

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

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

*By: Michael Sang\**

### **Abstract**

*This article provides an in-depth analysis of Kenya's anti-money laundering and counter-financing of terrorism regime, including the legal and regulatory measures in place to combat these offenses. The strengths and weaknesses of the regime are explored, with a particular focus on the roles and effectiveness of key institutions such as the Asset Recovery Agency, Office of the Director of Public Prosecutions, Ethics and Anti-Corruption Commission, and the Directorate of Criminal Investigations. The article also discusses proposals for urgent reform to strengthen Kenya's efforts in combating money laundering and the financing of terrorism and makes comparisons with Financial Action Task Force standards and developments in the Eastern and Southern Africa Anti-Money Laundering Group.*

**Key Words:** *Kenya, anti-money laundering, counter-financing of terrorism, POCAMLA, ODPP, FATF, ESAAMLG*

### **1. Introduction**

Money laundering and the financing of terrorism remain major global challenges, with devastating consequences on economic development and international security.<sup>1</sup> In Kenya, these offenses

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<sup>1</sup> David Mwai Gichia, "The Efficacy of Kenya's Anti-Money Laundering and Counter Financing of Terrorism Regime: A Critical Analysis. *The International Journal of Innovative Research and Development*.

have been on the rise in recent years, prompting the government to institute a range of legal and regulatory measures to combat them.<sup>2</sup> However, the effectiveness of Kenya's anti-money laundering and counter-financing of terrorism regime has come under scrutiny, with concerns raised about the country's compliance with international standards and the efficacy of its enforcement mechanisms.<sup>3</sup>

Kenya has put in place a number of measures to combat money laundering and terrorist financing. The country's anti-money laundering system is primarily regulated by the Proceeds of Crime and Anti-Money Laundering Act, (POCAMLA) which was enacted in 2009.<sup>4</sup> Under this act, a number of institutions are responsible for the prevention, detection, and reporting of money laundering and terrorism financing. These institutions include financial institutions,<sup>5</sup> law enforcement agencies,<sup>6</sup> and regulatory bodies such as the Central Bank of Kenya<sup>7</sup> and the Capital Markets Authority<sup>8</sup>. Financial institutions in Kenya are required to implement comprehensive customer due diligence (CDD) procedures, including identification and verification of their customers' identities and sources of funds.<sup>9</sup> They are also required to report any suspicious transactions to the Financial Reporting Centre (FRC), which is the central agency for the receipt, analysis, and dissemination of financial intelligence in

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<sup>2</sup> Ibid

<sup>3</sup> Edwin Bikundo Onyancha, "Kenya's Anti-Money Laundering Regime: Challenges and Prospects", *the International Journal of Humanities and Social Science Research*.

<sup>4</sup> Proceeds of Crime and Anti-Money Laundering Act, (POCAMLA) 2009.

<sup>5</sup> Section 44 of POCAMLA

<sup>6</sup> Section 37 of POCAMLA

<sup>7</sup> First schedule, POCAMLA

<sup>8</sup> First Schedule, POCAMLA

<sup>9</sup> Part IV, POCAMLA

Kenya.<sup>10</sup> The FRC is also responsible for the investigation and prosecution of money laundering cases. It works closely with other law enforcement agencies, such as the Directorate of Criminal Investigations (DCI), to identify and prosecute money laundering and terrorism financing cases.<sup>11</sup>

In addition to the legal and regulatory framework, Kenya has also signed a number of international conventions and agreements to combat money laundering and terrorism financing. These include the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption, and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) framework.<sup>12</sup>

Kenya has implemented a number of measures to counter the financing of terrorism, in addition to its anti-money laundering system. The country's counter-financing of terrorism (CFT) regime is designed to prevent terrorist organizations and individuals from using financial systems and resources to carry out their activities.<sup>13</sup> The primary legal framework for Kenya's CFT regime is the Prevention of Terrorism Act, which was enacted in 2012.<sup>14</sup> The act also establishes the Counter-Terrorism Center, which is responsible for coordinating and monitoring the implementation of the CFT regime in Kenya.<sup>15</sup>

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<sup>10</sup> Section 44, POCAMLA

<sup>11</sup> Section 24, POCAMLA

<sup>12</sup> Charles Omwandho Onditi, "The Impact of Anti-Money Laundering Regulations on the Financial Performance of Commercial Banks in Kenya", *the International Journal of Business and Social Science Research*.

<sup>13</sup> Ibid

<sup>14</sup> Ibid

<sup>15</sup> Section 40B of the Prevention of Terrorism Act, 2012

Kenya has also established a number of measures to enhance the transparency and accountability of its financial system. These include requirements for financial institutions to maintain records of all transactions and report any suspicious activities to the relevant authorities.<sup>16</sup> The Central Bank of Kenya also conducts regular supervision and monitoring of financial institutions to ensure compliance with CFT regulations.<sup>17</sup> In addition, the country has signed a number of international conventions and agreements related to CFT, such as the Financial Action Task Force (FATF) recommendations.<sup>18</sup> Kenya's CFT regime is aimed at preventing terrorist organizations and individuals from accessing financial resources and disrupting their ability to carry out their activities. It is an important component of the country's overall national security strategy, and is closely aligned with international efforts to combat terrorism financing.<sup>19</sup>

## **2. Money Laundering and Financing of Terrorism in Kenya**

### **2.1 A Brief historical background**

Money laundering and financing of terrorism have been a concern in Kenya for several decades.<sup>20</sup> In the 1980s and 1990s, the country

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<sup>16</sup> David Mwai Gichia, "The Efficacy of Kenya's Anti-Money Laundering and Counter Financing of Terrorism Regime: A Critical Analysis. *The International Journal of Innovative Research and Development*.

<sup>17</sup> Ibid

<sup>18</sup> Musyoka, F. M., & Onyango, J. (2019). The Financial Action Task Force: What it is and Its Impact on Combating Money Laundering and Terrorist Financing. *International Journal of Innovative Finance and Economics Research*, 7(2), 1-11.

<sup>19</sup> Ibid

<sup>20</sup> Aman, M. (2019). Fighting money laundering and terrorism financing in Kenya: the role of law enforcement agencies. *Journal of Financial Crime*, 26(4), 972-987.

experienced a surge in financial fraud, corruption, and drug trafficking, which led to an increase in illicit financial flows and money laundering activities.<sup>21</sup> In the early 2000s, Kenya became a target for terrorist attacks by Al-Shabaab, a militant group based in neighboring Somalia.<sup>22</sup> These attacks highlighted the need for Kenya to strengthen its legal and regulatory frameworks to prevent the financing of terrorism. In response, Kenya enacted the Proceeds of Crime and Anti-Money Laundering Act in 2009, which provided a legal framework for the prevention and detection of money laundering and terrorism financing. The act established the FRC as the central agency for the receipt, analysis, and dissemination of financial intelligence in Kenya.<sup>23</sup>

Since then, Kenya has implemented a number of measures to combat money laundering and terrorism financing, including the establishment of a counter-terrorism center and the signing of international conventions and agreements related to anti-money laundering and counter-terrorism financing.<sup>24</sup>

Despite these efforts, money laundering and terrorism financing continue to be a challenge in Kenya, particularly due to the country's position as a hub for trade, financial services, and remittances in East Africa.<sup>25</sup> However, the government and financial institutions in

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<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ongore, V. O., & K'Obonyo, P. O. (2018). An analysis of money laundering and its control in Kenya. *International Journal of Social Economics*, 45(3), 462-475.

<sup>25</sup> Ibid

Kenya continue to work together to strengthen their defenses against these illicit activities.<sup>26</sup>

## **2.2 The Current Situation in Kenya**

The current situation of money laundering and financing of terrorism in Kenya remains a concern, although the country has made significant progress in recent years to combat these illicit activities.<sup>27</sup> According to the Financial Action Task Force (FATF), which is an international body that sets standards and promotes effective measures to combat money laundering and terrorism financing, Kenya has made significant progress in implementing its anti-money laundering and counter-terrorism financing regime.<sup>28</sup> In 2019, FATF removed Kenya from its list of jurisdictions under increased monitoring.<sup>29</sup>

However, Kenya continues to face challenges in combating these illicit activities, particularly due to its position as a hub for trade, financial services, and remittances in East Africa.<sup>30</sup> The country's porous borders and informal financial sector also make it vulnerable to money laundering and terrorism financing.<sup>31</sup> In recent years, Kenya has experienced a surge in cybercrime, which has contributed to the laundering of illicit funds.<sup>32</sup> The government has responded by strengthening its cyber security framework and enhancing the

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<sup>26</sup> Ibid

<sup>27</sup> ESAAMLG (2022), *Anti-money laundering and counter-terrorist financing measures - Kenya, Second Round Mutual Evaluation Report*, ESAAMLG, Dar es Salaam <http://www.esaamlg.org/reports/me.php> accessed 10 March 2023

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

capacity of law enforcement agencies to investigate and prosecute cybercrime cases.<sup>33</sup> Overall, while Kenya has made significant progress in combating money laundering and terrorism financing, continued vigilance and ongoing efforts to strengthen its legal and regulatory frameworks will be necessary to address these illicit activities effectively.

### **3. The Legal and institutional framework of anti-money laundering and counter-financing of terrorism in Kenya**

#### **1.1 Statutory framework**

##### **3.1.1 Money-laundering-related legislation- The Proceeds of Crime and Anti-Money Laundering (POCAMLA) Act**

The Proceeds of Crime and Anti-Money Laundering (POCAMLA) Act was enacted in 2009 to provide a comprehensive legal and regulatory framework for the prevention and detection of money laundering and terrorism financing<sup>34</sup>. The Act is aimed at deterring the use of Kenyan financial institutions and other businesses for illicit purposes, and promoting transparency and accountability in the financial sector.<sup>35</sup> The POCAMLA imposes obligations on various entities, including financial institutions, to report suspicious transactions to the Financial Reporting Centre (FRC).<sup>36</sup> The FRC is the central agency responsible for receiving, analyzing, and

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<sup>33</sup> Ibid

<sup>34</sup> Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009, long title

<sup>35</sup> Odhiambo, M. O. (2016). A critical analysis of anti-money laundering regulations in Kenya: Challenges and prospects. *Journal of Money Laundering Control*, 19(2), 173-184.

<sup>36</sup> Section 44, POCAMLA

disseminating financial intelligence related to money laundering and terrorism financing.<sup>37</sup>

The Act also provides for the freezing and forfeiture of the proceeds of crime, as well as the seizure and forfeiture of instrumentalities used to commit or facilitate criminal offenses.<sup>38</sup> The Act empowers the courts to order the forfeiture of property that is believed to be proceeds of crime or used in the commission of an offense.<sup>39</sup> The POCAMLA also establishes the Asset Recovery Agency (ARA), which is responsible for the management and disposal of assets that are seized or forfeited under the Act.<sup>40</sup> The ARA is also responsible for coordinating and implementing asset recovery efforts in Kenya, in cooperation with other domestic and international agencies.<sup>41</sup>

Overall, the POCAMLA Act is an important legal and regulatory framework in Kenya's efforts to combat money laundering and terrorism financing. The Act provides for a comprehensive set of measures to detect and prevent these illicit activities as mentioned above, and it is continuously updated to keep up with emerging threats and trends in financial crime.

The POCAMLA has several strengths that make it an effective tool in Kenya's efforts to combat money laundering and terrorism financing. Some of these strengths can be highlighted here. First, the Act provides a comprehensive legal framework that covers a wide range

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<sup>37</sup> Part III, POCAMLA

<sup>38</sup> Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009, long title

<sup>39</sup> Section 92, POCAMLA

<sup>40</sup> Part VI, POCAMLA

<sup>41</sup> Section 54, POCAMLA

of financial crimes, including money laundering, terrorism financing, and the financing of proliferation of weapons of mass destruction.<sup>42</sup> Second, is the Act imposes obligations on a wide range of entities, including financial institutions, lawyers, real estate agents, and casinos, to report suspicious transactions to the Financial Reporting Centre (FRC).<sup>43</sup> This helps to detect and prevent illicit activities and ensures that reporting entities play an active role in the fight against financial crime.

Third, the Act provides for extensive powers of investigation and enforcement for Kenyan law enforcement agencies, including the Asset Recovery Agency<sup>44</sup> and the Directorate of Criminal Investigations.<sup>45</sup> This ensures that they have the necessary tools to investigate and prosecute cases related to financial crime. There are also the crucial asset recovery provisions. The Act provides for the freezing and forfeiture of proceeds of crime, as well as the seizure and forfeiture of assets used in the commission of an offense.<sup>46</sup> This helps to deprive criminals of their ill-gotten gains and send a strong message that crime does not pay. Finally, is international cooperation: The Act provides for international cooperation in the fight against financial crime, including the sharing of information and the provision of mutual legal assistance.<sup>47</sup>

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<sup>42</sup> Part II for instance covers money laundering and related offences.

<sup>43</sup> Section 44, POCAMLA

<sup>44</sup> Part VI, POCAMLA

<sup>45</sup> Under section 55A, the DCI is a member of Asset Recovery Advisory Board hence involved in policy formulation and decision-making.

<sup>46</sup> Section 92, POCAMLA

<sup>47</sup> Part XII, Section 123, POCAMLA

While the POCAMLA is an important legal and regulatory framework in Kenya's efforts to combat money laundering and terrorism financing, there are some weaknesses. Some of these weaknesses include limited implementation. Although the POCAMLA has been in force for over a decade, there are concerns that its implementation has been limited in some areas.<sup>48</sup> This has been attributed to inadequate resources, limited capacity, and lack of political will.<sup>49</sup>

Another issue is the informal sector. Kenya's large informal sector, which includes a significant portion of the economy, is largely unregulated and poses a challenge to the effective implementation of the POCAMLA.<sup>50</sup> There is also the challenge of limited awareness among the general public and some reporting entities about their obligations under the POCAMLA. This has led to under-reporting of suspicious transactions and a lack of understanding of the risks associated with financial crime.<sup>51</sup>

Enforcement challenges are also a matter of concern. The POCAMLA provides for extensive powers of investigation and enforcement for Kenyan law enforcement agencies, but there have been challenges in effectively enforcing the law. This has been attributed to factors such as corruption, inadequate training, and lack of coordination among enforcement agencies.<sup>52</sup>

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<sup>48</sup> Makori, R. (2019). Kenya's money laundering and terrorist financing risks: a review of the legal and regulatory framework. *Journal of Financial Crime*, 26(1), 44-59.

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Ibid

While the POCAMLA is an important legal and regulatory framework, addressing these weaknesses will be critical to strengthening Kenya's ability to combat money laundering and terrorism financing effectively.

### **3.1.2 Banking-related Legislation Banking Act**

The Banking Act regulates the operations of banks and financial institutions in Kenya and provides a framework for the prevention of financial crimes, including money laundering and terrorism financing.<sup>53</sup>

Under the Banking Act, banks and other financial institutions in Kenya are required to establish and maintain appropriate risk-based systems and controls to detect and prevent money laundering and terrorism financing.<sup>54</sup> This includes conducting customer due diligence, maintaining and furnishing the Central Bank with records of transactions,<sup>55</sup> and reporting suspicious activities to the relevant authorities.<sup>56</sup>

The Banking Act also provides for the establishment of a regulator, the Central Bank of Kenya (CBK), which is responsible for supervising and regulating banks and other financial institutions in Kenya.<sup>57</sup> The CBK is empowered to impose penalties on banks that fail to comply with their obligations under the Act, including those

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<sup>53</sup> Banking Act, long title

<sup>54</sup> Section 28, Banking Act

<sup>55</sup> Section 28, Banking Act

<sup>56</sup> Part VI, Banking Act

<sup>57</sup> Section 4 and 4A of Central Bank of Kenya (CBK) Act

related to anti-money laundering and counter-financing of terrorism.<sup>58</sup>

In addition to the Banking Act, the CBK has issued a number of guidelines and regulations that are aimed at strengthening anti-money laundering and counter-financing of terrorism measures in Kenya's financial sector. For example, the CBK has issued guidelines on customer due diligence, suspicious transaction reporting, and risk-based supervision.<sup>59</sup>

Overall, the study postulates that the Banking Act plays an important role in Kenya's efforts to combat money laundering and terrorism financing. By imposing obligations on banks and other financial institutions to establish appropriate systems and controls, and providing for the regulation and supervision of these institutions, the Act helps to promote transparency and accountability in the financial sector and to prevent the use of Kenyan financial institutions for illicit purposes.

The Banking Act of Kenya has several strengths that make it an effective tool for combating money laundering and terrorism financing. Some of these strengths include:

1. **Clear obligations and requirements:** The Act sets out clear obligations and requirements that banks and other financial

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<sup>58</sup> Section 57, CBK Act

<sup>59</sup> For instance, we have The CBK Guidance Note: Conducting Money Laundering/ Terrorism Financing Risk Assessment of March 2018. Available at [https://www.centralbank.go.ke/wp-content/uploads/2018/03/Guidance-note-on-ML\\_TF-risk-assessment.pdf](https://www.centralbank.go.ke/wp-content/uploads/2018/03/Guidance-note-on-ML_TF-risk-assessment.pdf) accessed 11 March 2023

institutions in Kenya must comply with in order to prevent money laundering and terrorism financing. This includes requirements related to customer due diligence, record keeping, and reporting of suspicious activities as mentioned above.<sup>60</sup>

2. **Regulatory oversight:** The Act provides for the establishment of the Central Bank of Kenya (CBK) as a regulator of banks and other financial institutions in Kenya.<sup>61</sup> The CBK is responsible for supervising and regulating these institutions and issues licenses to ensure that they comply with the Act's provisions, including those related to anti-money laundering and counter-financing of terrorism.<sup>62</sup>
  
3. **Penalties for non-compliance:** The Act provides for penalties and sanctions for banks and other financial institutions that fail to comply with their obligations under the Act, including those related to anti-money laundering and counter-financing of terrorism.<sup>63</sup> This helps to promote compliance with the Act and deter financial institutions from engaging in illicit activities.

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<sup>60</sup> Makori, R. (2019). Kenya's money laundering and terrorist financing risks: a review of the legal and regulatory framework. *Journal of Financial Crime*, 26(1), 44-59.

<sup>61</sup> Sections 4 and 5, Banking Act

<sup>62</sup> Makori, R. (2019). Kenya's money laundering and terrorist financing risks: a review of the legal and regulatory framework. *Journal of Financial Crime*, 26(1), 44-59.

<sup>63</sup> Sections 49n and 55 of the Banking Act

4. **Regular updates:** The Act is regularly updated to reflect changes in international standards and best practices related to anti-money laundering and counter-financing of terrorism. This ensures that Kenya's regulatory framework remains up-to-date and effective in preventing financial crime.<sup>64</sup>

While the Banking Act of Kenya has several strengths that make it an effective tool for combating money laundering and terrorism financing, there are also some weaknesses that limit its effectiveness. Some of these weaknesses include:

**Limited enforcement:** While the Act provides for penalties and sanctions for non-compliance with its provisions, enforcement may be limited due to factors such as inadequate resources, lack of capacity among relevant authorities, or corruption.<sup>65</sup>

**Limited international cooperation:** Money laundering and terrorism financing are often transnational crimes that require international cooperation to effectively combat. The Act has not provided sufficient mechanisms for international cooperation and information sharing.

### **Central Bank of Kenya Act**

The Central Bank of Kenya (CBK) Act provides the legal framework for the establishment, operation, and regulation of the Central Bank of Kenya (CBK).<sup>66</sup> The CBK is responsible for the supervision and

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<sup>64</sup> The current Banking Act was last revised in 2019

<sup>65</sup> Makori, R. (2019). Kenya's money laundering and terrorist financing risks: a review of the legal and regulatory framework. *Journal of Financial Crime*, 26(1), 44-59.

<sup>66</sup> CBK Act, long title

regulation of banks and other financial institutions in Kenya<sup>67</sup>. The Act includes provisions related to anti-money laundering and counter-financing of terrorism, which are aimed at preventing financial crime and ensuring the integrity of the financial system.<sup>68</sup> Some of the key provisions of the CBK Act related to anti-money laundering and counter-financing of terrorism include:

1. **Licensing and supervision of financial institutions:**<sup>69</sup> The CBK Act requires all financial institutions in Kenya to be licensed and supervised by the CBK. The CBK is responsible for ensuring that these institutions comply with the provisions of the Act, including those related to anti-money laundering and counter-financing of terrorism.
2. **Reporting of suspicious transactions:**<sup>70</sup> The CBK Act requires financial institutions to report any suspicious transactions to the CBK and other relevant authorities. This includes transactions that are suspected to be related to money laundering or terrorism financing.
3. **Record keeping:**<sup>71</sup> Financial institutions are required to keep records of their transactions and customer due diligence measures.

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<sup>67</sup> Section 4, 4A of the CBK Act

<sup>68</sup> For instance, section 57 3 (c) of the CBK Act

<sup>69</sup> Section 4A of the CBK Act

<sup>70</sup> Section 57 3 (c); section 33F; Section 43 of the CBK Act

<sup>71</sup> Section 33E of the CBK Act

4. **Sanctions and penalties:**<sup>72</sup> The CBK Act provides for sanctions and penalties for financial institutions that fail to comply with the Act's provisions, including those related to anti-money laundering and counter-financing of terrorism.

While the Central Bank of Kenya (CBK) Act has several strengths as shown in the above provisions, there are also some weaknesses that limit its effectiveness in combating money laundering and terrorism financing in Kenya. For instance, there is Limited enforcement. While the Act provides for sanctions and penalties for non-compliance, enforcement of these measures may be weak or inconsistent, due to aspects such as corruption which could undermine the Act's deterrent effect.<sup>73</sup>

### 3.1.3 Revenue-related Legislation

#### Income Tax Act

The Income Tax Act of Kenya does not specifically address anti-money laundering and counter-financing of terrorism. However, the Act indirectly supports the fight against money laundering and terrorism financing through the following provisions:

1. **Record keeping:**<sup>74</sup> The Act requires taxpayers to keep records of their income and expenses for a specified period of time. This record keeping obligation can help facilitate investigations into cases of money laundering or terrorism financing.

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<sup>72</sup> Section 57

<sup>73</sup> Odhiambo, M. O. (2016). A critical analysis of anti-money laundering regulations in Kenya: Challenges and prospects. *Journal of Money Laundering Control*, 19(2), 173-184.

<sup>74</sup> Section 54A; 55, Income Tax Act

2. **Penalties for non-compliance:**<sup>75</sup> The Act provides for penalties for taxpayers who fail to comply with its provisions, including those related to record keeping and reporting of suspicious transactions.
3. **Exchange of information**<sup>76</sup>: The Act includes provisions that facilitate the exchange of information between the KRA and other tax authorities, which can help identify and prevent cases of money laundering or terrorism financing.

While the Income Tax Act does not have specific provisions related to anti-money laundering and counter-financing of terrorism, its provisions related to record keeping, penalties for non-compliance, and exchange of information can indirectly support efforts to combat these crimes. However, the Act's effectiveness in this regard may be limited by the capacity of the KRA to effectively monitor and enforce compliance with its provisions.

## 1.2 Institutional Actors and their Respective Roles

### 3.2.1 Asset Recovery Agency

The Asset Recovery Agency (ARA) is a specialized agency in Kenya whose primary role is to investigate, trace, freeze, and recover proceeds of crime that have been acquired through illegal means, including money laundering and terrorism financing.<sup>77</sup> The agency was established under the Proceeds of Crime and Anti-Money

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<sup>75</sup> Part XII, Income Tax Act

<sup>76</sup> Section 41A;

<sup>77</sup> Part VI, POCAMLA

Laundering Act (POCAMLA) to enhance the government's efforts in combating these offenses.<sup>78</sup>

The ARA plays a crucial role in the fight against money laundering and terrorism financing in Kenya by:

1. **Tracing and seizing proceeds of crime:** The ARA has the power to trace and seize proceeds of crime acquired through money laundering and terrorism financing. This helps to disrupt criminal networks and prevent the further use of these funds for criminal activities.<sup>79</sup>
2. **Freezing of accounts:** The ARA can also apply to the court to freeze bank accounts and other assets suspected to have been acquired through money laundering and terrorism financing. This helps to preserve the assets pending investigation and confiscation<sup>80</sup>.
3. **Confiscation of assets:** The ARA can apply to the court to confiscate assets that have been identified as proceeds of crime acquired through money laundering and terrorism financing. Confiscation of these assets can act as a deterrent to potential offenders and also provide compensation to victims of crime.<sup>81</sup>

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<sup>78</sup> Makori, R. (2019). Kenya's money laundering and terrorist financing risks: a review of the legal and regulatory framework. *Journal of Financial Crime*, 26(1), 44-59.

<sup>79</sup> Section 54, POCAMLA

<sup>80</sup> Makori, R. (2019). Kenya's money laundering and terrorist financing risks: a review of the legal and regulatory framework. *Journal of Financial Crime*, 26(1), 44-59

<sup>81</sup> Ibid

4. **Coordinating with other agencies:** The ARA works closely with other law enforcement agencies, such as the police, the Directorate of Criminal Investigations (DCI), and the Office of the Director of Public Prosecutions (ODPP) to ensure effective investigations and prosecutions of money laundering and terrorism financing cases.<sup>82</sup>

The Asset Recovery Agency (ARA) has been effective in performing its roles of investigating, tracing, freezing, and recovering proceeds of crime acquired through money laundering and terrorism financing in Kenya in recent years.<sup>83</sup>

In 2021, for example, the ARA made significant progress in the fight against money laundering and terrorism financing by successfully freezing bank accounts and properties worth billions of Kenyan shillings that were suspected to have been acquired through criminal activities. The agency also recovered significant amounts of stolen public funds that had been laundered through the financial system.<sup>84</sup> In addition, the ARA has been working closely with other law enforcement agencies, such as the police and the Directorate of Criminal Investigations (DCI), to ensure effective investigations and prosecutions of money laundering and terrorism financing cases.<sup>85</sup> The agency has also been collaborating with international partners,

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<sup>82</sup> Part XII, POCAMLA

<sup>83</sup> Makori, R. (2019). Kenya's money laundering and terrorist financing risks: a review of the legal and regulatory framework. *Journal of Financial Crime*, 26(1), 44-59

<sup>84</sup> Ibid

<sup>85</sup> Ibid

such as the Financial Action Task Force (FATF), to strengthen its capacity in fighting these crimes.<sup>86</sup>

However, despite these achievements, the ARA faces several challenges that can affect its effectiveness in combating money laundering and terrorism financing. These challenges include limited resources, inadequate capacity, and a lack of coordination among relevant agencies.<sup>87</sup> The agency also faces the challenge of recovering assets that have been transferred to offshore jurisdictions or hidden in complex financial structures.<sup>88</sup>

Overall, while the ARA has performed its roles effectively in recent years, there is still room for improvement to strengthen its capacity and enhance coordination among relevant agencies to effectively combat money laundering and terrorism financing in Kenya.

### **3.2.2 Ethics and Anti-Corruption Commission**

The Ethics and Anti-Corruption Commission (EACC) is a Kenyan government agency established under Ethics and Anti-Corruption Commission Act, 2011. It is responsible for fighting corruption and promoting ethical practices in both the public and private sectors.<sup>89</sup> The commission also plays a significant role in combating money laundering and terrorism financing in Kenya in the following ways:

1. **Prevention:** The EACC works to prevent money laundering and terrorism financing by promoting ethical practices, educating the public on the dangers of these crimes, and

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<sup>86</sup> Ibid

<sup>87</sup> Ibid

<sup>88</sup> Ibid

<sup>89</sup> Section 11, Ethics and Anti-Corruption Commission Act, (EACC) 2011

encouraging the reporting of suspicious financial transactions.<sup>90</sup>

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3. **Investigation:** The EACC conducts investigations into cases of suspected money laundering and terrorism financing. The commission has the power to investigate both public and private sector individuals and entities involved in these offenses.<sup>91</sup>
4. **Prosecution:** The EACC works closely with the Office of the Director of Public Prosecutions (ODPP) to prosecute individuals and entities involved in money laundering and terrorism financing. The commission also works with other law enforcement agencies, such as the police and the Asset Recovery Agency (ARA), to ensure effective investigations and prosecutions.<sup>92</sup>
5. **Asset tracing and recovery:** The EACC has the power to trace and recover assets that have been acquired through money laundering and terrorism financing. The commission works with the ARA to ensure that these assets are traced and recovered for the benefit of the Kenyan people.<sup>93</sup>

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<sup>90</sup> Aman, M. (2019). Fighting money laundering and terrorism financing in Kenya: the role of law enforcement agencies. *Journal of Financial Crime*, 26(4), 972-987; Section 11 of the EACC Act

<sup>91</sup> Section 11 of the EACC Act

<sup>92</sup> Section 11, EACC Act

<sup>93</sup> Section 11, EACC Act

The effectiveness of the Ethics and Anti-Corruption Commission (EACC) in combating money laundering and terrorism financing in Kenya has been mixed in recent years.

On the one hand, the EACC has been successful in investigating and prosecuting some high-profile cases involving money laundering and corruption. For example, in 2020, the commission successfully investigated and prosecuted individuals involved in the theft of millions of dollars from the National Youth Service, a state agency.<sup>94</sup> The EACC has also been working closely with other agencies, such as the Asset Recovery Agency (ARA), to trace and recover assets that have been acquired through money laundering and corruption.<sup>95</sup>

On the other hand, the EACC faces several challenges that can affect its effectiveness in combating these offenses. These challenges include:

**Limited resources:** The EACC has limited resources to conduct investigations and prosecute offenders. This can result in delays and incomplete investigations, which can affect the success of the prosecution.<sup>96</sup>

**Political interference:** The commission has faced accusations of political interference, with some individuals and entities suspected of

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<sup>94</sup> Aman, M. (2019). Fighting money laundering and terrorism financing in Kenya: the role of law enforcement agencies. *Journal of Financial Crime*, 26(4), 972-987; Section 11 of the EACC Act

<sup>95</sup> Ibid

<sup>96</sup> Ibid

corruption allegedly being shielded from prosecution by powerful politicians.<sup>97</sup>

**Inadequate capacity:** The EACC also faces the challenge of inadequate capacity. The commission has had difficulty attracting and retaining highly skilled personnel, which can affect the quality of its investigations and prosecutions.<sup>98</sup>

**Corruption:** The EACC has also been accused of corruption and unethical practices, which can undermine its credibility and effectiveness in combating money laundering and terrorism financing.<sup>99</sup>

### 3.2.3 Office of the Director of Public Prosecutions

The Office of the Director of Public Prosecutions (ODPP) is responsible for prosecuting criminal cases in Kenya.<sup>100</sup> In the fight against money laundering and terrorism financing, the ODPP plays a crucial role in ensuring that offenders are brought to justice in the following ways:

1. **Reviewing and approving investigation files:** The ODPP reviews and approves investigation files submitted by law enforcement agencies, including the Ethics and Anti-Corruption Commission (EACC) and the Asset Recovery

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<sup>97</sup> Ibid

<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> Article 157 of the Constitution; section 5 of the Office of the Director of Public Prosecutions (ODPP) Act, 2013.

Agency (ARA), to ensure that there is sufficient evidence to support a prosecution.<sup>101</sup>

2. **Prosecuting offenders:** The ODPP prosecutes individuals and entities involved in money laundering and terrorism financing. The office works closely with law enforcement agencies, such as the police and the ARA, to ensure that cases are properly investigated and offenders are prosecuted.<sup>102</sup>
3. **Capacity building:** The ODPP is involved in capacity building initiatives aimed at improving the skills and knowledge of prosecutors and other stakeholders involved in the fight against money laundering and terrorism financing.<sup>103</sup>

The Office of the Director of Public Prosecutions (ODPP) has been effective in prosecuting cases related to money laundering and terrorism financing in Kenya.<sup>104</sup> In recent years, the office has successfully prosecuted several high-profile cases, including cases involving the theft of public funds and money laundering.<sup>105</sup> One of the major strengths of the ODPP is its independence, which allows it to carry out its prosecutorial duties without interference from political or other external factors.<sup>106</sup> Additionally, the ODPP has

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<sup>101</sup> Section 5, ODPP Act

<sup>102</sup> Section 5, ODPP Act; Article 157 of the CoK 2010

<sup>103</sup> Aman, M. (2019). Fighting money laundering and terrorism financing in Kenya: the role of law enforcement agencies. *Journal of Financial Crime*, 26(4), 972-987; Section 11 of the EACC Act

<sup>104</sup> Ibid

<sup>105</sup> Ibid

<sup>106</sup> Article 157 (10) of the CoK 2010

developed expertise in the investigation and prosecution of financial crimes, which has enabled it to build strong cases against offenders.<sup>107</sup> However, the ODPP also faces several challenges that can affect its effectiveness in combating money laundering and terrorism financing. These challenges include:

**Limited resources:** The ODPP faces resource constraints, which can lead to delays in the prosecution of cases and the development of expertise in complex financial investigations.<sup>108</sup> **Corruption:** Like other law enforcement agencies in Kenya, the ODPP is also vulnerable to corruption, which can undermine its credibility and ability to prosecute cases effectively.<sup>109</sup>

**High case load:** The ODPP has a high case load, which can affect the quality of its work and the timeliness of its decisions.<sup>110</sup>

**Limited international cooperation:** The ODPP faces challenges in obtaining evidence and prosecuting cases that involve foreign entities due to limited international cooperation.<sup>111</sup>

### 3.2.4 Directorate of Criminal Investigations

The Directorate of Criminal Investigations (DCI) is a law enforcement agency in Kenya that is responsible for investigating serious crimes, including those related to money laundering and terrorism financing.<sup>112</sup> The DCI plays a crucial role in the fight against these

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<sup>107</sup> Aman, M. (2019). Fighting money laundering and terrorism financing in Kenya: the role of law enforcement agencies. *Journal of Financial Crime*, 26(4), 972-987; Section 11 of the EACC Act

<sup>108</sup> Ibid

<sup>109</sup> Ibid

<sup>110</sup> Ibid

<sup>111</sup> Ibid

<sup>112</sup> Section 35 of the National Police Service Act, 2011

offenses by carrying out investigations and gathering evidence to support prosecution.<sup>113</sup>

The main role of the DCI in combating these offenses includes:

1. **Conducting investigations:** The DCI is responsible for investigating cases related to money laundering and terrorism financing. The agency works closely with other law enforcement agencies, such as the Asset Recovery Agency (ARA) and the Ethics and Anti-Corruption Commission (EACC), to gather evidence and build cases against offenders.<sup>114</sup>
2. **Intelligence gathering:** The DCI collects and analyzes intelligence related to money laundering and terrorism financing in Kenya. The agency works with other intelligence agencies, both within Kenya and internationally, to gather information on individuals and entities involved in these offenses.<sup>115</sup>

The DCI has made significant strides in combating money laundering and terrorism financing in Kenya.<sup>116</sup> In recent years, the agency has played a vital role in investigating and prosecuting high-profile cases involving these offenses. For example, in 2019, the DCI worked with international law enforcement agencies to bust a major money laundering syndicate that was operating in Kenya. The syndicate was

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<sup>113</sup> Ibid

<sup>114</sup> Ibid

<sup>115</sup> Ibid

<sup>116</sup> Aman, M. (2019). Fighting money laundering and terrorism financing in Kenya: the role of law enforcement agencies. *Journal of Financial Crime*, 26(4), 972-987; Section 11 of the EACC Act

involved in laundering billions of shillings that had been stolen from banks in Europe and other countries. The DCI's investigation led to the arrest of several individuals and the recovery of millions of dollars in assets.<sup>117</sup>

However, like other law enforcement agencies, the DCI also faces several challenges in its efforts to combat money laundering and terrorism financing in Kenya. Some of these challenges include:

**Limited resources:** The DCI, like other law enforcement agencies in Kenya, faces resource constraints that limit its ability to carry out effective investigations and enforcement activities.<sup>118</sup> **Corruption:** Corruption is a significant challenge in Kenya, and it can undermine the DCI's efforts to combat money laundering and terrorism financing. Corrupt officials may accept bribes or turn a blind eye to suspicious activities, making it more difficult for the DCI to build strong cases against offenders.<sup>119</sup>

**Sophisticated criminal networks:** Money launderers and terrorists often operate as part of complex criminal networks that span multiple jurisdictions. These networks use sophisticated methods to evade detection and law enforcement, making it difficult for the DCI to track and prosecute them.<sup>120</sup>

Despite these challenges, the DCI remains committed to its role in combating money laundering and terrorism financing in Kenya. The agency has continued to work closely with other law enforcement

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<sup>117</sup> Ibid

<sup>118</sup> Ibid

<sup>119</sup> Ibid

<sup>120</sup> Ibid

agencies and international partners to improve its effectiveness in detecting, investigating, and prosecuting these offenses.<sup>121</sup>

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

##### **4.1 Merits of the Anti-Money Laundering and Counter-Financing of Terrorism Regime**

Kenya's anti-money laundering and financing of terrorism regime has several merits, including:

1. **Strong legal framework:** Kenya has put in place a robust legal framework that provides a solid foundation for combating money laundering and terrorism financing. The Proceeds of Crime and Anti-Money Laundering Act and the Banking Act, among other laws, provide for effective mechanisms for detecting, preventing, and prosecuting these offenses.<sup>122</sup>
2. **International cooperation:** Kenya has forged strong partnerships with international organizations such as the Financial Action Task Force (FATF) and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) to improve its anti-money laundering and terrorism financing regime. This cooperation has helped Kenya to adopt best practices and keep pace with evolving global standards<sup>123</sup>.

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<sup>121</sup> Ibid

<sup>122</sup> Mwaura, M., & Kimani, N. (2019). The effectiveness of the anti-money laundering regime in Kenya. *International Journal of Business and Social Science*, 10(11), 111-120.

<sup>123</sup> Ibid

3. **Effective coordination:** Various agencies responsible for combating money laundering and terrorism financing in Kenya, such as the Central Bank of Kenya, Asset Recovery Agency, Ethics and Anti-Corruption Commission, and the Directorate of Criminal Investigations, work together to exchange information, pool resources, and coordinate investigations. This collaboration has enhanced the effectiveness of Kenya's anti-money laundering and terrorism financing regime.<sup>124</sup>
4. **Capacity building:** The Kenyan government has invested in capacity building programs to enhance the skills and knowledge of law enforcement agencies and other stakeholders in the fight against money laundering and terrorism financing. This has been achieved through training programmes. This investment has improved the quality of investigations and enforcement activities and increased the effectiveness of the regime.<sup>125</sup>
5. **Public awareness:** The government has also embarked on public awareness campaigns to sensitize the public about the dangers of money laundering and terrorism financing and encourage them to report suspicious activities. This awareness-raising has helped to enhance the effectiveness of the regime by increasing the level of cooperation between the public and law enforcement agencies.<sup>126</sup>

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<sup>124</sup> Ibid

<sup>125</sup> Ibid

<sup>126</sup> Ibid

#### **4.1.1 Comparison with FATF Standards**

The Financial Action Task Force (FATF) is an intergovernmental organization that sets international standards and promotes effective implementation of measures to combat money laundering, terrorism financing, and other related threats to the integrity of the international financial system.<sup>127</sup> Kenya is a member of the FATF and is expected to comply with its standards.<sup>128</sup>

In comparison to the FATF standards, Kenya's anti-money laundering and financing of terrorism regime has made significant progress in recent years, but there are still areas for improvement.<sup>129</sup> One of the strengths of Kenya's regime is the existence of a strong legal framework that provides for effective mechanisms to detect, prevent, and prosecute money laundering and terrorism financing offenses<sup>130</sup>. The POCAMLA and the Banking Act are key pieces of legislation that have helped to establish the legal framework for combating these offenses in Kenya.<sup>131</sup>

Another strength of Kenya's regime is the effective coordination between various agencies responsible for combating money laundering and terrorism financing. This collaboration has helped to enhance the effectiveness of Kenya's anti-money laundering and terrorism financing regime.<sup>132</sup>

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<sup>127</sup> Muthaura, M., & Gitahi, S. (2020). Evaluating the effectiveness of Kenya's anti-money laundering and countering the financing of terrorism regime against the FATF standards. *Journal of Money Laundering Control*, 23(4), 621-637

<sup>128</sup> Ibid

<sup>129</sup> Ibid

<sup>130</sup> Ibid

<sup>131</sup> Ibid

<sup>132</sup> Ibid

However, there are still areas where Kenya's regime falls short of FATF standards. For example, the FATF requires that countries establish a national strategy to combat money laundering and terrorism financing, and while Kenya has made progress in this area, there is still room for improvement.<sup>133</sup>

Another area of weakness is the lack of capacity building programs for some law enforcement agencies responsible for combating money laundering and terrorism financing. While there have been efforts to enhance the skills and knowledge of law enforcement agencies, further investment is needed to improve the quality of investigations and enforcement activities.<sup>134</sup>

While Kenya has made significant progress in recent years in combating money laundering and terrorism financing, there is still work to be done to fully comply with the FATF standards.

#### **4.1.2 Regional developments**

The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) is an intergovernmental organization established in 1999 to combat money laundering and terrorism financing in the Eastern and Southern Africa region.<sup>135</sup> The group consists of 18 member countries, including Kenya.<sup>136</sup>

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<sup>133</sup> Khauka, E., & Mwangi, S. (2020). Comparison of Kenya's anti-money laundering and counter-terrorism financing legal framework with FATF recommendations. *Journal of Money Laundering Control*, 23(3), 405-421.

<sup>134</sup> Ibid

<sup>135</sup> ESAAMLG (2022), Anti-money laundering and counter-terrorist financing measures - Kenya, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam <http://www.esaamlg.org/reports/me.php> accessed 10 March 2023

<sup>136</sup> Ibid

ESAAMLG was established to facilitate the implementation of international standards and best practices for combating money laundering and terrorism financing in the region.<sup>137</sup> It conducts mutual evaluations of its member countries to assess their compliance with the international standards set by the Financial Action Task Force (FATF) and provides technical assistance to help countries improve their anti-money laundering and terrorism financing regimes.<sup>138</sup>

ESAAMLG is relevant to Kenya because it provides a platform for cooperation and collaboration among member countries to combat money laundering and terrorism financing in the region.<sup>139</sup> Kenya, being a member of the group, benefits from the technical assistance provided by ESAAMLG in enhancing its anti-money laundering and terrorism financing regime.<sup>140</sup>

Through mutual evaluations, ESAAMLG assesses the level of compliance of member countries with international standards and provides recommendations for improvement. This process helps Kenya to identify areas where it needs to improve its anti-money laundering and terrorism financing regime.<sup>141</sup>

Furthermore, ESAAMLG provides a forum for sharing information and experiences among member countries, which can be useful in identifying emerging trends and typologies of money laundering and terrorism financing in the region. This information sharing can help

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<sup>137</sup> Ibid

<sup>138</sup> Ibid

<sup>139</sup> Ibid

<sup>140</sup> Ibid

<sup>141</sup> Ibid

Kenya to stay ahead of evolving threats in the fight against money laundering and terrorism financing.<sup>142</sup>

#### **4.2 Shortcomings the Anti-Money Laundering and Counter-Financing of Terrorism Regime**

Despite the efforts made by Kenya to combat money laundering and financing of terrorism, the country's anti-money laundering and financing of terrorism regime has some shortcomings, including:

1. **Weak enforcement:** The enforcement of anti-money laundering laws in Kenya is still weak, with few prosecutions and convictions for money laundering and terrorism financing offenses. This undermines the effectiveness of the regime and creates a perception of impunity for offenders.<sup>143</sup>
2. **Inadequate supervision:** There is inadequate supervision of financial institutions, particularly those in the informal sector, making it easy for criminals to launder money and finance terrorism through these channels.<sup>144</sup>
3. **Insufficient resources:** The agencies responsible for enforcing anti-money laundering laws and combating terrorism financing in Kenya, including the ARA, EACC, and the DCI, have limited resources, including financial, human, and technological resources.<sup>145</sup>

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<sup>142</sup> Ibid

<sup>143</sup> Moses Kinyanjui Njuru, "A Critical Analysis of the Anti-Money Laundering and Counter-Financing of Terrorism Legal Regime in Kenya", *the African Journal of Criminology and Justice Studies*, 2017.

<sup>144</sup> Ibid

<sup>145</sup> Ibid

4. **Limited international cooperation:** While Kenya is a member of the ESAAMLG and has made efforts to cooperate with international partners, there are still limitations in terms of information sharing and cross-border cooperation, which hinders the effective detection and prevention of money laundering and terrorism financing.<sup>146</sup>
5. **Corruption:** Corruption is still a significant challenge in Kenya, and it undermines the effectiveness of the anti-money laundering and terrorism financing regime. Corruption can allow criminals to circumvent the law and continue to launder money and finance terrorism with impunity.<sup>147</sup>
6. **Limited understanding of the risks:** There is a limited understanding of the risks of money laundering and terrorism financing among some financial institutions and other businesses, which can make them vulnerable to abuse by criminals.<sup>148</sup>

#### **4.2.1 Concerns raised by FATF**

The Financial Action Task Force (FATF) has raised several concerns with regards to Kenya's anti-money laundering and counter-terrorism financing regime. Some of these concerns include:

1. **Weak implementation of laws:** Despite the existence of strong anti-money laundering and counter-terrorism financing laws in Kenya, the implementation and enforcement of these laws are weak. FATF has expressed

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<sup>146</sup> Ibid

<sup>147</sup> Ibid

<sup>148</sup> Ibid

concern about the low level of investigations, prosecutions, and convictions related to money laundering and terrorism financing.<sup>149</sup>

2. **Inadequate supervision of financial institutions:** There is inadequate supervision of financial institutions in Kenya, particularly those in the informal sector, making it easy for criminals to launder money and finance terrorism through these channels.<sup>150</sup>
3. **Insufficient international cooperation:** FATF has noted that Kenya needs to improve its international cooperation with other countries to enhance the effectiveness of its anti-money laundering and counter-terrorism financing regime.<sup>151</sup>
4. **Inadequate risk assessment:** Kenya needs to improve its risk assessment capabilities to better understand the nature and scope of money laundering and terrorism financing in the country. This will enable the authorities to develop more effective strategies to combat these crimes.<sup>152</sup>
5. **Limited use of financial intelligence:** FATF has also expressed concern about the limited use of financial intelligence in Kenya to combat money laundering and

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<sup>149</sup> ESAAMLG (2022), Anti-money laundering and counter-terrorist financing measures - Kenya, Second Round Mutual Evaluation Report, ESAAMLG, Dar es Salaam <http://www.esaamlg.org/reports/me.php> accessed 10 March 2023

<sup>150</sup> Ibid

<sup>151</sup> Ibid

<sup>152</sup> Ibid

terrorism financing. There is a need to strengthen the capacity of the Financial Reporting Centre (FRC) to collect, analyze, and disseminate financial intelligence to relevant law enforcement agencies.<sup>153</sup>

#### **4.2.2 Diminished role of the DPP**

In recent years, the role of the Director of Public Prosecutions (DPP) in Kenya's anti-money laundering and counter-terrorism financing regime has been diminished due to several factors.

One of the main factors is the establishment of the Asset Recovery Agency (ARA), which has taken over some of the functions of the DPP<sup>154</sup>. The ARA is responsible for tracing, freezing, and confiscating proceeds of crime, including those related to money laundering and terrorism financing. As a result, the DPP's role in asset recovery has been reduced, and the ARA has become the primary agency responsible for asset recovery in Kenya.<sup>155</sup>

Furthermore, the DPP's role in prosecuting financial crimes is also limited by the fact that the Financial Reporting Centre (FRC) and the Central Bank of Kenya (CBK) have primary responsibility for monitoring financial transactions and receiving reports of suspicious activities related to money laundering and terrorism financing. The DPP relies on these agencies to provide financial intelligence that can be used to prosecute financial crimes. However, there have been

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<sup>153</sup> Ibid

<sup>154</sup> Mwaura, J. N. (2020). The Role of the Office of the Director of Public Prosecutions in Fighting Money Laundering and Terrorist Financing in Kenya. *International Journal of Humanities and Social Science Research*, 8(1), 14-25.

<sup>155</sup> Ibid

concerns about the quality and timeliness of financial intelligence provided by these agencies.<sup>156</sup>

Under the POCAMLA<sup>157</sup>, the Anti-Money Laundering Advisory Board established to oversee the implementation of the Act comprises various stakeholders. However, the ODPP is not a member of this board. The ODPP is an independent body responsible for prosecuting criminal cases, including those related to money laundering and terrorist financing. While the ODPP is not a member of the board, it is still a critical player in the anti-money laundering and counter-financing of terrorism regime in Kenya.

The ODPP works closely with the FRC, which is the agency responsible for receiving, analyzing, and disseminating financial intelligence related to money laundering and terrorist financing. The ODPP uses this financial intelligence to investigate and prosecute cases related to money laundering and terrorist financing.<sup>158</sup>

The exclusion of the ODPP as a member of the board has been a subject of debate.<sup>159</sup> Some argue that the ODPP, as the agency responsible for prosecuting cases related to money laundering and terrorist financing, should be a member of the board to provide its expertise in the fight against these crimes.<sup>160</sup>

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<sup>156</sup> Ibid

<sup>157</sup> Section 49, POCAMLA

<sup>158</sup> Mwaura, J. N. (2020). The Role of the Office of the Director of Public Prosecutions in Fighting Money Laundering and Terrorist Financing in Kenya. *International Journal of Humanities and Social Science Research*, 8(1), 14-25.

<sup>159</sup> Ibid

<sup>160</sup> Ibid

On the other hand, others argue that the ODPP's role is limited to prosecution and not policy-making, which is the primary responsibility of the board. Therefore, having the ODPP as a member of the board may not be necessary.<sup>161</sup>

The study postulates that the ODPP is a critical body tasked with prosecution of these offenses. It should therefore be included as a board member to inform policy and decision-making in the board. The other board members can also share information with the ODPP and help in prosecution of these offenses. This mutual relationship is beneficial in tackling these offenses and therefore necessitates the inclusion of the ODPP as a board member.

To crown it all, the study posits that addressing the shortcomings above will require significant efforts by the Kenyan government, financial institutions, and other stakeholders, including increased resources for enforcement agencies, enhanced supervision of financial institutions, improved international cooperation, and strengthened efforts to combat corruption.

## **5. Proposals for Urgent Reform**

Based on the above discussion, the study has formulated four key proposals for urgent reform of Kenya's anti-money laundering and counter-financing of terrorism regime:

### **5.1 Strengthening the role of the DPP**

There have been concerns raised about the diminishing role of the DPP in combating money laundering and terrorist financing. To address this, the government could consider amending the

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<sup>161</sup> Ibid

POCAML Act to include the ODPP as a member of the board established under the Act. Additionally, the government could allocate more resources to the ODPP to enable it to carry out its role effectively.

### **5.2 Enhancing the capacity of the Anti- money laundering (AML)/Counter-financing of terrorism (CFT) regulators**

The CBK, CMA, and IRA play a critical role in the fight against money laundering and terrorist financing. To enhance their effectiveness, the government could consider providing more resources to these agencies to enable them to build their capacity and expertise in AML/CFT.

### **5.3 Strengthening the legislative framework**

The existing AML/CFT laws, such as POCAML and the Banking Act, could be amended to align with international standards and best practices. This could include introducing provisions for beneficial ownership transparency, strengthening the risk-based approach, and improving the coordination between different agencies involved in the fight against money laundering and terrorist financing.

### **5.4 Enhancing international cooperation**

Given the global nature of money laundering and terrorist financing, it is crucial for Kenya to enhance its cooperation with other countries and international bodies. The government could consider strengthening its partnerships with regional bodies such as ESAAMLG and international bodies such as the FATF. Additionally, the government could explore opportunities for mutual legal assistance and sharing of intelligence with other countries.

## **6. Conclusion**

Money laundering and financing of terrorism remain significant global challenges, and Kenya is not immune to these offenses. The country has put in place a legal and institutional framework to combat money laundering and terrorist financing, including the POCAMLA, the Banking Act, the CBK Act, and the Asset Recovery Agency. Additionally, the EACC, the ODPP and the DCI play a critical role in investigating and prosecuting money laundering and terrorist financing offenses.

However, Kenya's regime faces several challenges, including inadequate resources and limited capacity of law enforcement agencies, inadequate coordination among stakeholders, and inadequate implementation of the legal framework. Kenya is also yet to fully comply with the FATF standards, and there are concerns about the role and participation of the DPP in the regime.

To address these challenges and enhance the effectiveness of the anti-money laundering and counter-financing of terrorism regime, urgent reforms are necessary. These reforms should include strengthening the legal framework, providing more resources to law enforcement agencies, improving coordination among stakeholders, enhancing international cooperation, and reviewing the role of the DPP.

Kenya has made significant strides in combating money laundering and terrorist financing. However, more needs to be done to enhance the effectiveness of the regime, and urgent reforms are necessary to address the existing gaps and challenges. By doing so, Kenya will be better placed to protect its financial system and prevent money laundering and terrorist financing offenses.

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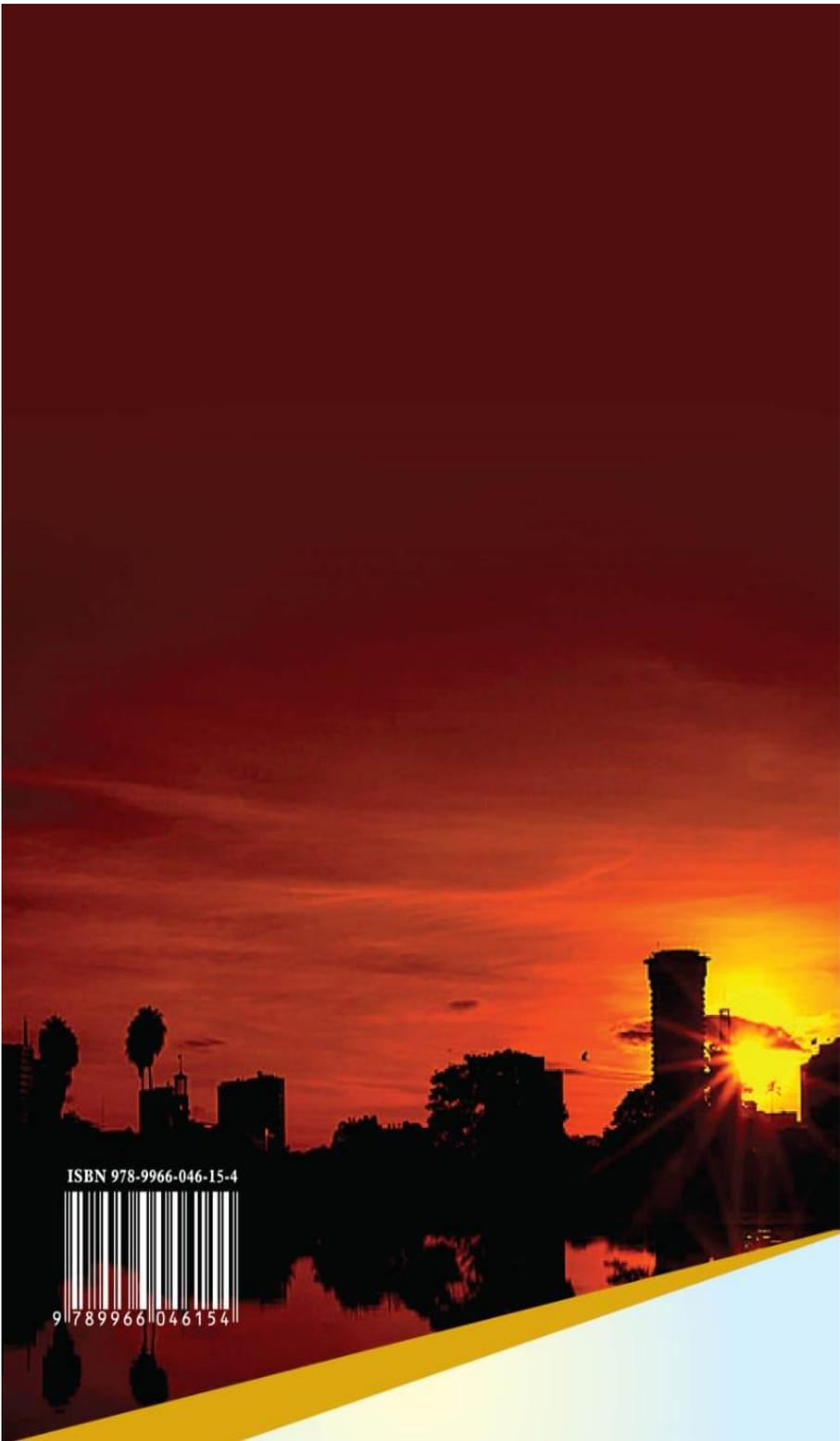
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