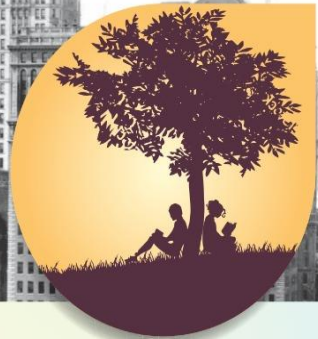


Journal of Conflict Management & Sustainable Development



Tracing the Role of Biodiversity Conservation in Achieving Sustainable Development Goals

Kariuki Muigua

The Complex Interplay of State and Religion: Exploring The Dynamics and Implications for Modern Society

Kenneth Wyne Mutuma

A Critical Analysis of Kenya's Anti-Money Laundering and Counter-Financing of Terrorism Regime

Michael Sang

Recognising the rights of nature for Environmental Justice in Kenya

Waruiru Cecilia &
Kirui Diana

High Seas Treaty: Enhancing Environmental Responsibility for Marine Protection

Kariuki Muigua

Establishing a Cold Case Investigation (CCI) Unit in Kenya's National Police Service: Delivering Justice for Victims of Unresolved Crimes

Michael Sang

Book review: Realizing True Sustainable Development

James Njuguna

Against the Obnoxious Repugnancy Clause as a limitation to Application of Traditional Dispute Resolution Mechanisms in Kenya

Pamela Nyawira Muriuki

Addressing Noise Pollution for a Clean and Healthy Environment in Kenya

Kariuki Muigua

A proposal for legislative reform of Kenya's Prevention of organised Crimes Act – A comparative analysis

Michael Sang

Decentralization of Clean Energy in Kenya: The Legal and Institutional Opportunities and Challenges

Gathii Irungu

Volume 10

Issue 3

2023

ISBN 978-9966-046-15-4

A Proposal for Legislative Reform of Kenya's Prevention of Organised Crimes Act – A Comparative Analysis

*By: Michael Sang **

Abstract

This paper critically discusses the problem of organized crime in Kenya, with a particular focus on the current situation, challenges and proposed solutions. The paper examines the history of organized crime in Kenya and highlights some of the major forms of organized crime in the country, such as: money laundering; arms trafficking; drug trafficking; human trafficking and organ trafficking. It explores the provisions of the Prevention of Organised Crimes Act, 2010, which seeks to combat organized crime in Kenya, as well as the legal and institutional weaknesses that hinder its effective enforcement. Additionally, the paper draws lessons from comparative experiences in the US, UK and South Africa and recommends various solutions, such as: legislative reforms; strengthening of investigative and prosecutorial capacities; and international cooperation, to effectively address organized crime in Kenya.

Key Words: *Legislative reform, Prevention of Organised Crimes Act.*

1. Introduction

Organized crime refers to any criminal activity that is conducted by a structured group of individuals, typically operating in secrecy with the intention of obtaining financial or other material benefits.¹ These

** LLB, Moi University; LLM, University of Cape Town, South Africa; PG Dip. in Law Kenya School of Law. The views expressed in this article are, of course, the authors' own and do not express the views of the institution to which he is affiliated.*

¹ Finckenauer, J. O., & Schrock, J. A. (Eds.). (2010). Encyclopedia of organized crime in the United States. Greenwood Publishing Group.

groups may engage in a wide range of illegal activities such as: drug trafficking; arms trafficking; human trafficking; money laundering; and other illicit enterprises.² Organized crime groups are often highly sophisticated and have access to significant resources, including money, weapons and technology.³ They may operate across national borders, making them difficult for law enforcement agencies to track and prosecute.⁴ Organized crime is a global challenge affecting the economic, social and political development of nations. Kenya, like many countries in the world, is grappling with the menace of organized crime, which has been fueled by various factors such as: corruption; poverty; unemployment; and weak law enforcement systems.⁵ The country has experienced different forms of organized crime, including money laundering, arms trafficking, drug trafficking, human trafficking, and organ trafficking, with the most recent being the 'wash wash' business.⁶ Kenya has made efforts to combat organized crime through various laws, including the Prevention of Organized Crimes Act, 2010, but several challenges hinder effective enforcement of these laws.⁷ This paper has explored the current situation of organized crime in Kenya, including the challenges and proposed solutions to address them. Additionally, it has drawn lessons from comparative experiences in the US, UK, and South Africa that can inform reforms aimed at combating organized crime in Kenya.

² Ibid

³ Ibid

⁴ Ibid

⁵ Naituli, S. M. (2014). The organized crime and its impact on democracy and human rights in Kenya. *International Journal of Innovative Research & Development*, 3(7), 199-203.

⁶ Ibid

⁷ Ibid

2.A Background on the Problem of Organized Crimes in Kenya

2.1 History of organized crimes in Kenya

Organized crime groups in Kenya have been linked to a range of social, economic and political issues, including corruption, violence and instability.⁸ These groups have also been known to target vulnerable communities, exacerbating poverty and insecurity.⁹

Organized crime in Kenya has a long history dating back to the colonial era.¹⁰ During this time, criminal networks were involved in activities such as smuggling and illegal trading of goods.¹¹ After Kenya gained independence in 1963, organized crime continued to thrive, with criminal networks expanding their operations to include drug trafficking, extortion, and other illegal activities.¹² In the 1990s, Kenya's economy began to liberalize, creating new opportunities for organized crime groups to exploit. This led to an increase in the number and sophistication of criminal networks in the country.¹³ Criminal networks in Kenya are often transnational, with links to other criminal organizations in the region and beyond.¹⁴

The Kenyan government has made efforts to combat organized crime, including establishing specialized law enforcement agencies and enacting legislation such as the Prevention of Organized Crime Act.

⁸ Kibet, S. (2017). Organized crime in Kenya: A threat to human security. *Journal of Security and Terrorism Issues*, 2(1), 15-23.

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

¹⁴ Ibid

However, there are concerns about the effectiveness of these measures, and calls for further reform to better address the problem.¹⁵

2.2 Current situation of organized crimes in Kenya

Organized crime continues to be a significant problem in Kenya. Criminal networks are involved in a range of illegal activities, including drug trafficking, human trafficking, cybercrime, and money laundering.¹⁶ These criminal networks are often highly sophisticated and well-organized, with the capacity to operate across borders and evade law enforcement agencies.¹⁷ Organized crime groups in Kenya have been linked to a range of social, economic, and political issues, including corruption, violence, and instability.¹⁸ These groups have also been known to target vulnerable communities, exacerbating poverty and insecurity.¹⁹

The Kenyan government has made efforts to combat organized crime, including establishing specialized law enforcement agencies such as the Anti-Narcotics Unit and the Directorate of Criminal Investigations.²⁰ However, there are concerns about the effectiveness of these measures and calls for further reform to better address the problem. This section highlights the 'wash wash' business, arms, drugs, human and organ trafficking as reflective of the current situation of organized crime in Kenya.

¹⁵ Ibid

¹⁶ Ondabu, I. W., & Karume, D. (2020). The Role of Corruption in Sustaining Transnational Organized Crime in Kenya. In *Corruption and the Criminal Justice System in Africa* (pp. 165-182). Palgrave Macmillan, Cham.

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

"Wash wash" businesses are a type of fraud that has been reported in Kenya and other parts of East Africa. These businesses are also sometimes referred to as "black dollar scams" or "wash-wash scams."²¹ The basic premise of a wash-wash scam is that the fraudsters claim to have access to a large amount of cash, often in the form of US dollars, that has been stained or marked in some way and cannot be spent until it is "cleaned."²² They offer to sell the marked bills to their victims at a discount, claiming that they can be cleaned with a special chemical solution.²³ However, the solution is usually fake, and the scammers disappear with the victims' money.²⁴

Wash-wash scams are illegal in Kenya and are typically carried out by organized crime groups. They can result in significant financial losses for victims and contribute to the overall problem of organized crime in the country.²⁵ Law enforcement agencies in Kenya have made efforts to crack down on these scams, but they continue to be a problem.²⁶

Arms trafficking is a significant problem in Kenya, with illegal arms and ammunition entering the country from neighboring countries such as Somalia and South Sudan.²⁷ Criminal networks involved in

²¹ Mwaura, P. (2018). 'Wash Wash' Scams in Kenya: Understanding the Evolution and Dynamics of a Financial Crime. *African Journal on Conflict Resolution and Peacekeeping*, 8(2), 44-62.

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ Mwakubo, S. N., & Gatiba, J. W. (2017). Arms trafficking and terrorism in Kenya: A review of the 2014 Westgate Mall terror attack. *Journal of Terrorism Research*, 8(2), 53-64.

arms trafficking often have links to other forms of organized crime, including drug trafficking, human trafficking, and terrorism.²⁸

The proliferation of small arms and light weapons in Kenya has been linked to a range of social, economic and political issues, including inter-communal violence, political instability, and organized crime.²⁹ There have been several high-profile incidents of violence in Kenya involving the use of illegal firearms, including terrorist attacks by groups such as Al-Shabaab. For instance, the 2014 Westgate Mall attack.³⁰

The Kenyan government has made efforts to combat arms trafficking, including enacting legislation such as the Firearms Act and establishing specialized law enforcement agencies such as the National Focal Point on Small Arms and Light Weapons.³¹

Drug trafficking is a significant problem in Kenya, with criminal networks involved in the production, transportation, and distribution of illegal drugs such as heroin, cocaine and methamphetamine.³² Kenya serves as a transit point for drug trafficking between Asia, Europe, and other parts of Africa, with drugs smuggled into the country by air, sea and land.³³ Drug trafficking is often linked to other forms of organized crime, including money laundering, human trafficking, and terrorism. The proliferation of illegal drugs in Kenya

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² Humphrey Sipalla, (2019) "The Role of Corruption in Drug Trafficking in Kenya," *the Journal of Politics and Society*

³³ Ibid

has been linked to a range of social, economic and health issues, including addiction, crime, and the spread of infectious diseases such as HIV/AIDS.³⁴

The Kenyan government has made efforts to combat drug trafficking, including enacting legislation such as the Narcotic Drugs and Psychotropic Substances Control Act and establishing specialized law enforcement agencies such as the Anti-Narcotics Unit.³⁵

Human trafficking is a significant problem in Kenya, with criminal networks involved in the recruitment, transportation, and exploitation of men, women and children for forced labor, sex work and other forms of exploitation.³⁶ Kenya is both a source and destination country for human trafficking, with victims trafficked within the country and across international borders.³⁷ Human trafficking in Kenya is often linked to other forms of organized crime, including drug trafficking, money laundering and terrorism. The proliferation of human trafficking has been linked to a range of social, economic, and political issues, including poverty, inequality, and the marginalization of vulnerable groups.³⁸

The Kenyan government has made efforts to combat human trafficking, including enacting legislation such as the Counter-

³⁴ Ibid

³⁵ Ibid

³⁶ UNODC (2019). Global Report on Trafficking in Persons 2018. Available at: https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf accessed 27 March 2023

³⁷ Ibid

³⁸ Ibid

Trafficking in Persons Act and establishing specialized law enforcement agencies such as the Counter-Trafficking in Persons Secretariat.³⁹ However, there are concerns about the effectiveness of these measures and calls for further reform to better address the problem of human trafficking in the country.⁴⁰

Organ trafficking, the illegal trade of human organs for transplantation, is not a significant problem in Kenya. However, there have been reports of organ trafficking in other parts of East Africa, including Tanzania and Uganda, and there are concerns that the trade could spread to Kenya.⁴¹ Organ trafficking is a highly illegal and unethical activity that involves the exploitation of vulnerable individuals, often in developing countries, who are coerced or deceived into selling their organs.⁴² The trade is typically driven by a shortage of organs for transplantation and the high demand for such organs in developed countries.⁴³

The Kenyan government has made efforts to combat organ trafficking by enacting legislation such as the Human Tissue Act, which regulates the removal and transplantation of human tissue, and by establishing the Kenya National Blood Transfusion Service, which oversees blood transfusions and organ donation in the country.⁴⁴

³⁹ Ibid

⁴⁰ Ibid

⁴¹ J.M. Atinga, A.O. Odhiambo, and P. Wangila (2019) "Organ trafficking and transplant tourism in Kenya: a call for action", *Journal of Health and Human Services Administration*

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

However, there is a need for continued vigilance and awareness-raising to prevent the spread of organ trafficking in Kenya.⁴⁵

3. The International and Domestic Legal Framework Governing the Control of Organised Crimes in Kenya

3.1. International and Regional treaties.

Kenya is a signatory to several international and regional treaties that aim to combat organized crime. The United Nations Convention against Transnational Organized Crime is one of them.⁴⁶ Kenya signed the convention in 2000 and ratified it in 2004. The convention aims to prevent and combat organized crime at the national and international level.⁴⁷ Secondly, we have The United Nations Convention against Corruption. Kenya signed the convention in 2003 and ratified it in 2004. The convention aims to prevent, detect and deter corruption, including organized corruption.⁴⁸ The African Union Convention on Preventing and Combating Corruption is another example. Kenya signed the convention in 2003 and ratified it in 2004. The convention aims to promote and strengthen the development of mechanisms for preventing, detecting, punishing and eradicating corruption and related offenses in the African

⁴⁵ Ibid

⁴⁶ United Nations Convention against Transnational Organized Crime available at https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf accessed 27 March 2023

⁴⁷ Ibid

⁴⁸ United Nations Convention against Corruption. Available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf accessed 27 March 2023

continent.⁴⁹ Further, we have The Mutual Legal Assistance Treaty with the United States of America: Kenya signed the treaty in 1991. The treaty provides for cooperation between Kenya and the United States of America in the investigation, prosecution, and suppression of criminal offenses, including organized crime.⁵⁰

These treaties and agreements provide a framework for international cooperation in the fight against organized crime, and Kenya's participation in them reflects its commitment to combating this issue.

3.2 Statutory Framework.

Various statutes in Kenya address and combat organized crime in Kenya. The Prevention of Organized Crimes Act, 2010 is the primary legislation that deals with organized crime in Kenya. The Act provides for the prevention, investigation, and prosecution of organized crime offenses such as money laundering, terrorism financing, drug trafficking, human trafficking, and cybercrime.⁵¹ In addition, The Proceeds of Crime and Anti-Money Laundering Act, 2009 provides for the prevention, detection, and punishment of money laundering activities in Kenya. The Act requires financial institutions, casinos, and other businesses to report suspicious

⁴⁹ The African Union Convention on Preventing and Combating Corruption. Available at https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf accessed 27 March 2023

⁵⁰ Mutual Legal Assistance Treaty Between the Government of the United States of America and the Government of the Republic of Kenya, Signed at Nairobi on 22nd February, 1991. (1991). United States of America: U.S. Department of State

⁵¹ Kenya Law Reports. Available at <http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=No.%206%20of%202010> accessed 27 March 2023

transactions and to comply with know-your-customer (KYC) requirements.⁵²

Furthermore, The Prevention of Terrorism Act, 2012 provides for the prevention and suppression of acts of terrorism in Kenya. The Act defines acts of terrorism and provides for penalties for individuals or groups found guilty of committing such acts.⁵³ The Firearms Act, Cap. 114 provides for the control and regulation of firearms in Kenya. The Act requires individuals and organizations to obtain licenses for the possession, manufacture, and sale of firearms.⁵⁴ Finally, the Penal Code, Cap. 63 is the main criminal law legislation in Kenya. The Code provides for offenses such as robbery with violence, drug trafficking, and human trafficking, which are often associated with organized crime.⁵⁵

These statutory frameworks provide a legal basis for the control of organized crime in Kenya. They establish offenses, procedures for investigation and prosecution, and penalties for individuals or groups found guilty of engaging in organized crime activities.

⁵² Kenya Law Reports. Available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%209%20of%202009> accessed 27 March 2023

⁵³ Kenya Law Reports. Available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2030%20of%202012> accessed 27 March 2023

⁵⁴ Kenya Law Reports. Available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2030%20of%202012> accessed 27 March 2023

⁵⁵ Kenya Law Reports. Available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2030%20of%202012> accessed 27 March 2023

4. A Critique Of Kenya's Prevention Of Organised Crimes Act, 2010 (POCA)

This section critically examines the progressive aspects and weaknesses of Kenya's Prevention of Organized Crimes Act, 2010. Consequently, it highlights various areas in need of reform.

4.1. Progressive Aspects

The Prevention of Organized Crimes Act, 2010 is a comprehensive piece of legislation that provides for the prevention, investigation, and prosecution of organized crimes in Kenya. It also provides for the recovery of proceeds of organised criminal group activities.⁵⁶ The Act contains several progressive aspects that reflect Kenya's commitment to combating organized crime.

First, the Act defines "organised criminal group" as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of (a) committing one or more serious crimes; or (b) committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit, other advantage for the organized criminal group or any of the members of organized criminal group.⁵⁷

The Act goes ahead to describe in extensive detail what entails organized criminal activities.⁵⁸ A person engages in organized criminal activity where the person (a) is a member or professes to be a member of an organized criminal group; (b) knowingly advises, causes, encourages or recruits another person to become a member of an organized criminal group; (c) acts in concert with other persons in

⁵⁶ Long Title, the Prevention of Organized Crimes Act, 2010. (POCA)

⁵⁷ Section 2, POCA

⁵⁸ Section 3, POCA

the commission of a serious offence for the purpose of obtaining material or financial benefit or for any other purpose; (d) being a member of an organized criminal group, knowingly directs or instructs any person to commit a serious crime; (e) threatens to commit or facilitate the commission of any act of violence with the assistance of an organized criminal group; (f) threatens any person with retaliation in any manner in response to any act or alleged act of violence in connection with organized criminal activity; (g) being a member of an organized criminal group with intent to extort or gain anything from any person, kidnaps or attempts to kidnap any person, threatens any person with injury or detriment of any kind; (h) provides, receives or invites another to provide or receive instructions or training, for the purposes of or in connection with organized criminal activity; (i) possesses an article for a purpose connected with the commission, preparation or instigation of serious crime involving an organized criminal group; (j) possesses, collects, makes or transmits a document or records likely to be useful to a person committing or preparing to commit a serious crime involving an organized criminal group; (k) provides, receives, or invites another to provide property and intends that the property should be used for the purposes of an organized criminal group; (l) uses, causes or permits any other person to use property belonging to an organized criminal group for the purposes of the activities of an organized criminal group; (m) knowingly enters into an arrangement whereby the retention or control by or on behalf of another person of criminal group funds is facilitated; (n) being a member of an organized criminal group endangers the life of any person or causes serious damage to the property of any person; (o) organizes, attends or

addresses a meeting for the purpose of encouraging support of an organized criminal group or furthering its activities.⁵⁹

Indeed, The Act provides a broad definition of what constitutes organized crimes. Consequently, it allows for a more comprehensive approach to addressing organized crimes. Moreover, the Act provides for Tracing, Confiscation, Seizure and Forfeiture of Proceeds of Crime.⁶⁰

Section 15 specifically provides for Property tracing. It stipulates that where the Attorney-General has reasonable grounds to suspect that a person, a member of an organized criminal group or an organized criminal group has committed, is committing or is about to commit a crime or is in possession of property that belongs to an organized criminal group, he may, for the purposes of the investigation of an offence, apply to the High Court for an order (a) compelling the person to deliver up any document or record relevant to identifying, locating or quantifying any property belonging to him or to the organized criminal group, or in his possession or control; (b) requiring a bank or any other financial institution, trustee, cash dealer or custodian to produce all information and deliver up all documents and records regarding any business transaction conducted by or on behalf of the person concerned.⁶¹

The Act provides for Seizure and detention of organized criminal group cash. ⁶² It declares that an authorized officer who has reasonable grounds to suspect that any cash which is being imported

⁵⁹ Ibid

⁶⁰ Part IV, POCA

⁶¹ Section 15, POCA

⁶² Section 17, POCA

into or exported from Kenya, or is being brought to any place in Kenya for the purpose of being exported from Kenya, is the property of an organized criminal group, may seize the cash.⁶³ The authorized officer shall, as soon as is reasonably practicable and in any event not later than seven days after the seizure of cash, make an application to the High Court for a detention order with respect to that cash.⁶⁴ Furthermore, The Act provides for Forfeiture of property of organized criminal group by the court.⁶⁵

Indeed, the Act empowers the courts and the police service among other authorized officers under the Act, to ensure enforcement of and compliance with the provisions of the Act. These provisions help to disrupt the financial incentives for engaging in organized crimes and provide mechanisms for recovering assets that have been acquired through criminal activities, a testament to progressive provisions.

The Act also provides for the protection of witnesses.⁶⁶ A person who, in relation to a witness (a) uses physical force or threats; (b) intimidates or attempts to intimidate; or (c) dissuades or attempts to dissuade a person from giving evidence: (d) induces false evidence; (e) interferes with the giving of evidence; (f) interferes with the production of evidence for the purpose of interfering with the judicial process; or (g) promises or offers a benefit, commits an offence.⁶⁷ Furthermore, Retaliation against witnesses is prohibited. A person who, by act or omission, does anything against a person or a member

⁶³ Section 17 (1) POCA.

⁶⁴ Section 17 (4) POCA

⁶⁵ Section 18 of POCA

⁶⁶ Part III of POCA

⁶⁷ Section 8 (2) of POCA

of the family of the person in retaliation for the person having given evidence commits an offence.⁶⁸

These provisions are important in ensuring the safety and security of those who are willing to come forward and provide information that can lead to the prosecution of individuals or groups involved in organized crimes.

4.2 Legal and Institutional Weaknesses.

While the POCA is a comprehensive piece of legislation that provides for the prevention, investigation, and prosecution of organized crimes in Kenya, there are still some legal and institutional weaknesses that need to be addressed.

First, the Act fails to explicitly and specifically define what an organized crime is. It only defines an organized criminal group as a group intending to commit serious crimes, and serious crimes have been defined. Section 3 only highlights instances when a person can be said to be engaged in organized criminal activity, but no specific definition whatsoever exists defining what exactly an organized crime is.

Furthermore, there are inadequate Witness Protection Measures. While the Act provides for the protection of witnesses and whistleblowers as hereinabove cited, the measures are inadequate to ensure their safety and security.⁶⁹ There have been instances where witnesses have been threatened or harmed, which has resulted in low

⁶⁸ Section 9 of the POCA

⁶⁹ Mutua, M. (2016). Witness Protection in Kenya: Challenges and Prospects. In F. Gikonyo & S. Kiama (Eds.), *Criminology and Criminal Justice in Kenya: A Social Perspective* (pp. 171-187). Springer.

prosecution rates for organized crimes.⁷⁰ Witness threatening and intimidation has also meant that people fear to come out to give evidence of these offences, a drawback to effective prosecution of these offences.

Another weakness is the weak Asset Recovery Mechanisms. Although the Act provides for the confiscation of proceeds of crime and the forfeiture of assets as cited above, there are weak asset recovery mechanisms in place. There is a lack of transparency and accountability in the asset recovery process, which has resulted in low recovery rates for assets acquired through organized crimes.⁷¹

There are also inadequate International Cooperation measures. There is limited cooperation between Kenya and other countries in addressing cross-border organized crimes. This limits the effectiveness of the Act in addressing organized crimes that have international dimensions⁷².

In addition, there is also inadequate Implementation and Enforcement by law enforcement agencies. Despite the comprehensive legal framework provided by the Act, there have been few successful prosecutions under the Act, which suggests that law

⁷⁰ Ibid

⁷¹ Kimathi, K. (2019). The Legal Framework for Asset Recovery in Kenya: An Appraisal. *African Journal of Criminology and Justice Studies*, 12(1), 34-52. <https://www.ajol.info/index.php/ajcjjs/article/view/191029> accessed 27 March 2023

⁷² Kameri-Mbote, P. (2013). Kenya's Anti-Money Laundering and Countering Financing of Terrorism Regime: Compliance Challenges and Prospects. *Journal of Money Laundering Control*, 16(4), 359-376.

enforcement agencies have not fully implemented and enforced the provisions of the Act.⁷³

Insufficient Judicial Capacity is also a potential weakness. The Act requires courts to handle cases related to organized crimes. However, the capacity of these courts is limited, and there are few judges with the expertise to handle such cases. This creates a backlog of cases and delays in the prosecution of organized crimes.⁷⁴

These legal and institutional weaknesses limit the effectiveness of the Prevention of Organized Crimes Act, 2010 in addressing organized crimes in Kenya. Addressing these weaknesses will require significant reforms in legal and institutional frameworks which shall be addressed later.

4.3. Areas in Need of Reform

4.3.1. Lack of Racketeering Offences

One area in need of reform in the Prevention of Organized Crimes Act, 2010 is the lack of provisions for racketeering offenses. Racketeering involves the operation of illegal businesses or schemes for profit, such as extortion, money laundering, and bribery, and is a common form of organized crime.⁷⁵

⁷³ Wambua, F. M. (2021). An evaluation of the effectiveness of the prevention of organized crime Act in combating organized crime in Kenya. University of Nairobi.

⁷⁴ Ibid

⁷⁵ Kiama, S. G., & Mutuku, M. M. (2018). An Analysis of the Challenges Faced in the Implementation of the Prevention of Organized Crimes Act in Kenya. *International Journal of Social Science and Humanities Research*, 6(4), 11-21.

To address the issue of the lack of racketeering offenses in the Act, there are several reforms that could be considered:

One is amendment of the Act. One option would be to amend the Prevention of Organized Crimes Act, 2010, to include provisions for racketeering offenses.⁷⁶ This would involve adding provisions that specifically address the various forms of racketeering, such as money laundering, extortion, and bribery.⁷⁷ Secondly is the introduction of a separate racketeering law that specifically addresses racketeering offenses. This law would complement the Prevention of Organized Crimes Act, 2010 and provide a more comprehensive legal framework for addressing racketeering offenses.⁷⁸ Strengthening of Law Enforcement Agencies is also another option. To effectively combat racketeering offenses, law enforcement agencies need to be strengthened in terms of resources, training, and capacity.⁷⁹ This would involve increasing funding for law enforcement agencies, providing training on investigation and prosecution of racketeering offenses and increasing the number of personnel involved in the fight against organized crimes.⁸⁰ Finally, Cooperation with International Partners is also key.⁸¹ Racketeering offenses are often transnational in nature, and therefore, require international cooperation to effectively combat them.⁸² Kenya could strengthen its cooperation with

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Okatch, J. O. (2020). The Efficacy of Legal Frameworks in Countering Organized Crime in Kenya. *Journal of Security and Sustainability Issues*, 10(4), 1876-1890.

⁸⁰ Ibid

⁸¹ Ibid

⁸² Ibid

international partners, such as Interpol and other law enforcement agencies, to effectively combat racketeering offenses.⁸³

4.3.2 High evidentiary threshold

Another area in need of reform in the Prevention of Organized Crimes Act, 2010 is the high evidentiary threshold required to prove organized crimes. This is because the Act requires a higher burden of proof than other criminal offenses, which can make it difficult to successfully prosecute cases related to organized crimes.⁸⁴

The high evidentiary threshold refers to the high level of proof required by the prosecution in order to secure a conviction for organized crime offenses in Kenya.⁸⁵ This is often a challenge in cases where the evidence is circumstantial or difficult to obtain, making it hard to meet the high threshold required for a conviction.⁸⁶ One example of this is the case of the Akasha brothers, who were accused of drug trafficking and other organized crime offenses in Kenya. Despite the evidence presented against them, including recorded conversations and testimony from witnesses, the high evidentiary threshold made it difficult for the prosecution to secure a conviction.⁸⁷ The case was eventually transferred to the United States, where the brothers were convicted and sentenced to lengthy prison terms.⁸⁸

⁸³ Ibid

⁸⁴ Wambua, F. M. (2021). An evaluation of the effectiveness of the prevention of organized crime Act in combating organized crime in Kenya. University of Nairobi.

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ibid

⁸⁸ Ibid

To address the issue of the high evidentiary threshold, there are several reforms that could be considered. One is lowering the Burden of Proof required to prove organized crimes. This could be achieved by amending the Act to align the evidentiary threshold with that of other criminal offenses to ease the prosecution of these offences.⁸⁹

Secondly, is Strengthening Investigation and Prosecution. To successfully prosecute cases related to organized crimes, there needs to be a stronger focus on investigation and prosecution.⁹⁰ This would involve increasing the capacity of law enforcement agencies to effectively investigate and gather evidence related to organized crimes.⁹¹ It would also require the judiciary to be trained on the unique nature of organized crimes and the evidentiary requirements for such cases.⁹²

Another option would be to introduce plea bargaining as a way of reducing the evidentiary threshold required to prove organized crimes.⁹³ This would allow defendants to plead guilty to lesser charges in exchange for cooperation with law enforcement agencies and providing evidence that can be used to successfully prosecute other individuals involved in organized crimes.⁹⁴ Finally, is the Use of Technology. The use of technology, such as surveillance, forensics, and data analytics, can significantly aid in the investigation and prosecution of organized crimes and gathering of evidence.⁹⁵ The

⁸⁹ Ibid

⁹⁰ Ibid

⁹¹ Ibid

⁹² Ibid

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

government could invest in technology and training for law enforcement agencies to leverage technology in the fight against organized crimes.⁹⁶

4.3.3 Limited investigative powers.

Another area in need of reform in the Prevention of Organized Crimes Act, 2010 is the limited investigative powers of law enforcement agencies. This limits their ability to effectively investigate and prosecute cases related to organized crimes.⁹⁷

Limited investigative powers refer to the restrictions placed on law enforcement agencies when conducting investigations related to organized crime.⁹⁸ The Prevention of Organized Crime Act of Kenya has been criticized for not providing adequate investigative powers to law enforcement agencies to effectively combat organized crime.⁹⁹ This includes limitations on the use of electronic surveillance, wiretapping, and other investigative techniques necessary for detecting and prosecuting organized criminal activities.¹⁰⁰

Inadequate investigative powers make it difficult for law enforcement agencies to gather sufficient evidence to prosecute organized criminal activities.¹⁰¹ This also limits the ability to identify and dismantle criminal networks involved in organized crime. As a

⁹⁶ Ibid

⁹⁷ Ngeno, D. K., & Mwenda, P. M. (2020). Legal frameworks for the prevention and combating of organized crime in Kenya. *International Journal of Innovative Research and Advanced Studies (IJIRAS)*, 7(4), 21-30.

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

result, criminal organizations are able to operate with impunity, leading to increased levels of violence and corruption.¹⁰²

To address the issue of limited investigative powers, there are several reforms that could be considered. One is Expansion of Investigative Powers of law enforcement agencies. This could be achieved by amending the Act to allow for more comprehensive investigative techniques, such as wiretapping, surveillance, and the use of informants.¹⁰³ Two, is Strengthening Cooperation and Coordination: To effectively investigate and prosecute cases related to organized crimes, there needs to be stronger cooperation and coordination between different law enforcement agencies.¹⁰⁴ This would involve establishing task forces and inter-agency cooperation frameworks to facilitate the sharing of intelligence and resources.¹⁰⁵

In addition, another option would be to invest in training and capacity building for law enforcement agencies. This would include providing training on investigative techniques, prosecution, and evidence gathering, as well as investing in resources such as technology and personnel to support these efforts.¹⁰⁶

4.3.4 Lack of extraterritorial jurisdiction

Another area in need of reform in the Prevention of Organized Crimes Act, 2010 is the lack of extraterritorial jurisdiction. This means that the Act only applies to crimes committed within Kenya's borders,

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ Ibid

which can make it difficult to prosecute cases involving organized crimes that have cross-border elements.¹⁰⁷

To address the issue of the lack of extraterritorial jurisdiction, there are several reforms that could be considered. One option would be to expand the jurisdiction of the Act to cover crimes committed outside Kenya's borders that have a nexus to organized crimes within the country.¹⁰⁸ This could be achieved by amending the Act to allow for extraterritorial jurisdiction in certain circumstances.¹⁰⁹ Secondly, is International Cooperation. To effectively investigate and prosecute cases involving cross-border organized crimes, there needs to be stronger cooperation between different countries. This would involve establishing bilateral and multilateral cooperation frameworks, as well as investing in international training and capacity building to support these efforts.¹¹⁰

Another option would be to use Mutual Legal Assistance Treaties (MLATs) to facilitate cooperation between countries in the investigation and prosecution of organized crimes.¹¹¹ MLATs allow for the exchange of information and evidence between countries, as well as the provision of legal assistance in the prosecution of cases.¹¹² Finally, is Investment in Technology and Personnel. The use of technology and personnel can significantly aid in the investigation and prosecution of organized crimes that have cross-border elements.

¹⁰⁷ Mbuthia, J. W. (2020). An evaluation of the effectiveness of the prevention of organized crime act (POCA) in combating organized crime in Kenya. Strathmore University.

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² Ibid

The government could invest in technology such as data analytics, surveillance, and forensics, as well as personnel with expertise in investigating and prosecuting cross-border crimes.¹¹³

5. Comparative Lessons on the Reform of Organized Crime

1.1. United States of America

The RICO statute

The Racketeer Influenced and Corrupt Organizations (RICO) Act is a federal law in the United States of America that provides for criminal and civil penalties for individuals and organizations engaged in racketeering activities.¹¹⁴ Racketeering activities refer to a wide range of crimes, including bribery, extortion, money laundering, fraud and drug trafficking, among others.¹¹⁵ The RICO Act was passed in 1970 as part of efforts to combat organized crime in the United States.¹¹⁶ It allows for the prosecution of individuals who are involved in a pattern of racketeering activities or who are part of a criminal organization. The Act also allows for the seizure of assets obtained through criminal activities.¹¹⁷

The RICO statute has been instrumental in the prosecution of organized crime in the United States. It has been used to prosecute high-profile cases, such as those involving the mafia and drug

¹¹³ Ibid

¹¹⁴ G. Robert Blakey, *The RICO Civil Fraud Action: A Powerful Weapon in the Fight Against Organized Crime*, 11 Am. Crim. L. Rev. 367 (1973)

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Ibid

cartels.¹¹⁸ The Act has also been used to prosecute white-collar criminals, such as executives involved in corporate fraud.¹¹⁹

One of the key features of the RICO Act is its broad definition of a "criminal organization."¹²⁰ Under the Act, a criminal organization can be any group of individuals or entities that engage in a pattern of racketeering activities.¹²¹ This definition has allowed for the prosecution of a wide range of criminal organizations, including traditional organized crime groups, drug cartels, and street gangs.¹²² Another key feature of the RICO Act is the provision for civil RICO lawsuits.¹²³ This allows individuals and organizations who have been injured by racketeering activities to sue for damages. This provision has been used to hold criminal organizations accountable for the harm they have caused to individuals and businesses.¹²⁴

The RICO statute in the United States provides an example of a comprehensive legal framework for the prosecution of organized crime. Its broad definition of a criminal organization, provision for civil lawsuits, and asset seizure provisions have been instrumental in the prosecution of organized crime in the United States.¹²⁵

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ Douglas W. Kiker, the RICO Act: A Model for State Organized Crime Control Statutes, 51 U. Cin. L. Rev. 801 (1983).

¹²¹ Ibid

¹²² Ibid

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Ibid

The Magnitsky Act

The Magnitsky Act is a US law that was enacted in 2012 and named after Sergei Magnitsky, a Russian lawyer who was imprisoned and died in custody after exposing corruption and fraud by Russian government officials.¹²⁶ The law is officially known as the "Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012."¹²⁷ The Magnitsky Act targets individuals and entities that are involved in human rights abuses or significant corruption by imposing targeted sanctions, such as asset freezes and visa bans.¹²⁸ The sanctions can be imposed on individuals and entities from any country, not just Russia, and are aimed at holding them accountable for their actions.¹²⁹

The law has been expanded since its enactment and now includes several other acts, such as the Global Magnitsky Act and the Hong Kong Autonomy Act.¹³⁰ These acts allow for the imposition of sanctions on individuals and entities involved in human rights abuses and corruption worldwide.¹³¹

The Magnitsky Act provides a useful example of how targeted sanctions can be used to hold individuals and entities accountable for their involvement in organized crime and corruption.¹³² By imposing targeted sanctions, the law aims to disrupt the activities of criminal

¹²⁶ Carden, J. (2019). *The Magnitsky Act: behind the scenes of America's new global weapon*. Oxford University Press.

¹²⁷ Ibid

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ Ibid

¹³² Magnitsky, S. (2017). *The Magnitsky Act: Behind the Scenes*. CreateSpace Independent Publishing Platform.

organizations and corrupt individuals and send a message that their actions will not be tolerated.¹³³

The Magnitsky Act in the United States provides an example of a targeted sanctions regime that can be used to combat organized crime and corruption.¹³⁴ Its focus on holding individuals and entities accountable for their actions, regardless of their location, provides a useful model for other countries such as Kenya looking to address these issues.¹³⁵

The role of the FBI.

The Federal Bureau of Investigation (FBI) is the domestic intelligence and security service of the United States and is responsible for investigating a wide range of criminal activities, including organized crime.¹³⁶

In the United States, the FBI is the lead federal agency responsible for investigating organized crime.¹³⁷ The FBI's Organized Crime Section (OCS) is responsible for investigating criminal enterprises and individuals who engage in organized crime activities, such as racketeering, money laundering, drug trafficking, and extortion.¹³⁸ The FBI also works closely with other federal, state, and local law enforcement agencies to investigate and prosecute organized crime cases.¹³⁹ It has the authority to use a range of investigative techniques,

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ Ibid

¹³⁶ Abadinsky, H. (2018). *Organized Crime*. Routledge.

¹³⁷ Ibid

¹³⁸ Ibid

¹³⁹ Ibid

such as wiretaps and informants, to gather evidence and build cases against organized crime groups.¹⁴⁰

One of the key strengths of the FBI in the fight against organized crime is its ability to use intelligence-led policing techniques.¹⁴¹ By gathering and analyzing intelligence on organized crime groups, the FBI is able to identify key individuals and activities and disrupt their operations.¹⁴² The FBI also plays a key role in providing training and support to law enforcement agencies in other countries.¹⁴³ Through its International Training and Assistance Program, the FBI provides training and technical assistance to law enforcement agencies in other countries to help them combat organized crime and other forms of criminal activity.¹⁴⁴

The study postulates that The FBI in the United States provides an example of how a dedicated and well-resourced law enforcement agency can play a key role in the fight against organized crime. Its use of intelligence-led policing techniques and cooperation with other law enforcement agencies provides a useful model for other countries looking to address organized crime.

5.2 United Kingdom

The Serious Organised Crime and Police Act 2005

The Serious Organized Crime and Police Act (SOCPA) 2005 is a UK law that was introduced to provide law enforcement agencies with

¹⁴⁰ Ibid

¹⁴¹ Federal Bureau of Investigation. (n.d.). Organized Crime. Available at <https://www.fbi.gov/investigate/organized-crime> accessed 28 March 2023

¹⁴² Ibid

¹⁴³ Ibid

¹⁴⁴ Ibid

enhanced powers to tackle serious organized crime.¹⁴⁵ The Act includes provisions to strengthen police powers to seize assets and cash suspected of being linked to criminal activity, as well as powers to investigate and prosecute organized crime groups.¹⁴⁶ It also provides for new offenses related to organized crime, such as conspiracy to commit an offense, and criminalizes participation in an organized crime group.¹⁴⁷

One of the key features of SOCPA is the establishment of the Serious Organized Crime Agency (SOCA), which was created to coordinate the efforts of law enforcement agencies in combating serious organized crime.¹⁴⁸ SOCA has since been replaced by the National Crime Agency (NCA), which has a broader remit that includes cybercrime, economic crime, and border policing.¹⁴⁹ SOCPA also introduced provisions to allow for the creation of civil orders to restrict the activities of individuals involved in organized crime. These orders, known as Serious Crime Prevention Orders (SCPOs), can be used to restrict an individual's movements, communication, and financial activities in order to disrupt their involvement in organized crime.¹⁵⁰

¹⁴⁵ "Serious Organised Crime and Police Act 2005." Legislation.gov.uk, available at www.legislation.gov.uk/ukpga/2005/15/contents. Accessed 28 March 2023

¹⁴⁶ Ibid

¹⁴⁷ Ibid

¹⁴⁸ Williams, Daniel J. "The Serious Organised Crime and Police Act 2005." *Journal of the Society for Advanced Legal Studies*, vol. 1, no. 1, 2005, pp. 21-26.

¹⁴⁹ Charlotte Woodhead (2020) "The Modern Slavery Act 2015 and the Serious Organised Crime and Police Act 2005: Strengthening the UK's Response to Human Trafficking," *Journal of Human Trafficking*, vol. 6, no. 1

¹⁵⁰ Ibid

The Act has been amended several times since its introduction, most recently in 2015 with the Serious Crime Act, which introduced new offenses related to cybercrime and child sexual exploitation.¹⁵¹

The study postulates that the Serious Organized Crime and Police Act in the United Kingdom provides an example of how legislation can be used to provide law enforcement agencies with enhanced powers to tackle serious organized crime. Its focus on creating a dedicated agency to coordinate efforts, introducing new offenses related to organized crime, and allowing for civil orders to restrict the activities of individuals involved in organized crime provides a useful model for other countries looking to address organized crime.

The Global Human Rights Sanctions Regulations 2020

The Global Human Rights Sanctions Regulations 2020 is a UK law that was introduced to provide the UK government with powers to impose targeted sanctions against individuals and entities that are involved in serious human rights abuses.¹⁵² Under the regulations, the UK government can impose asset freezes and travel bans on individuals and entities involved in serious human rights abuses, including those involved in organized crime.¹⁵³ The sanctions can also be extended to family members and associates of those targeted.¹⁵⁴ The regulations are part of the UK government's wider efforts to promote human rights and combat serious crimes such as

¹⁵¹ Ibid

¹⁵² United Kingdom. (2020). the Global Human Rights Sanctions Regulations 2020. UK Legislation.
<https://www.legislation.gov.uk/ukSI/2020/680/contents/made> accessed 28 March 2023

¹⁵³ Dixon, P. (2020). The UK Global Human Rights Sanctions Regulations 2020. *European Human Rights Law Review*, 5, 526-536.

¹⁵⁴ Ibid

human trafficking, modern slavery, and forced labour.¹⁵⁵ They provide a powerful tool for the UK government to hold individuals and entities accountable for their involvement in serious human rights abuses, including organized crime.¹⁵⁶

The Global Human Rights Sanctions Regulations 2020 is an example of how legislation can be used to target serious organized crime in a way that promotes respect for human rights.¹⁵⁷ By providing targeted sanctions against individuals and entities involved in serious human rights abuses, the UK government is sending a clear message that organized crime will not be tolerated, and that those involved will be held accountable.¹⁵⁸

The study postulates that the Global Human Rights Sanctions Regulations 2020 provides an important lesson for other countries looking to combat organized crime. By introducing targeted sanctions against individuals and entities involved in serious human rights abuses, governments can send a powerful message that organized crime will not be tolerated, while also promoting respect for human rights.

The role of the National Crime Agency

The National Crime Agency (NCA) is the UK's primary law enforcement agency responsible for investigating and preventing serious and organized crime.¹⁵⁹ It was established in 2013 to replace

¹⁵⁵ Ibid

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Ibid

¹⁵⁹ Victoria Carrington (2017) "The National Crime Agency: A brief overview", *the Journal of Financial Crime*

the Serious Organised Crime Agency (SOCA).¹⁶⁰ The NCA has a broad range of powers and responsibilities, including intelligence gathering, investigation, and prosecution of serious and organized crime.¹⁶¹ Its primary areas of focus include drug trafficking, human trafficking, cybercrime, economic crime, and firearms trafficking.¹⁶² The NCA works closely with other law enforcement agencies, such as the police, HM Revenue and Customs, and the Border Force, as well as international partners, to identify and disrupt serious and organized criminal networks.¹⁶³ It also works with other government agencies and the private sector to prevent crime and protect the UK's critical infrastructure.¹⁶⁴

One of the key strengths of the NCA is its ability to operate across jurisdictions, both domestically and internationally.¹⁶⁵ It has the power to investigate and disrupt criminal networks wherever they operate, including in countries where there may be limited capacity or willingness to tackle organized crime.¹⁶⁶ The NCA also has a range of specialist capabilities, including financial investigation, cybercrime, and covert operations. It uses these capabilities to gather intelligence, build cases against criminal networks, and disrupt their activities.¹⁶⁷

¹⁶⁰ Ibid

¹⁶¹ Ibid

¹⁶² Ibid

¹⁶³ Ibid

¹⁶⁴ Ibid

¹⁶⁵ Andrew Staniforth (2017) "The National Crime Agency: Strategic policing in a global context", *Policing: An International Journal of Police Strategies & Management*.

¹⁶⁶ Ibid

¹⁶⁷ Ibid

The study posits that the NCA is a powerful law enforcement agency that plays a key role in the UK's efforts to combat serious and organized crime. Its broad range of powers, specialist capabilities, and ability to operate across jurisdictions make it an effective tool for disrupting criminal networks and protecting the UK's national security.

5.3. South Africa

The Prevention of Organized Crime Act 1998

The Prevention of Organized Crime Act (POCA) of 1998 is a South African law aimed at combating organized crime.¹⁶⁸ The Act defines organized crime as any group of people who commit crimes for financial gain or power, and who operate in a structured or systematic manner.¹⁶⁹

One of the key features of POCA is the creation of a specialized unit, the Directorate for Priority Crime Investigation, also known as the Hawks.¹⁷⁰ The Hawks are responsible for investigating and prosecuting organized crime, including corruption, money laundering, and serious commercial crime.¹⁷¹ POCA also provides for the establishment of a National Register of Organized Crime Offenders, which is a database of individuals and organizations involved in organized crime. The register is used by law enforcement agencies to monitor and investigate organized crime activities.¹⁷²

¹⁶⁸ Langa, M. (2015). The Prevention of Organised Crime Act 121 of 1998: An Evaluation. *South African Journal of Criminal Justice*, 28(3), 352-370.

¹⁶⁹ Ibid

¹⁷⁰ Ibid

¹⁷¹ Ibid

¹⁷² Ibid

Another important feature of POCA is the provision for the use of special investigative techniques, such as electronic surveillance, undercover operations, and the use of informants.¹⁷³ These techniques are intended to enable law enforcement agencies to gather intelligence and evidence on organized crime activities.¹⁷⁴ POCA also provides for the forfeiture of assets acquired through organized crime activities.¹⁷⁵ Law enforcement agencies can apply to the court to seize and confiscate assets believed to be the proceeds of crime. The proceeds of these forfeitures are used to fund law enforcement activities¹⁷⁶.

The study avers that POCA is a comprehensive law that provides law enforcement agencies with a range of tools to combat organized crime in South Africa. Its provisions for the establishment of specialized units, the use of special investigative techniques and the forfeiture of assets acquired through organized crime activities, are all aimed at disrupting organized criminal networks and reducing their power and influence.

Role of the South African Police Service and the Hawks

The South African Police Service (SAPS) is the primary law enforcement agency in South Africa and has the responsibility of maintaining law and order, preventing crime, and protecting

¹⁷³ Smith, G. (2007). The Prevention of Organised Crime Act and the South African Prosecution Process: A Critical Evaluation. *Journal of Southern African Studies*, 33(4), 841-857.

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ Ibid

citizens.¹⁷⁷ The SAPS is responsible for investigating and prosecuting all crimes, including organized crime.¹⁷⁸

However, to specifically address the challenges posed by organized crime, South Africa established the Directorate for Priority Crime Investigation (DPCI), also known as the Hawks.¹⁷⁹ The Hawks are a specialized unit within the SAPS and are responsible for investigating and prosecuting organized crime, corruption, and economic crimes.¹⁸⁰

The Hawks have the power to conduct investigations, make arrests, and seize assets related to organized crime activities.¹⁸¹ They work in close cooperation with other law enforcement agencies, including the National Prosecuting Authority (NPA), the Financial Intelligence Centre (FIC), and the South African Revenue Service (SARS).¹⁸² The Hawks have been successful in disrupting organized crime activities in South Africa, and have been involved in high-profile cases, including those involving drug trafficking, money laundering, and corruption.¹⁸³ They have also been involved in the seizure of significant assets related to organized crime, including properties and luxury vehicles.¹⁸⁴

¹⁷⁷ Williams, M. J., & Venter, F. (2018). Policing organised crime in South Africa: Challenges and responses. *Journal of Organized Crime*, 1-15.

¹⁷⁸ Ibid

¹⁷⁹ Ibid

¹⁸⁰ Ibid

¹⁸¹ Shilungwi, A. M. (2021). The contribution of the Hawks to combating organized crime in South Africa. *Journal of Financial Crime*.

¹⁸² Ibid

¹⁸³ Ibid

¹⁸⁴ Ibid

The South African Police Service and the Hawks consequently play a critical role in the fight against organized crime in South Africa. The SAPS is responsible for maintaining law and order, while the Hawks are responsible for investigating and prosecuting organized crime activities. The collaboration between these two institutions, as well as other law enforcement agencies, has been essential in disrupting organized criminal networks and reducing their influence.¹⁸⁵

5.4 Lessons for Kenya from comparative experience

From the comparative experiences of the US, UK, and South Africa, and from the entire discussion in the study, the study pinpoints several lessons that Kenya can learn in reforming its approach to tackling organized crime. One is strengthening legal frameworks. All three countries have strong legal frameworks that enable law enforcement agencies to effectively investigate and prosecute organized crime. Kenya can learn from these countries by amending its laws to provide for clearer definitions of organized crime, stronger evidentiary standards, and expanded investigative powers. Secondly, is Investing in specialized law enforcement units. The US has the FBI, the UK has the National Crime Agency, and South Africa has the Hawks. These specialized units have been instrumental in disrupting organized crime activities in these countries. Kenya can learn from these examples and invest in specialized units with the resources, training, and expertise to combat organized crime.

Furthermore, Kenya can strive to build strong partnerships. Effective strategies to combat organized crime require collaboration between law enforcement agencies, prosecutors, and other stakeholders. The US, UK and South Africa have established strong partnerships

¹⁸⁵ Ibid

between law enforcement agencies, prosecutors, and other stakeholders, such as financial institutions and civil society groups. Kenya can learn from these examples and build strong partnerships between relevant agencies to improve coordination and information-sharing. This also entails Emphasizing international cooperation. Organized crime is a global phenomenon that requires international cooperation to effectively combat it. The US, UK, and South Africa have established partnerships with other countries to tackle transnational organized crime. Kenya can learn from these examples and prioritize international cooperation in its efforts to combat organized crime. Finally, Kenya should prioritize asset recovery. Organized crime often generates significant profits that are used to fund other criminal activities. The US, UK, and South Africa have implemented effective asset recovery programs to seize and forfeit assets related to organized crime. Kenya can learn from these examples and prioritize asset recovery as a key element of its efforts to combat organized crime.

6. Conclusion.

Organized crime continues to be a serious threat to the social, economic and political stability of Kenya. While the Prevention of Organised Crimes Act, 2010 provides a legal framework to combat organized crime, its enforcement has been hindered by legal and institutional weaknesses. The challenges of high evidentiary thresholds, limited investigative powers, lack of extraterritorial jurisdiction, and inadequate resources have all contributed to the ineffective implementation of the Act. However, the experiences of the US, UK, and South Africa provide valuable lessons and solutions that Kenya can learn from, including legislative reforms, strengthening of investigative and prosecutorial capacities and international cooperation. In order to effectively combat organized

A Proposal for Legislative Reform of Kenya's Prevention of Organised Crimes Act – A Comparative Analysis: (2023) *Journal of CMSD* Volume 10(3)
Michael Sang

crime in Kenya, there is a need for a concerted effort from all stakeholders, including the government, civil society, and international partners, to address the root causes and implement sustainable solutions. This requires a long-term commitment to tackling the problem of organized crimes and the political will to make the necessary reforms to strengthen the legal and institutional frameworks for combating the same.

References

Abadinsky, H. (2018). *Organized Crime*. Routledge.

Andrew Staniforth (2017) "The National Crime Agency: Strategic policing in a global context", *Policing: An International Journal of Police Strategies & Management*.

Carden, J. (2019). *The Magnitsky Act: behind the scenes of America's new global weapon*. Oxford University Press.

Charlotte Woodhead (2020) "The Modern Slavery Act 2015 and the Serious Organised Crime and Police Act 2005: Strengthening the UK's Response to Human Trafficking," *Journal of Human Trafficking*, vol. 6, no. 1

Dixon, P. (2020). The UK Global Human Rights Sanctions Regulations 2020. *European Human Rights Law Review*, 5, 526-536.

Douglas W. Kiker, The RICO Act: A Model for State Organized Crime Control Statutes, 51 U. Cin. L. Rev. 801 (1983).

Federal Bureau of Investigation. (n.d.). *Organized Crime*. Available at <https://www.fbi.gov/investigate/organized-crime>

Finckenauer, J. O., & Schrock, J. A. (Eds.). (2010). *Encyclopedia of organized crime in the United States*. Greenwood Publishing Group.

G. Robert Blakey, The RICO Civil Fraud Action: A Powerful Weapon in the Fight against Organized Crime, 11 Am. Crim. L. Rev. 367 (1973)

A Proposal for Legislative Reform of Kenya's Prevention of Organised Crimes Act – A Comparative Analysis: **(2023) Journalofcmsd Volume 10(3)**
Michael Sang

Humphrey Sipalla, (2019) "The Role of Corruption in Drug Trafficking in Kenya," *the Journal of Politics and Society*

J.M. Atinga, A.O. Odhiambo, and P. Wangila (2019) "Organ trafficking and transplant tourism in Kenya: a call for action", *Journal of Health and Human Services Administration*

Kameri-Mbote, P. (2013). Kenya's Anti-Money Laundering and Countering Financing of Terrorism Regime: Compliance Challenges and Prospects. *Journal of Money Laundering Control*, 16(4), 359-376.
Kenya Law Reports

Kiama, S. G., & Mutuku, M. M. (2018). An Analysis of the Challenges Faced in the Implementation of the Prevention of Organized Crimes Act in Kenya. *International Journal of Social Science and Humanities Research*, 6(4), 11-21.

Kibet, S. (2017). Organized crime in Kenya: A threat to human security. *Journal of Security and Terrorism Issues*, 2(1), 15-23.

Kimathi, K. (2019). The Legal Framework for Asset Recovery in Kenya: An Appraisal. *African Journal of Criminology and Justice Studies*, 12(1), 34-52.
<https://www.ajol.info/index.php/ajcjs/article/view/191029>

Langa, M. (2015). The Prevention of Organised Crime Act 121 of 1998: An Evaluation. *South African Journal of Criminal Justice*, 28(3), 352-370.

Magnitsky, S. (2017). The Magnitsky Act: Behind the Scenes. CreateSpace Independent Publishing Platform.

Mbuthia, J. W. (2020). An evaluation of the effectiveness of the prevention of organized crime act (POCA) in combating organized crime in Kenya. Strathmore University.

Mutua, M. (2016). Witness Protection in Kenya: Challenges and Prospects. In F. Gikonyo & S. Kiama (Eds.), *Criminology and Criminal Justice in Kenya: A Social Perspective* (pp. 171-187). Springer.

Mutual Legal Assistance Treaty Between the Government of the United States of America and the Government of the Republic of Kenya, Signed at Nairobi on 22nd February, 1991. (1991). United States of America: U.S. Department of State

Mwakubo, S. N., & Gatiba, J. W. (2017). Arms trafficking and terrorism in Kenya: A review of the 2014 Westgate Mall terror attack.

Journal of Terrorism Research, 8(2), 53-64.

Mwaura, P. (2018). 'Wash Wash' Scams in Kenya: Understanding the Evolution and Dynamics of a Financial Crime. *African Journal on Conflict Resolution and Peacekeeping*, 8(2), 44-62.

Naituli, S. M. (2014). The organized crime and its impact on democracy and human rights in Kenya. *International Journal of Innovative Research & Development*, 3(7), 199-203.

Ngeno, D. K., & Mwenda, P. M. (2020). Legal frameworks for the prevention and combating of organized crime in Kenya. *International Journal of Innovative Research and Advanced Studies (IJIRAS)*, 7(4), 21-30.

A Proposal for Legislative Reform of Kenya's Prevention of Organised Crimes Act – A Comparative Analysis: **(2023) Journal of cmsd Volume 10(3)**
Michael Sang

Okatch, J. O. (2020). The Efficacy of Legal Frameworks in Countering Organized Crime in Kenya. *Journal of Security and Sustainability Issues*, 10(4), 1876-1890.

Ondabu, I. W., & Karume, D. (2020). The Role of Corruption in Sustaining Transnational Organized Crime in Kenya. In *Corruption and the Criminal Justice System in Africa* (pp. 165-182). Palgrave Macmillan, Cham.

Serious Organised Crime and Police Act 2005. Legislation.gov.uk, available at www.legislation.gov.uk/ukpga/2005/15/contents.

Shilungwi, A. M. (2021). The contribution of the Hawks to combating organized crime in South Africa. *Journal of Financial Crime*.

Smith, G. (2007). The Prevention of Organised Crime Act and the South African Prosecution Process: A Critical Evaluation. *Journal of Southern African Studies*, 33(4), 841-857.

The African Union Convention on Preventing and Combating Corruption. Available at https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf

The Prevention of Organized Crimes Act, 2010.

United Kingdom. (2020). The Global Human Rights Sanctions Regulations 2020. UK Legislation. <https://www.legislation.gov.uk/uksi/2020/680/contents/made>

A Proposal for Legislative Reform of Kenya's Prevention of Organised Crimes Act – A Comparative Analysis: **Michael Sang** (2023) *Journal of CMSD* Volume 10(3)

United Nations Convention against Corruption. Available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

United Nations Convention against Transnational Organized Crime available at https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf

UNODC (2019). Global Report on Trafficking in Persons 2018. Available at: https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf

Victoria Carrington (2017) "The National Crime Agency: A brief overview", *the Journal of Financial Crime*

Wambua, F. M. (2021). An evaluation of the effectiveness of the prevention of organized crime Act in combating organized crime in Kenya. University of Nairobi.

Williams, Daniel J. "The Serious Organised Crime and Police Act 2005." *Journal of the Society for Advanced Legal Studies*, vol. 1, no. 1, 2005, pp. 21-26.

Williams, M. J., & Venter, F. (2018). Policing organised crime in South Africa: Challenges and responses. *Journal of Organized Crime*, 1-15.



ISBN 978-9966-046-15-4



9 789966 046154