scores: Effectiveness*

<b>Tool</b>	<b>Mean Score</b>	<b>Rank</b>
KYC	4.6	1
Record Keeping	4.0	2
STRs	3.9	3
Policies/Procedures	3.9	3
Compliance Officer	3.9	3
Cash Declarations	3.8	4
Compliance Programme	3.7	5
Risk Assessment	3.7	5
Vetting/Training	3.6	6
CTRs	3.5	7
Asset Recovery	3.5	7
Global & Regional Initiatives	3.5	7
PEPs	3.5	7
Whistle Blowing	3.4	8
Domestic Cooperation	3.2	9
FRC – Information Sharing	2.9	10

## **6.20 Conclusion**

This chapter has evaluated a range of tools and strategies that have been established to regulate money laundering in the financial services sector in Kenya. Before the evaluation, section one illustrated some demographic information of the respondents such as work experience, education, gender, sector representation etc. Section two identified the main tools for fighting the practice and continued with an evaluation of their effectiveness. These are for example KYC, STRs and CTRs. Section three considered in detail information sharing among the main stakeholders responsible for reducing money laundering - FRC, commercial banks, insurance companies, AML policing agencies etc. An evaluation of domestic cooperation was also conducted in this section. The effectiveness of internal controls, including policies and procedures, the compliance programme, training, record keeping, asset recovery and regional and international initiatives were discussed in section four. Finally, in section five other measures for controlling the practice of money laundering were examined – political will, civic education, whistle blowing etc. At the end of the chapter, the social and economic implications of money laundering was discussed. The next chapter will consider conclusion and recommendations of the research study.

## **Chapter 7: Conclusion and Recommendations**

### **7.1 Introduction**

The aim of this research study was to identify the anti-money laundering (AML) strategies and tools for reducing money laundering in the financial services sector in Kenya. The other objectives were to evaluate the effectiveness of these AML tools and explore remedial measures for regulating the financial crime in the sector. The main sources and methods used for laundering illicit funds were also considered. Consequently, in addressing the aims and objectives of this study, this chapter will summarise the key findings that emerged from the literature review, the issues that were raised during interviews and the results of the responses received in the survey questionnaire.

These key findings relate to corruption, Know Your Customer (KYC), information sharing and domestic cooperation which include AML policing agencies, fragmented AML enforcement, multi-agency team approach and AML round table meetings. The other findings that are considered in this chapter are the political will, money laundering enablers such as lawyers, cash intensive businesses and real estate agencies. These significant findings are followed by civic education, public awareness, socio-economic implications of money laundering and ESAAMLG. Alongside most these findings, key recommendations are also highlighted in this chapter. Finally, contribution to literature and knowledge, areas for further research and research limitations will be discussed in the chapter. The first finding to be examined is corruption followed by KYC.

### **7.2 Corruption**

In the study, it was illustrated that one of the key findings is that the main source of illegal funds laundered in the financial sector in Kenya originate from corruption. Citing cases mostly reported in the mass media in Kenya, in this thesis, this practice was noted to occur mostly during the procurement of goods and services by senior public officials in collusion with third parties such as vendors.

### **7.3 Know Your Customer (KYC)**

In this study, it has been demonstrated that, if utilized appropriately, KYC principle is one of the most important tools in combating money laundering in the financial sector. It has a great

impact because this is the first time the financial institution comes to know or understand its customers before opening an account or carrying out a transaction. KYC is like the first line of defence against the money launderer. It prevents illegal cash from being injected in the economy of Kenya through financial institutions. Some of the KYC challenges is opening of bank accounts using forged documents. Nevertheless, to stem the use of such documents a number of institutions have introduced biometric technology which allows customers to use their fingerprints and voice for identification purposes. Moreover, to authenticate identity cards (ID), the institutions use the Kenya government system called the Integrated Population Registration System (IPRS).

#### **7.4 Information Sharing**

It is a legal requirement that to curb money laundering, financial institutions are required to monitor and report suspicious transactions and cash transaction reports to the regulator, Financial Reporting Centre (FRC). In this regard, a key finding in this study is that there is lack of communication between the FRC which is required to analyse and disseminate these reports and other key stakeholders. The study has shown that when these reports are submitted to FRC as required, there is no feedback on action taken. In addition, it has been illustrated that when the reports are received by FRC, in some instances, they are not promptly sent to the relevant law enforcement agencies for appropriate action. It was also indicated that the database that is created and maintained by FRC of these reports is not shared with financial institutions or other regulatory agencies.

Again, on poor communication, the research study reveal that financial institutions do not share information relating to customers who present money laundering risks. For instance, when a customer is involved in a suspicious activity, the bank does not share that information with other banks but instead exit that “dirty” customer from its books. Consequently, that customer has an ample choice and opens an account with another bank since Kenya has more than 42 commercial banks. It was advanced that this happens because these institutions do not have a platform to share such information. Secondly, they do not have regulations protecting them in case they breach customer data confidentiality should they divulge such information to other institutions.

Another challenge that emerged in the study is lack of communication between financial institutions and law enforcement agencies. It was observed that this is due to the confidential

nature governing these institutions operations. In addition, there is lack of a structure for sharing such information. However, it was noted that financial institutions share information with law enforcement agencies on a need basis, as for example, where the client has refused to cooperate.

#### **7.4.1 Recommendation - 1: Information Sharing**

With a view of combating money laundering in the financial sector, it is recommended that the regulator, Central Bank of Kenya (CBK), FRC and the Kenya Bankers Association (KBA), create a proper platform or framework - a specific official channel for information sharing and support this with regulations, rules and guidelines that allows FRC, financial institutions and AML policing agencies to share information. These rules and regulations may be included in the AML legislation (POCAMLA) and should be tailored in such a way that they do not breach customer data confidentiality.

### **7.5 Domestic Cooperation**

#### **7.5.1 Police, Prosecution and Judiciary**

Another finding in this study is that there are challenges in investigation, prosecution and determination of money laundering matters in court. It was demonstrated that there is lack of collaboration, coordination and information sharing between the AML government agencies responsible for policing money laundering. These agencies do not work in harmony and are engaged in turf wars, blame games, conflicts and competition which undermines the fight against money laundering. They are pulling in different directions and undermining each other which is not a conducive environment for countering money laundering in Kenya. Their roles should be complementary and facilitative rather than attempting to outdo each other.

#### **7.5.2 Fragmented AML Enforcement**

This study also, noted that several law enforcement agencies are involved in the investigation of AML matters. This leads to duplicity and waste of resources. In the light of this, in relation to asset recovery, it was found that, in Kenya, the investigatory approach provided under the Proceeds and Anti-Money Laundering (POCAMLA) legislation is a fragmented one which

may lead to buck-passing and lack of co-ordination in investigations. There is no central investigative agency to handle asset forfeiture matters. It involves three different arms of the government that can initiate investigations in relation to proceeds of crime: the Attorney General (AG), the Director of Public Prosecutions (DPP) and the Asset Recovery Agency (ARA). However, these agencies lack the capacity to conduct investigations independently, since the National Police Service is the institution permitted by law and have the requisite manpower, to carry out investigations of all types of crimes in the country.

Additionally, the study has discovered that there is a legal conflict between government agencies responsible for pursuing civil forfeiture orders in court. This is because, as illustrated in the AML policing institutions chapter of this thesis, the general powers of prosecution are granted to the DPP. However, under sections 82 and 90 of POCAMLA, preservation or forfeiture orders relating to proceeds of crime can only be done by the director, ARA.

Regarding cash declarations and seizure, it is a legal obligation that a person entering or leaving Kenya in possession of US\$10,000 should declare the same to a customs officer at the port of entry or exit. In the study, it has emerged that this requirement does have loopholes, which affect its effectiveness. This is because, in case a person fails to declare possession, the customs officer is required to submit completed declarations to the FRC but at the same time to disclose any seizure to the ARA and not to the FRC. Yet, as demonstrated in the study, FRC is responsible for receiving and analysing reports of suspicious transactions in a bid to identify proceeds of crime. This implies that the FRC would have to await a report from the ARA whose primary functions is not to analyse cash declarations or suspicious transactions, but to recover criminal proceeds. Accordingly, this is likely to lead to delays in the FRC and the law enforcement agencies taking appropriate action.

### **7.5.3 Multi – Agency Team (MAT) Approach**

Also, a fundamental finding in this study is the creation by the government of the multi-agency team (MAT) approach as a tool for regulating money laundering in the financial sector. The MAT was created out of a Presidential directive in November 2015 to fight economic crimes such as corruption and money laundering in Kenya. This is a high-level decision-making body but it is not anchored in law. The aim of the task force is to facilitate information sharing and creating a collaborative working relationship among various government agencies tasked with fighting corruption, economic crimes, money laundering etc. This initiative has been largely

successful in recovering and forfeiture of unexplained assets. However, its biggest challenge is the lack of legal framework or structure and hence the legality of some MAT joint operations are challenged by culprits in court.

#### **7.5.4 Recommendation – 2: MAT Approach**

It is therefore recommended that the government set up a legal framework for the mandate and operations of this task force.

#### **7.5.5 AML Round Table Meeting**

Another finding which is closely related to MAT is the creation of the AML round table meeting by the government as a tool to minimise money laundering in the financial sector. This is a forum which brings together financial sector stakeholders with the aim of creating awareness on AML issues. It offers AML training to reporting institutions, law enforcement agencies and staff of FRC. Currently, the initiative is a national forum for information sharing, developing common approaches to issues relating to controlling money laundering and promoting best practices, standards and policies. It draws membership from the Ethics and Anti-Corruption Commission (EACC); Office of the AG; DPP; National Intelligence Service (NIS); KRA; CBK; ARA; Insurance Regulatory Authority (IRA); Directorate of Criminal Investigations (DCI); banks and mobile money service providers.

#### **7.5.6 Recommendation – 3: Domestic Cooperation**

Due to lack of information sharing, coordination and collaboration among the AML policing agencies, it is recommended that the government in consultation with the financial sector and other AML stakeholders create a specialised and dedicated hybrid AML policing unit. Among others, all the members of the MAT, the AML round table meeting, Banking Fraud Investigations Unit (BFIU) and Insurance Fraud Investigations Unit (IFIU) should be incorporated in the unit. After creation of the unit, the staff tasked with investigation and prosecution should all have the relevant skills, training and resources to handle AML matters, including during trial in court. This task force too should be mandated to receive from FRC reports of suspicious transactions for appropriate action and undertake asset recovery of the proceeds of crime. Ideally, the unit should be established under POCAMLA.

## **7.6 Political Will**

In the study, it was revealed that to improve the fight against money laundering there is need for government commitment. In this regard, sufficient and adequate budgetary resources should be allocated to AML policing agencies. These agencies should also be allowed to operate in an environment free of political interference. Regardless, these agencies may lack independence because senior managers and staff of these organisations are appointed by the government which also determines their terms of service. After all, these policing agencies are funded through taxation. Indeed, as indicated above, the government should also strive to deal with the conflicts among these agencies so that there is cooperation, collaboration and coordination in combating the crime of money laundering. In short, as was noted by Hock (2020, p.239), more integrated and holistic approaches to tackle economic crimes (such as money laundering) should be high on the political agenda.

One notable finding in this study which relates to government commitment in curbing money laundering is the recovery of unexplained assets obtained mostly through corruption and money laundering by public officials. This is a deterrent measure and sends a strong message that crime does not pay. However, the recent withdrawal of high-profile corruption and money laundering cases in court by the DPP against top officials of the new government casts a shadow of doubt about the seriousness of the government in fighting these financial crimes.

### **7.6.1 Recommendation - 4: Political Will**

It is recommended that the government allow AML policing institutions to execute their mandate independently and without political interference. This includes the investigative agencies, the prosecution and the judiciary. The government too should provide the institutions with adequate budgetary resources for the execution of their mandate and operations.

## **7.7 NGOs Operating in Kenya**

In the study, it was also found that falsely declared or undeclared cross-border cash transactions by NGOs exposes the sector to laundering proceeds of drug trafficking, theft and terrorism. This is because most of the NGOs operating in Kenya are financed by donations from international sources. Accordingly, these funds may expose the sector to abuse by money launderers seeking opportunity to plan and finance terrorist activities in the country. Moreover, the inadequacy of oversight and supervision by the NGOs Co-ordination Board (NGOCB) inhibit the country's ability to account for utilisation of funds by the NGOs operating in Kenya.

In short, it is difficult to monitor the diversion of funds, if any, to finance terrorist activities or to establish the source of funds. Additionally, it was disclosed that NGOs in Kenya are registered under different laws and others are created as informal associations. This fragmented and uncoordinated registration regime negatively impacts on the ability of the board to effectively monitor and supervise them.

Regarding terrorism financing, most terrorism attacks in Kenya have been conducted by the *Al-Shabaab* terrorist group based in Somalia. For example, as was illustrated in this thesis, funds for the terrorist attack that killed 21 people in 2019 in Kenya were sent from South Africa, laundered in Kenya to finance the terrorist attack and some subsequently sent to *Al-Shabaab* headquarters in Somalia. The country has been vulnerable to this terrorist group because it shares borders with Somalia which hosts that terrorist organisation, has failed government structures and ungoverned spaces which has allowed the group to launch attacks across the border, in Kenya. Additionally, the border between Kenya and Somalia which is roughly 625 miles long is un-manned and porous (NRA, pp.148 & 185).

#### **7.7.1 Recommendation – 5: NGOs**

It is recommended that the regulator, NGOCB in collaboration with FRC enhance their oversight role and ensure that NGOs, as is required by law, improve disclosure of the large amounts of cash that they transact across the borders. In this connection, the board in consultation with FRC should issue guidelines and educate or enlighten the NGOs about their obligations to report the source of funds and suspicious transactions.

### **7.8 Money Laundering Enablers**

#### **7.8.1 Lawyers**

An important finding in the study is that lawyers are not reporting institutions in Kenya and are under no obligation to report suspicious transactions or cash transactions. This is despite their potential misuse when they are undertaking their professional duties as illustrated in this study. Failure to include lawyers as reporting institutions under the POCAMLA is a major loophole in reducing money laundering. It is a vulnerable profession subject to abuse when they are handling large amounts of funds in the client's account as demonstrated in the study.

### **7.8.2 Recommendation – 6: Lawyers**

It is recommended that the legal profession be incorporated as a reporting institution under POCAMLA. Like the accountants, lawyers should have an obligation to report suspicious transactions or cash transactions of above US\$10,000 to the FRC. However, while reporting such transactions to the regulator, consideration should be taken regarding the interference of advocate-client confidentiality/privilege principles.

### **7.8.3 Cash Intensive Businesses**

Another significant finding in the study is that second-hand car dealers, a cash intensive business sector in Kenya though exposed to money laundering are not required to report suspicious transactions or cash transactions under POCAMLA. It was noted that this is one of the most lucrative and vulnerable sector to launder dirty cash given the large amount of cash handled, some of which could be proceeds from corruption, drug trafficking and tax evasion. In addition, there is lack of clear regulations of monitoring the sector.

### **7.8.4 Recommendation –7: Second - Hand Car Dealers**

Regarding this sector, it is recommended that under POCAMLA, requirements be imposed on second hand car dealers – like accountants – to report suspicious transactions and transactions paid in cash that exceed US\$10,000.

### **7.8.5 Real Estate Agencies**

This study has also disclosed that although real estate agencies have AML obligations under POCAMLA, there is weak regulatory oversight, particularly in reporting suspicious transactions. Second, there are several unregistered (“*briefcase*”) real estate agencies which the regulator, Estate Agents Registration Board is unable to monitor their compliance with their reporting obligations. Third, the board does not have the capacity to monitor and ensure enforcement by its members of these obligations. As was demonstrated in the study, perhaps that is why there are some real estate agencies who defraud Kenyans through land transactions.

## **7.9 Civic Education and Public Awareness**

Another crucial finding in the study was to utilise civic education and public awareness as a tool for regulating money laundering. It was indicated that it is necessary to create public awareness on the risks associated with money laundering. This may be through educational forums conducted by the governmental agencies responsible for AML matters. It was also suggested that such awareness could be created by educating young people who are in primary and secondary schools. This is just like the way HIV was prevalent in Kenya in the 1980's and the government reduced it by having a school curriculum about the dangers of HIV from lower classes up to university level.

## **7.10 Socio-Economic Implications**

This study also, found that there were social and economic implications of money laundering in Kenya. In summary, these are lack of adequate foreign investment because of the high levels of corruption and money laundering which translates to low standards of living, poor infrastructure, lack of health or educational facilities, unemployment etc. Second, it decreases the government tax revenue base thereby reducing the capacity of the Kenya government to provide goods and services to its citizens. Third, honest businesses have been driven out because they cannot keep up with firms that may be dealing with illicit funds. Finally, money laundering creates economic distortion because funds laundered are in some cases invested in areas that may not be necessarily profitable. It is invested in areas which are considered secure and can obscure the audit trail.

## **7.11 New Technologies**

This study also discloses that in Kenya, there is no legislation or regulation governing cryptocurrencies such as bitcoins. As noted in the study, this is despite illegal funds being laundered using such currencies in the country.

### **7.11.1 Recommendation – 8: New Technologies**

In view of the above, to check money laundering, it is recommended that the government consider initiating legislation on these digital currencies. In addition, AML policing agencies responsible for preventing this crime and cybercrime be trained and equipped to handle incidents where these currencies are misused for laundering purposes.

### **7.12 The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)**

Finally, in the study, it was found that ESAAMLG is a key regional body responsible for preventing money laundering by implementing the FATF Forty recommendations and nine Special Recommendations for combating money laundering and financing of terrorism. For its effectiveness, ESAAMLG encourages its members to participate in a self-assessment process to evaluate their progress in implementing those recommendations. Such an evaluation was conducted in Kenya and key findings and recommended actions were issued through a mutual evaluation report in September 2022.

Before discussing contribution to literature and knowledge of this study, it is to be noted that on the effectiveness of these strategies and tools, as demonstrated in this thesis, there is limited AML literature available on Kenya. Again, the researcher acknowledges that some of the findings that emerged in the study relate to strategies and tools that are conventionally used in most jurisdictions to disrupt money laundering in the financial sector, as for example KYC. However, new broader findings in relation to the effectiveness of the AML tools in Kenya have been provided in this research study. For example, rivalry and lack of cooperation between AML policing agencies, poor communication between the regulator and other stakeholders, political interference in the fight against money laundering etc. In a developing country like Kenya, the study has for instance demonstrated that by utilising asset forfeiture tool, the government has recovered substantial public funds derived from proceeds of crime. Secondly, in enforcing CDD and legal reporting requirements, the regulator in the NYS case sanctioned some financial institutions and imposed heavy financial penalties for violating those requirements. The researcher considers this as an achievement given that money laundering is a new crime in Kenya and few researchers have conducted research in this AML area.

### **7.13 Contribution to Literature and Knowledge**

As was demonstrated in the introduction chapter of this thesis, the rationale for conducting this research study was because there is very limited literature in the area of combating money laundering in the financial services sector Kenya. There is a knowledge gap given that there is inadequate academic research conducted which holistically identifies and evaluates the effectiveness of AML measures and tools for fighting the financial crime of money laundering in the sector.

Thus, this research study is offering a much deeper, new insight and understanding into the nature, scope and characteristics of money laundering in the financial sector in Kenya. The

research approach too was comprehensive in that besides providing AML tools for regulating the practice of money laundering, it also suggested mitigating measures for reducing the crime in the sector. It entirely covered key AML strategies/tools and their effectiveness in a developing country like Kenya. The study is also offering a much deeper understanding of AML strategies as it is practiced in western world context. Significantly, the study further discovered the main sources and methods of laundering illicit funds - an area where there is lack of research undertaken in Kenya. The findings resulting from the study if effectively implemented can greatly assist in minimising money laundering in the financial sector. Overall, this research study is an original and significant research which has made meaningful new contribution in the AML research area in Kenya. Likewise, as was noted in the introduction chapter of this thesis, the research study will contribute to a body of literature mainly in the field of economic crime, financial crime and economic criminology of a developing country like Kenya. The researcher considers this study to be the first one to explore AML tools and strategies holistically and comprehensively in the financial services sector in Kenya.

## **7.14 Areas for Further Research**

### **7.14.1 Mobile Money Transactions**

It has been demonstrated in this study that mobile money services (m-money) in Kenya are widely used for payment of goods and services. The system is also used to conduct banking activities. However, the sector is vulnerable to money laundering. It was shown that in one case in the study, the m-money system facilitated a terrorist attack which killed 21 people in Nairobi, Kenya in 2019. The suspect engaged in identity theft and registered several accounts with an agent of a mobile service provider. Though the mobile service providers are a reporting institution and are required to detect and report suspicious transactions, due to the susceptibility of laundering illegal money in the sector, this is an area that research should be conducted in the future.

### **7.14.2 Monitoring Diaspora Remittances**

Diaspora remittances are funds which are sent back home by Kenyans who are working abroad in UK, US, Middle East and other foreign countries. These remittances play an important role in the development of the economy of Kenya. For example, according to the regulator, CBK, Kenya is now earning more foreign exchange from diaspora remittances than each of its major exports – coffee, tea and horticulture – in spite of persistent criticism of a poor diaspora policy.

The latest figures from the CBK reveal that the country's diaspora remittances rose by 8.34 % to US\$4.027 billion in 2022, closing in on exports, which brought in US\$5.77 billion worth of foreign currency in the same period. The current administration of President William Ruto states that it is paying more attention to the diaspora and has since established a state department to respond to specific issues of Kenyans abroad (Owino, 2023, January 2023. The East African).

In the study, (Chapter 4) it was illustrated that some of these funds after being stolen from foreign countries are being transferred by fraudsters and money launderers to bank accounts in Nairobi. This is an important sector and future research need to be conducted to prevent these illicit funds from being laundered and injected into the economy of Kenya.

### **7.15 Limitations of the Research Study**

The limitations of this research study were highlighted in the Introduction chapter of this thesis and due to space constraints, the researcher is not going to repeat the same here. In summary, issues relating to difficulties in accessing participants and respondents due to Covid-19 pandemic, lack of conducive interview environment and uncooperative witnesses were considered. Additionally, due to the Covid-19 pandemic limitations, all the interviews and the survey questionnaire were confined and conducted with financial institutions whose headquarters are based in the capital city, Nairobi. It was not possible to visit and conduct research in the other parts of the country where for example, major banks and insurance companies have their branches. Moreover, as indicated throughout the study, the focus of this research was mainly on AML measures for eradicating money laundering in the financial services sector in Kenya. Conversely, the study does not cover other sectors of the economy in the country. This was due to time, space and resources limitations.

Lastly, this research was also constrained by respondent bias. For instance, during interviews, an experienced AML investigator who have worked in law enforcement for over 15 years was very reluctant to disclose information that was within his knowledge. When asked to explain how, in his view sanctions, confiscation and forfeiture of assets contributes to the reduction of money laundering in the financial sector in Kenya, his response was that "I'll request that question to be targeted to Assets Recovery Agency (ARA)". Yet, he works in an institution whose core mandate is also to recover proceeds of crime. Again, when a question was posed about the effectiveness of international and regional AML initiatives in combating money

laundering in the country in his view, he replied that “my knowledge is very limited in that scope” (Interview, 20). However, a participant who worked under him when asked this same question explained the complex challenges that they encounter with mutual legal assistance (MLA) when conducting investigations outside the country.

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## APPENDICES

### Appendix 1

#### Submission: Ethics Review

## Application for Ethics Review – Staff and Postgraduate Students

### 1. Study Title and Key Dates

<b>1.1 Title</b>
Countering money laundering in the financial services sector in Kenya.
<b>1.2 Key Dates</b>
<p>Date of original submission to ethics committee: 25 November 2019  Version number of original submission: A1  Ethics Committee Reference Number:</p> <p>Intended Start Date of Data Collection: February 2020  Expected Finish Date of Data Collection: May 2020</p> <p><i>When resubmitting an updated application (e.g. in response to ethics review, or an application for substantial amendment):</i></p> <p>Date of resubmission to ethics committee:  Version number of resubmitted documents:</p>

### Applicant Details

<b>2.1 Principal Investigator</b>	
Name: Jesse Ngari	Title /Role /Course of study: PhD – Part Time
Department: Institute of Criminal Justice Studies	Faculty: Humanities and Social Sciences
Telephone: +254 722 755 582	Email: <a href="mailto:jesse.ngari@myport.ac.uk">jesse.ngari@myport.ac.uk</a>
Has the principal investigator attended the graduate school (for students) or researcher development programme (for staff) research ethics training session?	Yes on 10 May 2019
<b>2.2 Supervisor (if Principal Investigator is a student or a research assistant)</b>	
Name: Mark Button	Title /Role: Professor
Department: Institute of Criminal Justice Studies	Faculty: Humanities and Social Sciences
Telephone: 023-9284-3923	Email: <a href="mailto:mark.button@port.ac.uk">mark.button@port.ac.uk</a>
Names and email of any other supervisors:	

Professor Mark Button is my first supervisor and therefore responsible for supervising all the research work pertaining to my research study.

Has the supervisor attended the researcher development programme research ethics training session (NB this is not mandatory)?

He has not attended

**2.3 Others involved in the work/research including students and/or external collaborators (name, organisation/course, role in the project)**

There are no other persons involved in my research study.

**Details of Peer Review**

My supervisor has supervised all aspects of the research since I embarked on the research study to date.

**Funding Details**

The research study is self-funded.

**Sites/Locations**

My research project work will take place in Nairobi, Kenya and shall entail interviewing and distributing questionnaires to participants working in commercial banks, other financial institutions, Ethics and Anti-Corruption Commission, Office of the Director of Public Prosecutions, Financial Reporting Centre (Financial Intelligence Unit), Assets Recovery Agency, Savings and Credit Cooperative Societies and foreign currency exchange bureaus. All these individuals have knowledge in money laundering matters.

**Insurance/indemnity Arrangements**

There is no special insurance that have been sought since the researcher is aware that the research study is covered by the University of Portsmouth Public Liability Insurance, subject to ethical approval.

**Aims and Objectives/Hypothesis**

**7.1 Aims**

The aim of this study is to understand the nature, extent, characteristics and impact of money laundering in the financial services sector in Kenya. In addition, a review of the existing anti-

money laundering strategies for combating money laundering in the sector in order to identify its effectiveness shall be conducted.

### **7.2 Primary Objective**

The primary objective of my research study is to evaluate and critique the effectiveness and impact of the anti-money laundering initiatives and explore measures that should be put in place to eradicate the vice in the financial services sector in Kenya.

### **7.3 Secondary Objective(s)**

Another objective of the research study is investigating the sources (eg. drug trafficking) and mechanisms or methods used (e.g cash smuggling) to launder the proceeds of crime.

### **Justification/Summary of Study (no more than one side)**

Ryder (2012, p.1) defines money laundering as the illegal process or act by which criminals attempt to disguise, hide or distance themselves from their illegal activities. These illicit activities are corruption, drug trafficking, human trafficking, organised crime and so on. Money laundering is an emerging and new crime in Kenya and has both adverse social and economic implications. The economy of Kenya, particularly the financial sector, is more developed compared to other Eastern Africa countries. As such, being a comparatively developed financial centre and economy increases the vulnerability of laundering of illicit proceeds through the country (Gikonyo, 2018, p.60). Moreover, the US Department of State (2017) cited by Gikonyo (2018, p.61) claims that Kenya is a transit point for international drug traffickers and trade-based money laundering.

Given the seriousness of this problem in Kenya, this research study is aimed at evaluating the impact and effectiveness of anti-money laundering measures, identifying weaknesses and exploring/suggesting remedial action to be taken for combating the crime in the financial services sector. It is be noted that very few researchers have conducted studies in the field of combating money laundering in the country. It has been a neglected topic and the literature in this field in Kenya is limited. Thus, it is this gap in knowledge which will be addressed by undertaking the research study and the researcher therefore consider the study an appropriate and deserving topic to study now.

The results from this research study will be useful to decision and policymakers, particularly legislators and regulatory authorities whose mandate is to formulate anti-money laundering policies necessary for preventing money laundering in the financial services sector in Kenya. Significantly, the financial sector will find the study useful as a source of knowledge and shall be able to gain a deeper understanding of the nature of money laundering activities in the sector and adopt appropriate proactive strategies or measures to prevent the vice. Information derived from the study will also be useful to government agencies involved with prevention, detection, investigation, prosecution and punishment of offenders convicted of money laundering activities. Lastly, the research study will be useful and beneficial to other stakeholders such as financial

institutions customers, scholars, researchers, professionals and students undertaking studies on money laundering.

## Description of Method/ Protocol and Risks

### 9.1 Please describe your main method(s) or describe your protocol here, although ensure you do not replicate sections 11, 12 or 13.

In the study, with a view of addressing the research questions, mixed methods research design approach will be utilised where both qualitative and quantitative techniques shall be combined or integrated during data collection. A mixed methods design is useful when the quantitative and qualitative approach, each by itself, is inadequate to best understand a research problem and the strengths of both quantitative and qualitative research (and its data) can provide the best understanding (Creswell & Creswell, 2018, p.19).

Convergent mixed methods design is proposed to be used by the researcher as the most appropriate method for addressing the research questions. This is a design in which the researcher converges or merges quantitative and qualitative data in order to provide a comprehensive analysis of the research problem. In this single phase - approach, a researcher collects both quantitative and qualitative data, analyses them separately, and then compares the results to see if the findings confirm or disconfirm each other. A convergent strategy is an efficient way of collecting data and typically involves collecting data concurrently, roughly at the same time ---- and it does not require repeated visits to the field to gather data (Creswell & Creswell, 2018, pp.15, 217 & 239). Thus, the researcher will conduct semi-structured interviews and simultaneously distribute questionnaire to the respondents so that strengths of one method complements the weaknesses of the other i.e triangulation.

In relation to quantitative research approach a cross-sectional survey questionnaire will be adopted i.e data collected at one point in time (Creswell & Creswell, 2018, p.149). The primary purpose of the survey shall be to answer the research questions. It will identify the strategies for countering money laundering and the effectiveness of those measures in the financial services sector in Kenya. This will include also investigating the source of the illicit funds and mechanisms or methods used to launder the funds in the financial sector.

Both electronic and the drop and pick method will be used in distributing and collecting the questionnaire. The advantage of giving questionnaires personally is that the researcher can explain the purpose of the study and in some cases, questionnaires can be completed on the spot (Bell, 2010, p.152).

The questionnaire was pilot tested and all the suggestions made were discussed with the supervisor prior to incorporating the same in the questionnaire. Bell (2010, p.151) asserts that the survey questionnaire should be piloted to test how long it takes recipients to complete them, to check that all questions and instructions are clear and to enable you to remove any items which do not yield usable data. She adds that the purpose of a pilot exercise is to get the bugs out of the instrument so that respondents in the main study will experience no difficulties in completing it.

Besides the introduction and some basic demographic questions, the questionnaire consists of 21 questions which are organised into sections dealing mainly with evaluating the effectiveness of anti-money laundering strategies/tools in preventing/combating money laundering in the financial

services sector in Kenya. Other topics covered are the nature and characteristics of money laundering, main sources and mechanisms or methods used to launder illicit funds and regional and international initiatives for fighting the vice.

A draft survey questionnaire (SQ1) is attached at Appendix A.

As indicated above, money laundering is a new phenomenon and limited research has been conducted on the subject in Kenya. Creswell & Creswell (2018, p.19) argues that if a concept or phenomenon needs to be explored and understood because little research has been done on it, then it merits a qualitative approach.

This study will involve the collection of confidential information held by financial institutions, private and public organisations. Twenty (20) semi-structured interviews are planned to be conducted with representatives of the following organisations.

Commercial banks

Central Bank of Kenya

Central Bank Banking Fraud Unit

Ethics and Anti-Corruption Commission

Office of the Director of Public Prosecutions

Financial Reporting Centre (Financial Intelligence Unit)

Assets Recovery Agency

Mobile telephone providers

Transparency International

Savings and Credit Cooperative Societies

Foreign currency exchange bureaus

Anti-money laundering professionals/experts

Anti-money laundering advisory board

All of them are knowledgeable and have relevant professional experience and expertise on matters pertaining to reduction and prevention of money laundering incidents.

Through interviews, participants will be able to identify strategies for combating money laundering and the effectiveness of the existing anti-money laundering measures that have been put in place in the financial services sector in Kenya. (Merriam & Tisdell, 2016, pp.117&126) claims that the key to getting good data from interviewing is to ask questions and to collect meaningful data a researcher must ask good questions. The fewer, open-ended questions are, the better. Creswell & Creswell (2018, p.190) recommends that the total number of questions should be somewhere between 5 and 10, although no precise number can be given. Given the wide scope of the study, the researcher has prepared in advance of conducting the interviews 10 broad open-ended questions which will be used consistently in all the interviews. The duration of each interview shall be approximately one hour.

Semi-structured interview questions (IQ1) are also attached at Appendix A.

## 9.2 Anticipated Ethical Issues

Given that money laundering in the banking sector is a sensitive topic, it is critical that disclosures do not cause harm or adverse consequences to the participants or their organisations. It is imperative that during data collection, inappropriate disclosures such as the ones listed below can be made by the participants/interviewees.

Breach of confidentiality through improper disclosure.

Disclosure of career limiting criticisms.

Disclosure of proscribed behavior of organization.

Disclosure of information that is *sub-judice* or part of on-going criminal investigation.

In order to reduce the risk of inappropriate disclosures, the researcher shall endeavour to mitigate this through the following control measures:

### *Participants*

Ensure that participation by all participants is voluntary.

Where participants are employees of organizations, ensure that consent for their participation is obtained from the management of the host organisation.

In the study, involve participants of professional status with appropriate fiduciary positions and professional training in disclosure and confidentiality.

Inform participants of risks of inappropriate disclosures in writing and verbally.

### *Informed consent*

Inform participants of risks in invitation information form.

Remind participants of risks at commencement of the interview.

Inform participants that data will be published but will be untraceable and anonymous.

Ensure that the participants are aware of the risks and their responsibilities by requiring them to sign informed consent forms.

Allow participants to withdraw at any time and withdraw permission to use data already obtained up to end of data gathering phase.

Provide participants with University supervisory details for making complaints.

### *Dialogue management*

Detect and recognise potential risk of breach when conducting interview/dialogue and adjust focus of dialogue or stop interview/dialogue.

*Anonymity*

Participant is coded anonymously.

Employing organisation is coded anonymously.

All data not in the public domain is anonymous.

Data in the public domain, traceable to an anonymous participant, must be anonymised or discarded.

Ensure that participants are fully aware that their participation is known to the employer and that the employer is able to see data gathered.

As last resort, discard data as unusable rather than breach confidentiality.

Ensure that raw data is not shared with anyone else including University colleagues.

Raw data is destroyed after completion of thesis.

9.3 Anticipated other Risks or Concerns

Have all risk assessments as required by relevant Health and Safety policies been completed?	YES
--	-----

Risks to participants:

During data collection, the researcher will ensure that no one is harmed or suffers adverse consequences such as retaliation from research activities. The researcher shall endeavour to protect and safeguard the rights of the participants so that they do not suffer potential physical harm, discomfort, stress, pain, embarrassment or loss of privacy due to participating in the research (BSC, 2015, p.5).

In case the researcher uncovers money laundering criminal activity when collecting data, in Kenya, it is a legal obligation that the activity should be reported to the relevant authorities for action. Failure to do so is an offence (POCAMLA, 2009, p.14). In such a situation, the researcher shall inform the participant the limits to confidentiality and anonymity and the action that is being taken (BSC, 2015, p.7). This should also apply if a participant incriminates himself or herself in relation to money laundering.

Risks to researchers/ university staff/students:

Most of the research activities shall be conducted in the capital city Nairobi, Kenya where financial institutions and other organisations targeted in the research study have their headquarters. The central business district (CBD) of Nairobi is relatively safe but some slum areas are prone to crime. Thus, the researcher will not collect data in those crime prevalent areas and will confine all research activities to be conducted during the day in CBD, including using safe transport such as his personal car or a reputable car hire firm (Uber).

Regarding the risk of a researcher accidentally exposing a participant to his employer, to mitigate against retaliation, the researcher will anonymise data as quickly as possible and exclude the name of the participant from the study.

Reputational risks:

To guard against all forms of reputation risks, when gathering data, the researcher will demonstrate the highest standard of integrity, adhere to the requirements of informed consent and handle sensitive data in a confidential manner. The researcher shall ensure that research is undertaken to the highest possible methodological standard and the highest quality. He will take all reasonable steps to correct any misrepresentations and adopt the highest standards in all his professional relationships with institutions and participants (BSC, 2015, pp.2&3).

Security risks:

N/A

Other: N/A

#### 9.4 Medical Cover (if applicable)

a. Medical Category (1-5):

Category 1 Paramedic or medic in attendance as determined by the IMO.

Category 2 First aider present. A 12 lead ECG is required pre-testing if: participants are beyond their 30th birthday; they display any other questionable characteristics; they have a family history of sudden death; they have no previous experience of maximum exercise. The ECG is to be reviewed by the IMO.

Category 3 First aider present

Category 4 First aider available for consultation (present within the building)

Category 5 No first aid cover required

b. Independent Medical Officer (IMO):

c. Medical cover provided by:

d. All procedures within Schedule of Approved Procedures (e.g. DSES): Yes/No\*

N/A

### 3. Compliance with Laws, Codes, Guidance, Policies and Procedures

All data obtained from the research study will be protected under section 31(d) of the Constitution of Kenya 2010 which provides that every person has the right to privacy, which includes the right not to have the privacy of their communications infringed. Further, the data shall be protected under sections 25 and 26 of the Data Protection Act of Kenya, 2019 which stipulates the principles and obligations of personal data protection.

In addition, the researcher will collect all data in strict conformity with “Researchers' Responsibilities towards Research Participants, BSC, 2015, pp.5-9.

## 11. Recruitment of Participants

### 11.1 Who are the Research/ Participant Population?

Both survey questionnaire and semi-structured interviews are targeted towards the main stakeholders in the financial sector and organizations that are involved in anti-money laundering initiatives. Thus, the research participants shall be recruited from the representatives of the institutions named above (para. 9.1). The survey questionnaire shall be distributed to about 100 individuals who are mainly involved in countering money laundering in Kenya. Regarding semi-structured interviews 20 participants are to be interviewed from those organisations.

### 11.2 Inclusion/Exclusion Criteria

Random sampling technique will be employed in selecting participants from host organizations, a strategy which shall enable each employee to stand a chance of being selected to participate in the survey/interview.

**Inclusion Criteria:** One of the criteria for selecting the participants is that that they should have the expertise and be knowledgeable about combating and prevention of money laundering.

**Exclusion Criteria:** Individuals who lack knowledge and experience on countering money laundering and those who decline to participate in the research study shall be excluded.

### 11.3 Number of participants (include rationale for sample size)+-

Regarding semi-structured interviews, the researcher aims to interview 20 participants and concurrently distribute 100 survey questionnaires.

### 11.4 Recruitment Strategy (including details of any anticipated use of a gatekeeper in host organizations to arrange/distribute participant invitations)

Snowball or network sampling method will be adopted as the research recruitment strategy. Merriam & Tisdell (2016, p.98) indicate that the strategy involves locating a few key participants who easily meet the criteria you have established for participation in the study. As you interview these early key participants, you ask each one to refer you to other participants. Consequently, the researcher will conduct interviews with recommended targets who have expertise in preventing money laundering.

**11.5 Payments, rewards, reimbursements or compensation to participants**

During the research study, there will be no payments made to participants.

**11.6 What is the process for gaining *consent* from participants?**

After participants are identified, then relevant organisations will be contacted by telephone or personal visit explaining clearly the purpose of the research and type of access required. In addition, the researcher will inform the organization the desire to approach one of their employees to participate in the study. The telephone call will be followed up in writing (Form IE Invite and Form I3 Information Sheet) with a request that they consent to their employee being approached and, if he or she consents, participating. If approval is granted, this initial approach will be followed up by a written briefing and invitation to the target participant (Form I1 Invite and Form I4 Information Sheet) and consent form (Form I2 Consent). Participants shall be given three days to consider the information submitted before asking them to consent. Thereafter, face-to-face, one-on-one interview meetings will be scheduled. All interviews will be audio-recorded and transcribed as well as all interview data will be confidential, anonymous and untraceable. Prior to conducting interviews, participants will be informed of their right to reject the use of data-gathering devices such as digital recorders (BSC, 2015, p.7).

Further, before commencement of every interview or distribution of questionnaires, the researcher will explain to the participants the procedures to be followed in the interview/survey and purpose and benefits of the research study with a view of motivating them to answer questions truthfully, improve cooperation and honestly disclose information. In addition, before requesting permission to proceed with the interview, the researcher shall request participants to sign consent forms, inform them that participation is voluntary and that they have a right to refuse to answer questions or participate in the interview. Furthermore, before completing the questionnaire, the participant will be required to indicate whether he or she would consent or do not wish to participate.

As explained above both electronic and the drop and pick method will be used in distributing and collecting the questionnaire. The invites, consent and information sheets all appear at Appendix B.

As indicated above, participants will be given three days to consider the information before asking them to consent.

**11.7 Has or will consent be gained from other organisations involved (if applicable)?**

As explained above, prior to gathering data, researcher shall secure consent from the relevant organisations explaining the purpose of the research and requesting consent to approach one of their employees. However, given the sensitivity of the research study (money laundering), it may not be necessary to secure consent from the organisation since some participants may opt to grant consent without involving host organization.

**11.8 Arrangements for translation of any documentation into another language (if applicable)?**

English is the official language in Kenya and there will be no need of an interpreter in the research study.

**11.9 Outline how participants can withdraw consent (if applicable), and how data collected up to this point will be handled. Also stop criteria for specific tests (if applicable)?**

Participants will have the right to access their own data and will be able to withdraw participation at any point during the interview. In such cases, participants will be given one week to think about and consider their decision to withdraw. Further, participants will have the right to change their consent and to ask for destruction of data collected at any time during the data gathering phase (BPS, 2010, p.15), at which time they will be contacted to confirm their permission.

**11.10 Outline details of re-consent or debrief (if applicable)?**

N/A

**12. Data Management**

**12.1 Description of data analysis**

Data analysis in a convergent mixed methods design of this research study shall consist of three phases. First will be to analyse the qualitative database by coding the data and collapsing the codes into broad themes. The themes or patterns will be summaries of information gathered during face-to-face interviews relating to identifying the nature, extent, characteristics and impact/effectiveness of anti-money laundering strategies in the financial services sector in Kenya. Second is to analyse the quantitative data base in terms of statistical results. These results will be obtained from the survey questionnaire responses which are aimed at evaluating the effectiveness of measures in place for combating money laundering in the financial sector. Third is the mixed methods data analysis which shall consist of integrating the two databases. This integration shall entail merging the results from both the qualitative and quantitative findings. One of the ways to merge the two databases is called a side-by-side comparison [comparing qualitative findings (themes) that either confirm or disconfirm statistical results]. Another procedure involves merging the two forms of data in a table or a graph i.e joint display of data (Creswell & Creswell, 2018, pp. 120&219).

**12.2 Where and how will data be stored DURING the project?**

Data collected during the research study will be temporarily stored in the researcher’s personal laptop which he has sole access. It shall then be transferred and backed up onto a researcher’s Cloud account and University of Portsmouth “N” drive. No data will be located on any external server.

**12.3 Destruction, Retention and Reuse of Data (often AFTER your project has finished)**

Published information output from the research will be in the form of a thesis, journal articles and presentations. This information will therefore be publicly available (open access), but untraceable anonymity will be maintained by continuation of the coding arrangements. Any data in the public domain, traceable to an anonymous participant, must be anonymized, disguised or discarded.

**After completing the research project, the researcher shall publicly share the research data. However, when the research study is ongoing, none of the original data will be shared.**

To ensure confidentiality, access to the personal data shall be restricted to only the researcher and his supervisor.

<p>After completion of the research, data collected must be retained for ten years.</p> <p>Original data will be destroyed either when permission is withdrawn or after expiry of the retention period. The identities of individuals and organisations will be coded to create anonymity in the raw data. Role and organisation descriptions will be sufficiently vague to prevent traceability, for example, “compliance officer or commercial bank X”.</p>
<p><b>12.4 Personal Data – How will confidentiality be ensured?</b></p>
<p>The study does not involve collecting “sensitive personal data”.</p> <p>Confidentiality shall be maintained by anonymizing data collected as quickly as possible. As explained above, during data collection, data will be securely temporarily stored in the researcher’s laptop and then transferred to both “N” drive and Cloud account. It is only the researcher and the supervisor who will have access to the data.</p> <p>The strategy for anonymizing data will entail changing names of individuals and organisations, in other words coding the data.</p>
<p><b>12.5 How will data belonging to organisations (publicly unavailable data) be handled (if applicable)?</b></p>
<p>N/A</p>
<p><b>12.6 How will security sensitive data be handled (if applicable)?</b></p>
<p>N/A</p>

### 13. Publication / Impact / Dissemination Plans

As noted above - Published information output from the research will be in the form of a thesis, journal articles and presentations. This information will therefore be public, but untraceable anonymity will be maintained by continuation of the coding arrangements. Any data in the public domain, traceable to an anonymous participant, must be anonymized, disguised or discarded.

### 14. References

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## 15 Appendices

Document	Date	Version No.
Application Form	24 November 2019	A1
Invitation Letter (Host Organisation)	24 November 2019	IE
Invitation Letter (Participant)	24 November 2019	I1
Participant Information Sheet	24 November 2019	I4
Consent Form	24 November 2019	I2
Host Organisation Information Sheet	24 November 2019	I3

Supervisor Email Confirming Application	22 November 2019	
Interview Questions	24 November 2019	IQ1
Survey Questionnaire	24 November 2019	SQ1

## Appendix A

### SQ1 - Survey questionnaire

#### Countering Money Laundering in the Financial Services Sector in Kenya

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Page 1: Page 1

#### Countering Money Laundering in the Financial Services Sector in Kenya

I would like to invite you to participate in my research study by completing a survey questionnaire. The research study that I am engaged in is part of a PhD research project on countering money laundering in the financial services sector in Kenya.

The survey is aimed at assessing the effectiveness of anti-money laundering strategies in combating money laundering in the financial services sector. In addition, the purpose of the survey is to identify the main sources and mechanisms, or methods used to launder the proceeds of crime in the sector.

The questionnaire starts with some basic demographic questions and your perception and views about the effectiveness of the existing strategies for preventing money laundering in the financial sector. Please answer as many questions as you can and if you are unable to or do not want to answer a specific question proceed to the next one. All information will be treated anonymously and unless you write your name or the name of your organisation, we will not be able to determine who you are.

The researcher will also be conducting some interviews on the issues covered in this questionnaire and if you would like to participate in this part of the research too, please e-mail [jesse.ngari@myport.ac.uk](mailto:jesse.ngari@myport.ac.uk) to register your interest.

**I.** By clicking on the button below (or ticking), you acknowledge that your participation in the study is voluntary, you are 18 years of age or older, and that you are aware that you may choose to terminate your participation in the study at any time and for any reason up to the point of submitting your responses.

- I consent, begin the study
- I do not consent; I do not wish to participate

#### About You

2. Please indicate your job title:

a. Do you have responsibilities related to dealing with money laundering issues?

- Yes
- No

i. Approximately how many years' experience do you possess working in anti-money laundering?

ii. Please tick or circle below your appropriate age group:

- Below 30 Years
- 31- 40 Years
- 41-50 Years
- Over 51 Years

iii. What is your gender?

- Male
- Female

iv. Please indicate the level of your education:

- Below Diploma
- Undergraduate
- Postgraduate
- Other

a. If you selected Other, please specify:

#### About Your Organisation

3. Which of the following best describes the operations of your organisation:

- Public Sector
- Private Sector

Third Sector

a. Which of the following sectors does your organisation best fit?

Public Sector: Law enforcement/Prosecution/Regulatory body

Private Sector: Financial Institutions

Third Sector: Non-Governmental Organisation (NGO)/Professional body

i. What is the estimated number of employees in your organisation?

Under 50

51 to 200

201 to 350

351 to 500

501+

a. What is the annual turnover/budget of your organisation?

Page 2

**4. Anti-Money Laundering Strategies:** Regarding the measures that have or are being taken to prevent money laundering in financial institutions in general in Kenya, please indicate (tick) which of the following are generally undertaken:

Cash Transactions Reporting (CTR)

Suspicious Activities Reporting (SAR)

Suspicious/Unusual Transactions Reporting (STR)

Filing of cash declarations

Know Your Customer (KYC) principle

Proper record keeping

Confiscation and forfeiture of assets

Vetting and training of staff

Internal controls

Monitoring diaspora remittances

Demonetisation (withdrawal) of currency

Other

a. If you selected Other, please specify:

b. On a scale of 1 to 5 where 1 is not very effective and 5 is very effective, how would you rank the effectiveness of the above measures in combating money laundering in the financial services sector in Kenya?

1

2

3

4

5

5. **Know Your Customer (KYC):** To prevent money laundering, when a financial institution is opening a personal account for a customer, it is a requirement that customer due diligence should be conducted for purposes of customer identification. In case of an individual, please indicate which of the following documents should generally be submitted in your view:

Passport

National ID

PIN certificate

Drivers licence

Birth certificate

Residential address

Utility bill

Referee

Other

a. If you selected Other, please specify:

b. On a scale of 1 to 5 where 1 is not very important and 5 is very important, how would you rate the importance of 'Know Your Customer' principle as a tool in countering money laundering in financial institutions in Kenya? Please give reasons.

1

2

3

4

5

### Suspicious Activities/Transactions Reporting (SAR or STR)

6. In connection with financial institutions anti-money laundering monitoring and reporting obligations to the Financial Reporting Centre (FRC) i.e Financial Intelligence Unit, do organisations in the Kenyan financial sector generally in your view: Report and monitor all complex, unusual/suspicious transactions or activities

ALWAYS

USUALLY

RARELY

NEVER

a. Immediately or within seven days of date of transaction/activity report to FRC

ALWAYS

USUALLY

RARELY

NEVER

b. Report any suspicious transactions so that a paper trail of evidence is created

ALWAYS

USUALLY

RARELY

NEVER

c. File reports of all cash transactions exceeding US\$ 10,000 within seven days

ALWAYS

USUALLY

RARELY

NEVER

d. Examine the background and purpose of suspicious transactions

ALWAYS

USUALLY

RARELY

NEVER

*e.* On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rate unusual/suspicious transactions or activities reporting requirements as a tool in preventing money laundering in the financial institutions.

1

2

3

4

5

**After financial institutions submit unusual or suspicious transaction reports to Financial Reporting Centre (FRC), indicate whether the following measures are generally undertaken by FRC to prevent money laundering in the financial services sector in Kenya in your view.**

*7.* Appropriate action is taken on all reports of suspicious activities or transactions submitted to FRC and feedback on the same is provided to financial institutions in a timely manner

YES

NO

DON'T KNOW

*a.* Information received regarding suspicious activities or transactions is promptly disseminated to the appropriate law enforcement authorities and the outcome of the investigation is disclosed to the affected financial institution

YES

NO

DON'T KNOW

*b.* The database that is created and maintained by FRC of all reports of suspicious transactions is shared with financial institutions

YES

NO

DON'T KNOW

*c.* On a regular basis, FRC conducts inspections to ensure that financial institutions comply with international standards and best practice in anti-money laundering measures

- YES
- NO
- DON'T KNOW

d. FRC conducts training to staff of financial institutions on identification of types of activities or transactions which may indicate possible money laundering activities

- YES
- NO
- DON'T KNOW

e. On a scale of 1 to 5 where 1 is not effective and 5 is very effective, how would you rank the effectiveness of FRC in implementing the above measures as a tool in combating money laundering in financial institutions in Kenya.

- 1
- 2
- 3
- 4
- 5

8. **Cash Transactions Reporting (CTR) - \$10,000 and above:** On a scale of 1 to 5 where 1 is not very effective and 5 is very effective, how would you rank the effectiveness of daily cash transaction reporting as a tool for countering money laundering in the financial institutions in Kenya?

- 1
- 2
- 3
- 4
- 5

9. **Filing of Cash Declarations Exceeding - \$10,000 or above:** Please rate on a scale of 1 to 5 where 1 is not very effective and 5 is very effective the importance of cash declaration as a strategy for preventing money laundering in Kenya.

- 1
- 2
- 3

4

5

**10. Maintenance of Customer Records:** With a view of combating money laundering, financial institutions have an obligation to establish and maintain proper records of all transactions conducted. On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rate establishment and maintenance of customer records as a tool for fighting the vice of money laundering in the Kenyan financial services sector.

1

2

3

4

5

**11. Confiscation and Forfeiture of Assets:** “Confiscation and forfeiture of the proceeds of crime (asset recovery) is one of the most important tools to combat money laundering and has a deterrence effect on potential future offenders.” On a scale of 1 to 5 where 1 is not very effective and 5 is very effective, how would you rank the effectiveness of asset recovery as a tool in countering money laundering?

1

2

3

4

5

**12. Effective Collaboration and Coordination – Police, Prosecution and Judiciary:** “With a view of countering money laundering, there is need for effective collaboration, coordination and information sharing between the key agencies mandated to fight the vice such as law enforcement, prosecution and judiciary.” On a scale of 1 to 5 where 1 is not very effective and 5 is very effective, how would you rank the effectiveness of investigation, prosecution and punishment of offenders as a tool in countering money laundering?

1

2

3

4

5

13. Regarding the requirement of setting up appropriate policies and procedures on anti-money laundering, please indicate which of the following are generally undertaken by the board of directors and management of the organisation you work for:

- Initiate internal controls to mitigate money laundering risks
- Train staff on proper identification of customers
- Train staff on identification of source/use of funds
- Train staff on effective prevention and detection measures
- Obtain/maintain customer records eg. passports/ID
- Train staff on identification of suspicious transactions
- Report suspicious transactions/activities to regulator
- Cooperate with investigations agencies
- Other

a. If you selected Other, please specify:

b. On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rate anti-money laundering policies and procedures as preventative tools for money laundering in financial institutions.

- 1
- 2
- 3
- 4
- 5

14. **The Anti-Money Laundering Compliance Programme:** With a view of addressing risks posed by money laundering, indicate which of the following key components of an effective anti-money laundering (AML) compliance programme that are in place in your organisation:

- Internal policies, procedures, and controls
- A designated AML compliance officer detailing his responsibilities
- Existence of policies and procedures for testing/audit of AML measures

- AML training provided for appropriate personnel
- Due diligence/vetting policies/procedures applied during recruitment
- Systems in place for identifying/reporting suspicious transactions or activities
- Other

a. If you selected Other, please specify:

b. On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rank the effectiveness of anti-money laundering compliance programmes in eradicating money laundering in the financial services sector in Kenya.

- 1
- 2
- 3
- 4
- 5

**15. Compliance Officer:** On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rate the effectiveness of compliance officer in preventing money laundering in financial institutions in Kenya.

- 1
- 2
- 3
- 4
- 5

**16. Anti-Money Laundering Risk Assessment:** On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rate anti-money laundering risk assessment undertaken with specific customers and transactions as a preventative tool for money laundering in the financial services sector in Kenya.

- 1
- 2
- 3
- 4
- 5

**17. Wire Transfers:** “In an effort to curb money laundering, financial institutions should ensure that information accompanying both domestic and cross-border wire transfers - Real Time Gross Settlement (RTGS) is adequate to identify the originator and the beneficiary”. On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rate the effectiveness of including adequate information of the originator and the beneficiary in wire transfers in preventing money laundering in financial institutions in Kenya.

1

2

3

4

5

**18. Politically Exposed Persons (PEPs):** In case of a prominent public official, financial institutions in Kenya are required to establish the source of funds involved in proposed business relationship and determine purpose of account and expected volume/nature of account activity. On a scale of 1 to 5 where 1 is not very effective and 5 is very effective, how would you rank the effectiveness of obtaining source of wealth and determining nature of account purpose and activity of a PEP in preventing money laundering in financial institutions in Kenya?

1

2

3

4

5

**19. Vetting and Training of Staff:** On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rate vetting (pre-employment screening), lifestyle audit and anti-money laundering training as a preventative tool for money laundering in financial institutions in Kenya.

1

2

3

4

5

**20. Whistleblowing:** On a scale of 1 to 5 where 1 is not very effective and 5 is very effective how would you rate whistleblowing as a strategy for preventing money laundering in the financial services sector in Kenya.

- 1
- 2
- 3
- 4
- 5

**21. International and Regional Initiatives:** To fight money laundering, Kenya is a signatory to several of the United Nations Conventions such as Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) which is an affiliate of Financial Action Task Force (FATF). On a scale of 1 to 5 where 1 is not very effective and 5 is very effective, how would you rank the effectiveness of regional and international collaboration as tool in combating money laundering.

- 1
- 2
- 3
- 4
- 5

#### Page 4: Sources of Money laundering

**22.** Listed below are some of the main sources of money laundered in the financial services sector in Kenya. Please select **five** of the main sources of money laundering in your view.

Please select no more than 5 answer(s).

- Corruption
- Drug Trafficking
- Fraud and theft
- Cybercrime
- Forex Exchange Bureaus
- Gambling/Casinos
- Human Trafficking
- Prostitution
- Terrorism
- Tax Evasion

- Arms Smuggling
- Piracy
- Poaching
- Forest Trafficking
- Other

a. If you selected Other, please specify:

### Page 5: Mechanisms or Methods used to launder illicit funds

23. Below are several money laundering mechanisms or methods which are likely to be used to launder the proceeds of crime in the financial services sector in Kenya. Please select **five** of the most likely mechanisms or methods used to launder illicit funds in your view.

Please select no more than 5 answer(s).


- Cash smuggling
- Structuring or “smurfing” (banking small deposits)
- Wire transfers
- Cash intensive businesses
- Offshore/front companies
- Purchase high-value goods
- Casinos/Gambling
- Real estate transactions
- Foreign currency exchange bureaus
- Hawala (informal funds transfer)
- Lawyers and accountants
- Other

a. If you selected **Other**, please specify:

24. **Money Laundering in Financial Services Sector:** On a scale of 1 to 5 where 1 is a major problem and 5 is not a problem, how would you rate the problem of money laundering in the financial services sector in Kenya?

- 1
- 2
- 3
- 4
- 5

**25. Other:** Are there any other measures that are in place to prevent money laundering in the financial services sector in Kenya? **Open**



Page 6: Final page

Thank you for your participation.

---

## **IQ1 - Semi - Structured Interview Questions**

### **Countering Money Laundering in the Financial Services Sector in Kenya**

- 1) Tell me about how money laundering generally occurs in the financial services sector in Kenya?
- 2) According to you, what strategies are you aware of that financial institutions use to counter money laundering?
- 3) What do you think is the effectiveness of the existing legal reporting requirements in combating money laundering in financial institutions in Kenya?
- 4) What impact does “Know Your Customer” (KYC) principle have in preventing money laundering in the financial services sector in Kenya in your view?
- 5) Explain how, in your view sanctions, confiscation and forfeiture of assets contributes to the reduction of money laundering in the financial services sector in Kenya?
- 6) How effective do you think are internal control procedures and compliance programmes in preventing money laundering in financial institutions in Kenya?
- 7) In your view, what steps do you think the government and financial institutions should jointly take to address the vice of money laundering in Kenya?
- 8) What measures would you recommend the Central Bank of Kenya (CBK) to take to improve the fight against money laundering in the financial services sector in Kenya?

- 9) What do you think are the social and economic implications of money laundering in Kenya?
- 10) What is the effectiveness of international and regional anti-money laundering initiatives in combating money laundering in Kenya in your view?

## Appendix B

### Form IE Invite (Host Organisation)



Institute of Criminal Justice Studies  
St Georges Building,  
Portsmouth,  
PO1 2HY  
Tel: +44 23 92843923

**Researcher: Jesse Ngari**  
[jesse.ngari@myport.ac.uk](mailto:jesse.ngari@myport.ac.uk)  
**Supervisor: Professor Mark Button**  
[mark.button@port.ac.uk](mailto:mark.button@port.ac.uk)

**Study Title:** Countering Money Laundering in the Financial Services Sector in Kenya

**REC Ref No:** [   ]

Dear [Name]

Further to our recent telephone conversation I would like to confirm your consent for [NAME] to participate in a research study that I am engaged in as part of a PhD research project into Countering Money Laundering in the Financial Services Sector in Kenya. The aim of my research is to ascertain the nature, extent, characteristics and preventive strategies for combating money laundering in the financial sector in Kenya. In addition, the researcher intends to evaluate the effectiveness of the anti-money laundering strategies with a view of recommending measures for reducing the vice in the sector. I would therefore like to interview [NAME] for my research as one of 20 respondents.

Participation in my research is entirely voluntary and I anticipate that [NAMES] engagement will require approximately 60 minutes of his/her time in an interview that I will conduct at a time and place of his or her choice. Withdrawal from the research is possible at any time before the data I am collecting being analysed but, in any case, the contribution to my research will be in confidence and references in my final published research will be anonymous. The information sheet provides greater clarification on this issue and I will ask [NAME] to complete a consent form when we meet.

You may contact me at the University at the above postal or e-mail address or by telephone mobile number +254 722 755 582. If I could ask you to confirm in writing to me your agreement that I may approach [NAME], I would be very grateful.

Yours Sincerely  
Jesse Ngari

## Form I3 Host Organisation Information Sheet



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Tel: +44 23 92843923  
**Researcher: Jesse Ngari**  
[jesse.ngari@myport.ac.uk](mailto:jesse.ngari@myport.ac.uk)  
**Supervisor: Professor Mark  
Button**  
[mark.button@port.ac.uk](mailto:mark.button@port.ac.uk)

### HOST ORGANISATION INFORMATION SHEET

**Study Title:** Countering Money Laundering in the Financial Services Sector in Kenya

**REC Ref No:** [    ]

Further to our telephone conversation, I write to confirm that I would like a member of your organisation to take part in my research study and I would like you to understand why the research is being done and what it will involve for your employee and your organisation. Please feel free to talk to others about the study if you wish and do not hesitate to ask if there is anything unclear.

The aim of the research is to evaluate the impact and effectiveness of anti-money laundering initiatives in combating money laundering in the financial services sector in Kenya. Significantly, the research study shall explore and recommend effective measures that should be taken to reduce or minimise the occurrence of money laundering incidents in the sector.

#### **What is the purpose of the study?**

In terms of outcomes, I hope to:

- Establish the nature, extent and characteristics of the current strategies for countering money laundering in the financial services sector in Kenya
- Evaluate and analyse the effectiveness of anti-money laundering measures and identify the weaknesses and suggest remedial action to fight the vice
- Identify the main sources and mechanisms or methods used to launder proceeds of crime in Kenya

#### **Why has your organisation been invited?**

The research method or technique for the research study will be 20 semi-structured interviews. The interviews are planned with representatives from commercial banks, non-bank financial institutions, government anti-corruption agencies, regulatory authorities, NGO's and anti-money laundering professionals and experts. Your organisation falls within those groups and I believe that one of your employees have particularly relevant knowledge of the issues.

**Do you have to take part?**

It is up to you to decide if you will allow me to approach your employee to ask him/her to join the study. When we meet, I will take them through the study, explain the contribution they will be asked to make and then I will then ask them to sign a consent form if they wish to proceed. Before then I need to discuss the nature of the information that may emerge from that discussion with your employee.

**What will happen to my organisation if we agree to allow our employee to take part?**

I would like to conduct an interview with your employee that will take approximately 60 minutes. Subject to their consent I will make an audio recording of the interview and will later transcribe that so that I can compare and analyse the various responses from all of the interviews I will conduct. Whilst the interview will be stored with a reference to help me identify your employees name, after the data has been analysed and if the data appears in my final thesis, it will be entirely anonymous both in terms of your employee and your organisation. I expect that my research will take a number of years to conclude but your employee's involvement will be limited to the 60 minutes. You should be aware that your employee may divulge information of a sensitive or confidential nature or which concerns details of specific instances of money laundering although I have targeted those employees who ordinarily manage this type of information and will be aware of the sensitivity of it. I will not be asking for any confidential data or details about current or planned criminal investigations or prosecutions.

**What will my employee have to do?**

I have a schedule of about ten broad open-ended questions, and I am interested in their responses, views, opinions and attitudes to the questions. They relate to combating money laundering in the financial services sector in Kenya and do not require any specialist knowledge beyond that which they possess by reason of their current or prior position. They will not be asked to provide any information which is confidential, or which would embarrass them or your organisation professionally or constitute a breach of confidentiality or breach of fiduciary duty. If I suspect that any information provided in the interview represents such a breach, I will suspend the interview to ensure that my research does not rely on information provided in error.

**What are the possible disadvantages and risks of taking part?**

Your employee will be inconvenienced for 60 minutes and may divulge information that you would not wish him to divulge. I cannot envisage any other disadvantage or risk.

**What are the possible benefits of taking part?**

There will be no financial reward for participation but you and your employee may well benefit from the knowledge that you are contributing to research, which may advance or improve the fight against money laundering in the financial sector in Kenya, or promote further educational research or generate policy documents or greater awareness of the problem of money laundering.

**Will my employee taking part in the study be kept confidential?**

When your employee joins the study, it is possible that some of the data collected will be seen by authorised persons from the University of Portsmouth or by those engaged by regulatory authorities. Because my research is supervised, others may look at the data to check that the study is being conducted correctly. All those people will have a duty of confidentiality to you as a host organisation and to your research participant and will do their best to meet this duty.

In any event, your confidentiality will be safeguarded during and after the study. The interview will be audio recorded (with your employee's consent) and then transcribed and analysed using a software

programme called NVivo. At all times the data will be saved securely and it will be retained only until the final thesis is approved. At that point it will be destroyed. At any time before destruction, my research supervisor may review the data to ensure the study is proceeding correctly.

**What will happen if my employee doesn't want to carry on with the study?**

Your employee may withdraw from the study at any time before providing consent and until the data from any interview has been analysed, at which time it will be anonymous but may have been integrated with other responses from other interviewees and so will be difficult to exclude from the study.

**What if there is a problem?**

If you have a concern about any aspect of this study, you may speak with me or write or speak to Professor Mark Button, my supervisor. We will both do our best to answer your questions. Professor Button can be reached by e-mail at [mark.button@port.ac.uk](mailto:mark.button@port.ac.uk) or by telephone on +44 23 92843923. If you remain unhappy and wish to complain formally, you can do this by writing to Dr Phil Clements, the Head of Department who can be reached at [phil.clements@port.ac.uk](mailto:phil.clements@port.ac.uk).

**What will happen to the results of the research study?**

I will notify you when my thesis is published although it will be several years before the research is completed. Your organisation will not be identified in any report/publication unless you have given your consent.

**Who is organising and funding the research?**

The University of Portsmouth is sponsoring my research.

**Who has reviewed the study?**

Research in the University of Portsmouth is looked at by independent group of people, called a Research Ethics Committee, to protect your interests. This study has been reviewed and given a favourable opinion.

**Concluding statement**

Thank you for taking the time to read this information sheet.

**Form I1 Invite (Participant)**



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**Researcher:** Jesse Ngari  
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**Supervisor: Professor Mark Button**  
[mark.button@port.ac.uk](mailto:mark.button@port.ac.uk)

**Study Title:** Countering Money Laundering in the Financial Services Sector in Kenya

**REC Ref No:** [   ]

Dear [Name]

Further to our recent telephone conversation I would like to confirm your agreement to participate in a research study that I am engaged in as part of a PhD research project into Countering Money Laundering in the Financial Services Sector in Kenya and I am keen to interview you for my research as one of 20 respondents.

Participation in my research is entirely voluntary and I anticipate that your involvement will only require 60 minutes of your time in an interview that I will conduct at a time and place of your choice. Withdrawal from the research is possible at any time prior to the data I am collecting being analysed but, in any event, your contribution to my research will be in confidence and references in my final published research will be anonymous. The information sheet provides greater clarification on this issue and I will ask you to complete a consent form when we meet.

You may contact me at the University at the postal or e-mail address above or by mobile telephone number +254 722755582.

I look forward to seeing you on [DATE].

Yours Sincerely

**Form I4 Information Sheet (Participant)**



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Tel: +44 23 92843923

**Researcher: Jesse Ngari**  
jesse.ngari@myport.ac.uk  
**Supervisor: Professor Mark  
Button**  
[mark.button@port.ac.uk](mailto:mark.button@port.ac.uk)

## **PARTICIPANT INFORMATION SHEET**

**Study Title:** Countering Money Laundering in the Financial Services Sector in Kenya

**REC Ref No:** [   ]

### **Invitation**

You have agreed to take part in my research study and I would like you to understand why the research is being conducted and what it will involve for you. I will go through this information sheet

with you, to help you decide whether you would like to take part and answer any questions you may have. I would suggest this should take about 10 minutes. Please feel free to talk to others about the study if you wish and do not hesitate to ask if there is anything unclear.

### **Study Summary**

This study is concerned with evaluating the impact and effectiveness of anti-money laundering strategies in combating money laundering in the financial services sector in Kenya. Significantly, the research study shall explore and recommend effective measures that should be taken to reduce or minimise the occurrence of money laundering incidents in the sector. The study is important because of the prevalence of money laundering in Kenya. We are seeking participants who should be knowledgeable about money laundering prevention strategies. Participation in the research would take approximately 60 minutes of your time.

### **What is the purpose of the study?**

In terms of outcomes, I hope to:

- Establish the nature, extent and characteristics of the current strategies for countering money laundering in the financial services sector in Kenya
- Evaluate and analyse the effectiveness of anti-money laundering measures and identify the weaknesses and suggest remedial action to fight the vice
- Identify the main sources and mechanisms or methods used to launder proceeds of crime in Kenya

### **Why have I been invited?**

The research method for the study will be 20 semi-structured interviews. The interviews are planned with representatives from commercial banks, non-bank financial institutions, government anti-corruption agencies, regulatory authorities, NGO's and anti-money laundering professionals and experts. Your organisation falls within those groups and I believe that you have particularly relevant knowledge of the issues.

### **Do I have to take part?**

No, taking part in this research is entirely voluntary. It is up to you to decide if you want to volunteer for the study. We will describe the study in this information sheet. If you agree to take part, we will then ask you to sign the attached consent form, dated xxx, version number 2.6 December 2018.

### **What will happen to me if I take part?**

I would like to conduct an interview with you, which will take approximately 60 minutes. Subject to your consent I will make an audio recording of the interview and will later transcribe that so that I can compare and analyse the various responses from all of the interviews I will conduct. Whilst the interview will be stored with a reference to help me identify your name, after the data has been analysed and if your data appears in my final thesis, it will be entirely anonymous. I expect that my research will take a number of years to conclude but your involvement will be limited to the 60 minutes.

### **What will I have to do?**

I have a schedule of ten broad open-ended questions, and I am interested in your responses, opinions and attitudes to those questions. They relate to countering money laundering in the financial services sector in Kenya and do not require any specialist knowledge. You will not be asked to provide any information which is confidential or which would embarrass you professionally or constitute a breach of confidentiality or breach of fiduciary duty. If I suspect that any information provided in the interview represents such a breach I will suspend the interview to ensure that my research does not rely on

information provided in error.

**What are the possible disadvantages, burdens and risks of taking part?**

You will be inconvenienced for about 60 minutes but I cannot envisage any other disadvantage or risk.

**What are the possible advantages or benefits of taking part?**

There will be no financial reward for participation but you may well benefit from the knowledge that you are contributing to research, which may advance or improve the fight against money laundering in Kenya, promote further educational research or generate policy documents or greater awareness of a problem.

**Will my taking part in the study be kept confidential? Will my data be kept confidential?**

When you join the study, it is possible that some of the data collected will be seen by authorised persons from the University of Portsmouth or by those engaged by regulatory authorities. Because my research is supervised, others may look at the data to check that the study is being conducted correctly. All of those people will have a duty of confidentiality to you as a research participant and will do their best to meet this duty.

Subject to the provision that any offer of confidentiality may sometimes be overridden by law, your confidentiality will be safeguarded during and after the study. The interview will be audio recorded (with your consent) and then transcribed and analysed using a software programme called NVivo. At all times the raw data, which identifies you, will be kept securely by the researcher and it will be retained only until the final thesis is approved. At that point it will be destroyed. At any time before destruction, my research supervisor may review your data to ensure the study is proceeding correctly.

**What will happen if I don't want to carry on with the study?**

As a volunteer you can stop any participation from the study at any time prior to providing consent and until the data from any interview has been analysed, without giving a reason if you do not wish to. If you do withdraw from a study after some data have been collected you will be asked if you are content for the data collected thus far to be retained and included in the study. If you prefer, the data collected can be destroyed and not included in the study. Once the research has been completed, and the data analysed, it will not be possible for you to withdraw your data from the study.

**What if there is a problem?**

If you have a query, concern or complaint about any aspect of this study, in the first instance you should contact me or write or speak to Professor Mark Button, my supervisor. We will both do our best to answer your questions. Professor Button can be reached by e-mail at [mark.button@port.ac.uk](mailto:mark.button@port.ac.uk) or by telephone on +44-23-9284-3923. If your concern or complaint is not resolved, you should contact the Head of Department, Dr Phil Clements, who can be reached at [phil.clements@port.ac.uk](mailto:phil.clements@port.ac.uk).

**What will happen to the results of the research study?**

I will notify you when my thesis is published although it will be several years before the research is complete. You will not be identified in any report/publication unless you have given your consent.

**Who is organising and funding the research?**

The University of Portsmouth is sponsoring my research.

**Who has reviewed the study?**

Research in the University of Portsmouth is reviewed by an ethics committee to ensure that the dignity and well-being of participants is respected. This study has been reviewed by the Humanities and Social Sciences Faculty Ethics Committee and has been given favourable ethical opinion.

**Thank you**

Thank you for taking time to read this information sheet and for considering volunteering for this research. If you do agree to participate your consent will be sought; please see the accompanying consent form. You will then be given a copy of this information sheet and your signed consent form, to keep.

Form I2 Consent Form (Participant)



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Tel: +44 23 92843923  
**Researcher: Jesse Ngari**  
**Supervisor: Professor Mark Button**  
[mark.button@port.ac.uk](mailto:mark.button@port.ac.uk)

**CONSENT FORM**

Title of Project: Countering Money Laundering in the Financial Services Sector in Kenya

University Data Protection Officer: Samantha Hill, +44 23 9284 3642 or data-protection@port.ac.uk

Please  
initial box

Ethics Committee Reference Number: -----

1. I confirm that I have read and understood the information sheet dated..... (Version 2.6 December 2018)

for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.

2. I understand that my participation is voluntary and that I am free to withdraw at any time before the data is analysed without giving any reason.

3. I understand that data collected during this study will be processed in accordance with data protection law as explained in the Participant Information Sheet dated 5 November 2019, Version 2.6 December 2018).

4. I agree to take part in the above study.

**Name of Participant:**

**Date:**

**Signature:**

**Name of Person taking Consent:**

**Date:**

**Signature:**

**15. Declaration by Principal Investigator and Supervisor (if applicable)**

1. The information in this form is accurate to the best of my/our knowledge and belief and I/we take full responsibility for it.
2. I/we undertake to conduct the research/ work in compliance with the University of Portsmouth Ethics Policy, UUK Concordat to Support Research Integrity, the UKRIO Code of Practice and any other guidance I/we have referred to in this application.
3. I/we confirm that all relevant risk assessments and Health and Safety requirements have been made/met.
4. If the research/ work is given a favourable opinion I/we undertake to adhere to the study protocol, the terms of the full application as finally reviewed and any conditions set out by the Ethics Committee in giving its favourable opinion.
5. I/we undertake to notify the Ethics Committee of substantial amendments to the protocol or the terms of the final application, and to seek a favourable opinion before implementing the amendment.
6. I/we undertake to submit annual progress reports (if the study is of more than a year's duration) setting out the progress of the research/ work, as required by the Ethics Committee.
7. I/we undertake to inform the Ethics Committee when the study is complete and provide a declaration accordingly.
8. I/we am/are aware of my/our responsibility to be up to date and comply with the requirements of the law and relevant guidelines relating to security and confidentiality of personal data, including the need to register, when necessary, with the appropriate Data Protection Officer. I/we understand that I/we am/are not permitted to disclose identifiable data to third parties unless the disclosure has the consent of the data subject.
9. I/we undertake to comply with the University of Portsmouth Data Management Policy.
10. I /we understand that records/data may be subject to inspection by internal and external bodies for audit purposes if required.
11. I/we understand that any personal data in this application will be held by the Ethics Committee, its Administrator and its operational managers and that this will be managed according to the principles established in the Data Protection Act 1998 (and after May 2018, the General Data Protection Regulation).
12. I understand that the information contained in this application, any supporting documentation and all correspondence with the Ethics Committee and its Administrator relating to the application:
  - Will be held by the Ethics Committee until at least 10 years after the end of the study
  - Will be subject to the provisions of the Freedom of Information Acts and may be disclosed in response to requests made under the Acts except where statutory exemptions apply.
  - May be sent by email or other electronic distribution to Ethics Committee members.
13. I/we understand that the favourable opinion of an ethics committee does not grant permission or approval to undertake the research/ work. Management permission or approval must be obtained from any host organisation, including the University of Portsmouth or supervisor, prior to the start of the study.

**Principal Investigator: Jesse Ngari**

**Date 24 November 2019**

**Supervisor: Professor Mark Button**

**Date 22 November 2019**

## **Appendix 2**

### **Favourable Ethical Opinion (With Conditions)**

**Name:** Jesse Ngari

**Study Title:** Countering money laundering in the financial services sector in Kenya

**Reference Number:** FHSS 2019-069

**Date:** 18/12/2019

Thank you for submitting your application to the FHSS Ethics Committee.

I am pleased to inform you that FHSS Ethics Committee was content to grant a favourable ethical opinion of the above research on the basis described in the submitted documents listed at Annex A, and subject to standard general conditions (See Annex B).

With this there are a number of ethical conditions to comply with, and some additional advisory notes you may wish to consider, all shown below.

#### **Condition(s)1**

1. Funding details: In Section 4 it states "The research study is self-funded". However, in the PIS to the host organisations it states "The University of Portsmouth is sponsoring my research". This apparent contradiction needs to be addressed.
2. Insurance: 6. Foreign travel needs to be approved by the Head of School and the risk of the country of the research site needs to be checked in the insurance company's website.

3. Withdrawal: In Section 9.2. it states "Allow participants to withdraw at any time". For clarity, it is suggested that a date is given up until when participants can withdraw either form of data. This needs to be clear in all participant information.
4. Sharing of data: In Section 9.2 it states "Ensure that raw data is not shared with anyone else including University colleagues". The PhD supervisor will need access to the data. Moreover, in the PIS to host organisations, it states "When your employee joins the study, it is possible that some of the data collected will be seen by authorised persons from the University of Portsmouth or by those engaged by regulatory authorities". The first statement needs to be amended.
5. Retention of data: In Section 9.2 it states "Raw data is destroyed after completion of thesis." The data will need to be retained for 10 years. (See 14 below).
6. Risks to participants: 9.3. The risk of criminalisation is mentioned. This should be included in the PIS and the following clause should be included in the consent form:  
"I understand that should I disclose possible criminal offences that have not been investigated or prosecuted, in the course of the interview, the researcher may report the matter(s) to relevant agencies."
7. Compliance with Laws, Codes, Guidance, Policies and Procedures: 10. In addition to what is stated here (regarding data protection law in Kenya), the researcher needs to ensure that the research reflects the University of Portsmouth's adherence to the commitments set out in the Concordat to Support Research Integrity and the University's ethics policy.
8. Inclusion/Exclusion criteria: In section 11.2, it states that 'random sampling' will take place and then in 11.4 snowball/network sampling is stated in relation to interviews and, in section 9, it states a 'drop and pick method will be used in distributing and collecting the questionnaire.' How will random sampling be achieved, if using a convenience sampling method like the latter in regards to the questionnaire? And presumably, random sampling was not stated in relation to the qualitative data analysis?
9. Recruitment Strategy: 11.4 It is unclear how participants are to be identified/recruited. The identification/ recruitment process is unclear. How, for example, does the researcher intend to obtain the telephone numbers of potential participants? This requires clarification.
10. Process for gathering consent from participants: 11.6. "Prior to conducting interviews, participants will be informed of their right to reject the use of datagathering devices such as digital recorders". What will the researcher do if a participant rejects the use of data-gathering devices such as a digital recorder? It is seen to be best practice in qualitative research to record the interview for accuracy, rather than take notes, so this addition is a little strange.
11. Has or will consent be gained from other organisations involved? "As explained above, prior to gathering data, researcher shall secure consent from the relevant organisations explaining the purpose of the research and requesting consent to approach one of their employees. However, given the sensitivity of the research study (money laundering), it may not be necessary to secure consent from the organisation since some participants may opt to grant consent without involving host organization. Is consent to be obtained from the host organisation or not? This needs to be clarified.
12. Participants' access to their data: In section 11.9, it states that participants will have access to their data. In what form? Is the researcher doing member-checking in relation to the interview transcripts? Will they receive a copy of their questionnaire?
13. Storage of data during the project: 12.2 "Data collected during the research study will be temporarily stored in the researcher's personal laptop which he has sole access." It is recommended that data is transferred to the 'N' Drive at the end of each analysis session.
14. Destruction, Retention and Reuse of Data: 12.3. As a result of the national and international push towards 'open research', it's the policy of the University and all major funders that you make the research data which underpins your publications open access (i.e. publicly available to download) at

the end of your project, unless there is an ethical, legal or contractual reason not to do so. Not only does this greatly increase the transparency of the research process by allowing results to be re-analysed and conclusions re-tested, it also enables data to be reused by other researchers, industry, charities, governments and even the general public for creative and innovative purposes. This can be achieved by uploading to Pure. Responsibility for the storage of all data passes to ICJS when the researcher leaves the University. In the PIS to host organisations it states that “At all times the data will be saved securely and it will be retained only until the final thesis is approved. At that point it will be destroyed.” However, all research data is subject to the UoP Retention Schedule for Research Data and **University’s Research Data Management Policy**, which stipulates a minimum retention period of 10 years. This needs to be communicated to potential participants in the PIS.

15. All documentation seen by members of the public/participants should bear the UoP logo.

16. PIS to Potential participants: The project has been reviewed by the **UoP’s Faculty of Humanities and Social Sciences Ethics Committee**.

17. Consent form. Participants are not asked for consent for the interview to be audio recorded. It would also be useful to request consent for anonymised verbatim quotes to be used. This needs to be addressed.

#### **Advisory Note(s) 1**

A favourable opinion will be dependent upon the study adhering to the conditions stated, which are based on the application document(s) submitted. It is appreciated that Principal Investigators may wish to challenge conditions or propose amendments to these in the resubmission to this ethical review.

#### **Advisory Note(s)2**

A. It might be best to refer to money laundering as a ‘practice’ rather than a ‘vice’.

B. Risks to researchers: In section 9.3, it is advisable to include a lone-researcher policy/strategy. i.e. keeping in touch with the supervisors as to their whereabouts and safety when conducting data collection.

C. On the consent form, it should read ‘51 years and over’ rather than ‘Over 51 years’.

D. Survey Questionnaire. It is customary to let potential participants know approximately how long it will take to complete the questionnaire. E. Consent form: “I confirm that I have read and understood the information sheet dated..... (Version 2.6 December 2018)”. The PIS does not appear to be dated.

F. Survey Questionnaire: The Breach of confidentiality through improper disclosure; Disclosure of career limiting criticisms; Disclosure of proscribed behaviour of organization; Disclosure of information that is *sub-judice* or part of on-going criminal investigation, have all been mitigated in the information sheets for the interview. There is, however, no such warning at the beginning of the survey. Could, for example, some sort of warning be provided before clicking ‘consent’, to warn participants against disclosing anything in the free-text response box?

G. It is somewhat disappointing to see that the student’s supervisor has not attended a researcher development programme research ethics training session. Please note that the favourable opinion of FHSS Ethics Committee does not grant permission or approval to undertake the research/ work. Management permission or approval must be obtained from any host organisation, including the University of Portsmouth or supervisor, prior to the start of the study.

Wishing you every success in your research

**Chair - Signature**

Mr Richard Hitchcock

Email: [ethics-fhss@port.ac.uk](mailto:ethics-fhss@port.ac.uk)

**Advisory Note 2** - The comments are given in good faith and it is hoped they are accepted as such. The PI does not need to adhere to these, or respond to them, unless they wish to.

### **Annexes**

A - Documents reviewed

B - After ethical review

#### **ANNEX A - Documents reviewed**

The documents ethically reviewed for this application

#### ***Document - Version & Date***

Application Form A1 25/11/2019

Invitation Letter (Host Organisation) IE 25/11/2019

Invitation Letter (Participant) I1 25/11/2019

Participant Information Sheet I4 25/11/2019

Consent Form I2 25/11/2019

Host organisation Information Sheet I3 25/11/2019

Supervisor Email Confirming Application N/A 25/11/2019

Interview Questions IQ1 25/11/2019

Survey Questionnaire SQ1 25/11/2019

#### **ANNEX B - After ethical review**

1. This Annex sets out important guidance for those with a favourable opinion from a University of Portsmouth Ethics Committee. Please read the guidance carefully. A failure to follow the guidance could lead to the committee reviewing and possibly revoking its opinion on the research.
2. It is assumed that the work will commence within 1 year of the date of the favourable ethical opinion or the start date stated in the application, whichever is the latest.
3. The work must not commence until the researcher has obtained any necessary management permissions or approvals – this is particularly pertinent in cases of research hosted by external organisations. The appropriate head of department should be aware of a member of staff's plans.
4. If it is proposed to extend the duration of the study beyond that stated in the application, the Ethics Committee must be informed.
5. Any proposed substantial amendments must be submitted to the Ethics Committee for review. A substantial amendment is any amendment to the terms of the application for ethical review, or to the protocol or other supporting documentation approved by the Committee that is likely to affect to a significant degree:
  - (a) the safety or physical or mental integrity of participants
  - (b) the scientific value of the study
  - (c) the conduct or management of the study.
- 5.1 A substantial amendment should not be implemented until a favourable ethical opinion has been given by the Committee.
6. At the end of the work a final report should be submitted to the ethics committee. A template for this can be found on the University Ethics webpage.

7. Researchers are reminded of the University's commitments as stated in the **Concordat to Support Research Integrity viz:**

- maintaining the highest standards of rigour and integrity in all aspects of research
- ensuring that research is conducted according to appropriate ethical, legal and professional frameworks, obligations and standards
- supporting a research environment that is underpinned by a culture of integrity and based on good governance, best practice and support for the development of researchers
- using transparent, robust and fair processes to deal with allegations of research misconduct should they arise working together to strengthen the integrity of research and to reviewing progress regularly and openly.

8. In ensuring that it meets these commitments the University has adopted the **UKRIO Code of Practice for Research**. Any breach of this code may be considered as misconduct and may be investigated following the University **Procedure for the Investigation of Allegations of Misconduct in Research**. Researchers are advised to use the **UKRIO checklist** as a simple guide to integrity.

### **Appendix 3**

#### **Emails to Participants and Respondents**

##### *LinkedIn Introduction Message*

I am a PhD student at the University of Portsmouth (UoP), UK and I am conducting research on countering money laundering in the financial services sector in Kenya. If you have expertise or experience on money laundering matters in Kenya, I would like to invite you to participate in my research study by completing a survey questionnaire which takes approximately 10-15 minutes to complete. All information will be treated anonymously. Please provide me with your email address and I will submit the survey questionnaire to you. My email is - jesse.ngari@myport.ac.uk. Thank you. Jesse

##### *Acknowledgment Email sent to Participants/Respondents*

Dear xxxx,

Thank you very much for offering to assist. I have sent you the survey questionnaire. I would also appreciate it if you could introduce me to other contacts or colleagues with AML experience to participate in the survey. Kindly share with me their emails.  
Best regards, Jesse

##### *Thank you, Email/Invitation, to Participate in Interviews*

Dear xxxx,

Thank you for completing the questionnaire. I am currently conducting face-to-face interviews of my AML research study and I would like to invite you to participate. Kindly let me know when I can conduct the interview at a time, date and place of your choice. My mobile number is 0722 755582. Many thanks, Jesse

Dear xxxx,

Thank you very much for completing the survey questionnaire and providing me with emails of your colleagues and other contacts. I will contact them on separate emails. When I commence conducting face-to face interviews, I will let you know. Again, thank you, Jesse

*Email: Researcher being introduced to potential Participants/Respondents*

Dear Jesse,

Hope this email finds you well. Another respondent that you may wish to contact is Dr. xxxx. He has written a book on “Law of Financial Institutions in Kenya”. He can be contacted through xxxx.com. Regards, xxxx

*An Example of a Reminder Email*

Dear xxxx,

I would be grateful if you could complete the survey questionnaire that I sent you on -  
---(date) and advise when we can do face-to-face interview. Best wishes, Jesse

## Appendix 4

### Form UPR16 – Research Ethics Review Checklist

# FORM UPR16

## Research Ethics Review Checklist

**Please include this completed form as an appendix to your thesis (see the Research Degrees Operational Handbook for more information)**



<b>Postgraduate Research Student (PGRS) Information</b>		<b>Student ID:</b>	911132
<b>PGRS Name:</b>	JESSE NGARI		
<b>Department:</b>	SCCJ	<b>First Supervisor:</b>	Professor MARK BUTTON
<b>Start Date:</b> (or progression date for Prof Doc students)	OCTOBER 2018		
<b>Study Mode and Route:</b>	Part-time <input checked="" type="checkbox"/>	MPhil <input type="checkbox"/>	MD <input type="checkbox"/>
	Full-time <input type="checkbox"/>	PhD <input type="checkbox"/>	Professional Doctorate <input type="checkbox"/>
<b>Title of Thesis:</b>	COUNTERING MONEY LAUNDERING IN THE FINANCIAL SERVICES SECTOR IN KENYA		
<b>Thesis Word Count:</b> (excluding ancillary data)	79,822		
<p>If you are unsure about any of the following, please contact the local representative on your Faculty Ethics Committee for advice. Please note that it is your responsibility to follow the University's Ethics Policy and any relevant University, academic or professional guidelines in the conduct of your study</p> <p>Although the Ethics Committee may have given your study a favourable opinion, the final responsibility for the ethical conduct of this work lies with the researcher(s).</p>			
<p><b>UKRIO Finished Research Checklist:</b> (If you would like to know more about the checklist, please see your Faculty or Departmental Ethics Committee rep or see the online version of the full checklist at: <a href="https://ukrio.org/publications/code-of-practice-for-research">https://ukrio.org/publications/code-of-practice-for-research</a>)</p>			
a) Have all of your research and findings been reported accurately, honestly and within a reasonable time frame?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
b) Have all contributions to knowledge been acknowledged?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
c) Have you complied with all agreements relating to intellectual property, publication and authorship?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
d) Has your research data been retained in a secure and accessible form and will it remain so for the required duration?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
e) Does your research comply with all legal, ethical, and contractual requirements?	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>	
<b>Candidate Statement:</b>			
I have considered the ethical dimensions of the above named research project, and have successfully obtained the necessary ethical approval(s)			
<b>Ethical review number(s) from Faculty Ethics Committee (or from NRES/SCREC):</b>	FHSS 2019-069		
If you have <i>not</i> submitted your work for ethical review, and/or you have answered 'No' to one or more of questions a) to e), please explain below why this is so:			
<b>Signed (PGRS):</b>			<b>Date:</b> 17 MAY 2023

