Kenya Illicit Finance Risks and Assessment

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Glossary of Acronyms

AML/CFT	Anti-money laundering and countering the financing of terrorism
ARA	Asset Recovery Agency
ARIN-EA	Asset Recovery Inter-Agency Network for Eastern Africa
BRS	Business Registration Service
CBK	Central Bank of Kenya
CDD	Customer due diligence
CAR	Central African Republic
CMA	Capital Markets Authority
DPP	Office of the Director of Public Prosecutions
DRC	Democratic Republic of the Congo
DNFBPs	Designed non-financial businesses and professionals
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EACC	Ethics and Anti-Corruption Commission
EU	European Union
FATF	Financial Action Task Force
FATF 40	40 recommendations developed by the FATF
FinCEN	US Department of the Treasury's Financial Crimes Enforcement Network
FIUs	Financial intelligence units
FRC	Financial Reporting Centre
FRACCK	Framework for the Return of Assets from Corruption and Crime in Kenya
GDP	Gross domestic product
ICGLR	International Conference on the Great Lakes Region
IMF	International Monetary Fund
KEPSS	Kenya Electronic Payment and Settlement System
KRA	Kenya Revenue Authority
KYC	Know your customer
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
ML	Money laundering
MER	Mutual Evaluation Review
NCCTs	Non-cooperative countries and territories
NIFC	Nairobi International Financial Centre
NRA	National risk assessment
NPOs	Nonprofit organizations
PEP	Politically exposed person
POCAMLA	The Proceeds of Crime and Anti-Money Laundering Act, 2009
POTA	Prevention of Terrorism Act, 2012

RTGS	National Real Time Gross Settlement
SARs	Suspicious Activity Reports
SPLA	Sudan People's Liberation Army
SPLA-IO	Sudan People's Liberation Army in Opposition
StAR	World Bank's Stolen Asset Recovery Initiative
STR	Suspicious transaction report
TF	Terrorist financing
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNSC	United Nations Security Council
US	United States
VASPs	Virtual assets service providers
VTDP	Voluntary Tax Disclosure Program

Introduction

Kenya is a country that is rich in natural resources, has strong manufacturing and services sectors, and acts as a strategic gateway between East and Central Africa and Europe, the Middle East, and Asia. While this position offers great opportunity, it also makes Kenya highly susceptible to acting as a transshipment point for illicit trade and finance, meaning that it is essential for Kenya to have effective and adequate anti-money laundering and countering the financing of terrorism (AML/CFT) measures in place. It is estimated that Kenya has lost more than $10.6 billion in illicit financial flows since 1970, including via capital flight to banking secrecy havens of funds illegally acquired by officials, individuals, and corporations.[1] The US government recently listed Kenya as a "major money laundering jurisdiction," citing numerous domestic and foreign criminal activities and highlighting that money laundering takes place in both the formal and informal sectors.[2]

In the near future, Kenya is likely to undergo its Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) mutual evaluation review (MER) and finalize a national risk assessment (NRA). Kenya's AML/CFT system is more advanced than others in the region. After having been through a MER in 2010, Kenya updated its AML/CFT framework, leading to its removal from the Financial Action Task Force's (FATF) list of non-cooperative countries and territories (NCCTs) in just four years. The country is in the process of preparing for its next MER and has already tabled proposed updates to national AML/CFT laws and regulations.[3] However, major risks remain.

Since 2016, The Sentry has, through its investigative work in South Sudan and East and Central Africa, exposed a number of illicit financial activities in Kenya connected to regional corruption and conflict. The Sentry has historically emphasized the important role of the Kenyan financial system as a regional hub for South Sudanese elites to bank and purchase property, stating, "It's vital that Kenyan banks and their regulators lead the way in implementing strict standards for anti-money laundering, anticorruption, and sanctions enforcement to protect the country's financial system from abuse by the violent kleptocrats and corrupt elite in South Sudan who pump their ill-gotten gains into Kenyan bank accounts and real estate holdings."[4] Kenyan authorities are beginning to take action against foreign corruption, as evidenced by a recent asset-freezing action against a United States (US)-sanctioned South Sudanese official, although his account has subsequently been unfrozen.[5, 6]

This report was compiled using open-source research and is set out in three sections. It focuses on areas that the ESAAMLG assessment team should consider during its preparation for the onsite visit, as well as areas that the government of Kenya may wish to assess as it finalizes its NRA and prepares for the MER. The first part of the report discusses illicit finance risks and typologies—many linked to South Sudan—to be considered and addressed as the government seeks to establish Kenya as a financial hub in Africa through its Vision 2030 and the development of the Nairobi International Financial Centre (NIFC). The second part of the report provides a high-level assessment of Kenya's AML/CFT regime, informed by the FATF's 40 Recommendations. The third section provides recommendations to the MER team, the government of Kenya, and international partners, including an overview of steps that Kenya should prioritize to protect the banking sector, the real estate sector, and other areas at risk of abuse by illicit actors.

Key Findings

- **Weaknesses in Kenya's finance and real estate sectors have been exploited to contribute to South Sudan's conflict.** South Sudanese politically exposed persons (PEPs) responsible for the conflict have infiltrated Kenyan banking, real estate, trade, defense, and corporate enterprises with their ill-gotten gains. Kenya is a destination country for illicit South Sudanese funds, which have been moved into Kenya using Kenyan corporate structures, luxury properties, and banks. Arms and munitions have also transited through Kenya into South Sudan.

- **Kenya faces severe money laundering risks.** Kenya faces numerous illicit finance risks that expose its society to crime and deprive it of public services. These risks include domestic corruption, terrorist financing, environmental crimes, illegal trafficking, tax evasion, and the misuse of digital finance such as mobile banking and cryptocurrency. If Kenya has the political will, it has the ability to respond to existing threats, but tech-enabled and cyber risks require additional training and technology resources for an effective response.
- **Kenya's AML/CFT framework requires improvement.** While Kenya has reasonably documented AML/CFT laws and regulations, gaps remain around full documentation into law and effective implementation by both the public and private sectors. Areas identified that require enhancement include the risk-based approach; proliferation financing; sanctions adherence; financial secrecy; resourcing available for AML/CFT compliance; PEPs; wire transfers and new technology; designated non-financial businesses and professionals (DNFBPs), particularly notaries and legal practitioners; public beneficial ownership registries; transparency on the roles and responsibilities of competent authorities; and domestic barriers to international cooperation.
- **Kenya's AML/CFT efforts are more effective when linked to countering domestic corruption.** Effective implementation remains a challenge in several areas, and AML/CFT action by government and regulators seems to be more robust when linked to the domestic war on graft. This makes Kenya an attractive destination for corrupt foreign officials and their enablers to launder illicit financial flows from across Kenya's borders.

Regional Illicit Financial Flow Risks

This section provides an overview of typologies used to hide and launder illicit proceeds from high-level political corruption and criminality in East and Central Africa via Kenya. The MER team, the NRA team, and the Kenyan government should consider these risks as they identify higher AML/CFT risks and evaluate the effectiveness of the mitigating measures in place. This section also references Kenyan banks, corporations, and relationships identified in The Sentry's reporting and considers key illicit finance risks such as terrorist financing, domestic corruption, environmental crimes, tax evasion, and exploitation of digital finance, which were identified through open-source research. A list of risk indicators is included in Appendix A.

Foreign PEP involvement

The Sentry's investigations have highlighted that several corrupt South Sudanese officials travel to and maintain their assets in Kenya.

Real estate used to launder the proceeds of foreign corruption

The Sentry has identified numerous cases in which South Sudanese PEPs have purchased luxury real estate in Kenya for themselves or for their families. This could indicate that the sources of wealth and funds are not being reviewed as part of due diligence checks by the Kenyan real estate sector. South Sudanese President Salva Kiir has even acknowledged the trend, saying in 2016 that some government officials "have bought apartments, have bought very beautiful houses, villas. They are hiding it in Kenya and they refuse to reveal it."[7, 8]

One such individual is a South Sudanese general who is subject to US sanctions due to his involvement in mass violence against civilians.[9] One source told The Sentry that the general's family paid $1.5 million in cash for a property that is listed under the name of one of his wives.[10] Another case identified a property belonging to a senior military official who has been involved in violent land grabs, ethnic conflict, and corruption scandals.[11] The Sentry further identified that family members of several of South Sudan's highest-ranking PEPs reside in one particular upscale neighborhood in Nairobi and their children attend local private schools.[12] In yet another instance, The Sentry found that a South Sudanese PEP involved in mining owned a luxury house in Nairobi, the value of which significantly exceeded his modest salary.[13]

Joint corporate shareholdings with Kenyan PEPs to move dirty funds

The Sentry has identified several examples in which Kenyan citizens, including members of the political elite and their families, have set up businesses with corrupt foreign PEPs, making it easier to move illicit funds around the region. This supports the case for beneficial ownership transparency of corporate structures.

In one instance, a Kenyan PEP was identified as having a partial stake in a South Sudan registered company that had entered into a joint venture with a company owned by family members of a South Sudanese PEP. The new company, created as part of the joint venture as a "special purpose vehicle," is described as engaging "in the provision of services in the oil sector," including waste management, drilling, logistics, and air transportation. However, it more likely personally benefited family members of the South Sudanese PEP.[14]

Another company, which appears to be jointly owned by a Kenyan citizen and South Sudanese PEPs, based on the signatures in corporate documents, was used to transfer US dollars into a South Sudanese PEP's personal account held at a Kenyan bank.[15] The South Sudanese PEP was identified by the United Nations (UN) as being responsible for the violence that led to famine in South Sudan.[16,17]

A final example includes a company that operates in the oil industry in South Sudan and is owned by the son of a high-ranking South Sudanese PEP, with the remaining shares held by three Kenyan businessmen.[18]

Misuse of corporate structures for illicit trade

The Sentry has also found that foreign PEPs have used Kenyan corporate structures to siphon funds from their home countries. In one example, a Kenyan oil company was used to funnel payments to the personal account of a South Sudanese general who acted as a commander during a military offensive—one that led to the displacement of 100,000 people in South Sudan—and who is subject to UN sanctions. The funds were purported to be "a refund to the SPLA [Sudan People's Liberation Army]" for failing to deliver fuel, but they do not appear to have made it to the South Sudanese Treasury.[19]

A separate incident involved the use of Kenyan corporate structures and Kenyan banks to transfer funds to an Australia registered company owned by a family member of a different South Sudanese general. The family member subsequently purchased luxury real estate and luxury vehicles in Australia, which were frozen and seized by Australian authorities.[20]

Some Kenyan corporate structures were beneficiaries of the $922 million South Sudanese letters of credit scandal, in which oil-backed loans were used to secure financing to import food and goods from neighboring countries. These corporate structures, which were owned by South Sudanese senior officials, members of their families, or well-connected traders, failed to provide the goods following payment, contributing to widespread severe hunger and famine in South Sudan.[21]

Kenyan corporate structures have also been misused by a UN-sanctioned warlord from the Central Africa Republic (CAR). This individual, who allegedly has ties with Kenyan politicians, traveled to Kenya in 2014 prior to being sanctioned in 2017 by the UN for "engaging in or providing support for acts that undermine the peace, stability or security of the CAR, including acts that threaten or impede the political transition process, or the stabilization and reconciliation process or that fuel violence" and for being "involved in planning, directing, sponsoring, or conducting attacks against UN missions or international security presences, including MINUSCA [the UN Multidimensional Integrated Stabilization Mission in the Central African Republic], the European Union Missions and French operations which support them."[22] Between 2014 and 2016, he used a network of companies to develop an illicit trade in diamonds and gold, and in exchange he was supposed to receive military equipment, weapons, and ammunition via the Democratic Republic of Congo (DRC) or Sudan.[23]

These examples further highlight the need for beneficial ownership transparency and for firms subject to AML/CFT measures to monitor and report suspicious transactions.

Bank accounts used for cross-border illicit transfers

The Sentry has obtained documents indicating that millions of dollars in questionable payments linked to top South Sudanese officials have transited through Kenyan banks, reinforcing the need to monitor and report suspicious transactions and to have foreign PEP due diligence measures in place.[24] In one instance, a South Sudanese PEP purchased a luxury home using a US dollar-denominated account held at the Ugandan branch of a Kenyan bank.

This occurred during a period of intense fighting involving a nonstate militia that was funded and supported by the PEP's office.[25]

In a separate example, a Kenyan bank housed a South Sudanese PEP's US dollar-denominated personal account, through which millions transited.[26] Transactions included the receipt of large cash deposits and payments from construction companies backed by Chinese, Lebanese, and possibly Turkish investors and the withdrawal of over $1 million in cash by the South Sudanese PEP. In a case involving another South Sudanese PEP, suspicious transactions were related to "reimbursement" payments for a fuel supply deal that fell through and took the form of transfers of hundreds of thousands of dollars into the PEP's account by a multinational corporation operating in South Sudan.[27]

In another matter, bank records reviewed by The Sentry indicate that a Kenyan bank processed payments for the personal account of a UN-sanctioned South Sudanese PEP. The account received suspicious financial transfers, including from someone who shares a name with the advisor of a high-ranking Kenyan PEP and from a Kenyan multinational petroleum company operating in South Sudan. The account continued to operate after UN sanctions were imposed.[28] Kenyan corporate structures have also been used to siphon government funds from South Sudan and facilitate arms transfers.[29, 30] Recently, Kenyan authorities froze an account held at a Kenyan bank by a US-sanctioned South Sudanese minister.[31] A Kenyan court has since lifted the account freeze order, having accepted the minister's explanation that the funds in the account were the proceeds of his salary and rental income.[32] The account held 13.42 million Kenyan shillings (approximately $124,260), but the minister had previously held a US dollar-denominated account through which an estimated $460,896.20 was transferred prior to its being closed in 2019.[33]

Financial sector growth in risky markets

In recent years, Kenya has emerged as a regional banking hub connecting East and Central Africa to international financial centers such as London, New York, and the United Arab Emirates (UAE). Several Kenyan banks have branches overseas and correspondent banking relationships with top-tier financial institutions around the world. Kenya's second-largest bank, Equity Group, is now the largest bank in the DRC, will likely be the second-largest bank in Rwanda and possibly the third-largest bank in Uganda, and has a license to operate in Ethiopia.[34] KCB, Kenya's largest bank, has foreign subsidiaries in South Sudan, Uganda, Rwanda, Burundi, and Tanzania.[35] NCBA Bank Kenya, Kenya's third-largest bank, is partially owned by President Uhuru Kenyatta's family and has operations in Rwanda, Kenya, Tanzania, Uganda, and the Ivory Coast.[36] There are indications that it was previously seeking to expand into Burundi and South Sudan.[37, 38] Kenya's banking presence in these regions is a positive step toward financial inclusion in these countries, but enhanced due diligence is key to managing correspondent banking relationships while at the same avoiding large-scale de-risking action.

The Sentry's reporting has identified Kenya as the largest foreign investor in the South Sudanese banking sector. South Sudan significantly relied upon Kenya for financial services during the war, and this close relationship has continued, with Kenya acting as a significant food export partner to South Sudan. Today, some South Sudanese PEP-owned or -controlled banks have Kenyan investors, and South Sudanese banks with correspondent relationships with Kenyan banks may hold nested accounts in Kenya. Additionally, most remittances sent to South Sudan from around the world are spent in Kenya and Uganda.[39]

The Sentry has also reported numerous questionable transactions involving top officials from South Sudan and banks in Kenya. A previously undisclosed internal audit of South Sudan's central bank describes significant irregularities pertaining to South Sudanese state assets deposited into Kenyan banks.[40, 41]

The US government has found that some financial institutions in Kenya are involved in currency transactions that are linked to international narcotics trafficking.[42]

Local mines covering for conflict gold smuggling

Following an in-depth investigation, The Sentry raised serious concerns that a corporate network had purchased conflict gold from the DRC, processed it in Uganda, and exported it to the UAE. Companies in this network claimed to have sourced gold from accredited mines in Kenya.[43] Kenya's Vision 2030 blueprint includes plans "to have a certification laboratory and audit agency" for minerals.[44] The Ministry of Petroleum and Mining indicated that it would equip and operationalize the Mineral Certification Laboratory and establish four mineral audit offices by March 31, 2019.[45] No further updates are available to confirm that a certification laboratory or audit agency offices have been established or to indicate that Kenya has implemented mine certification as part of the International Conference on the Great Lakes Region (ICGLR) minerals certification process.

Arms and munitions shipments to regional conflict zones

The financing for arms and munitions contracts should be subject to enhanced due diligence, and firms should identify beneficial owners for legal structures. However, The Sentry's reporting has identified Kenya as a trans-shipment site for arms and munitions intended for use in South Sudan.[46] In one case, armored vehicles and spare parts were delivered in several shipments to a site in Kenya. The shipment was sent by a Russian company on behalf of a company based in the UAE, reportedly South Sudanese owned.[47] South Sudan's Ministry of Interior subsequently received the vehicles, which have been photographed on the battlefield as recently as 2018.[48] In a separate case, an American arms trafficker attempted to sell a trove of weapons worth $43 million to an ousted South Sudanese warlord. Initially, the weapons were to be sold to a Kenya-based shell company linked to the South Sudanese warlord, who owns a mansion with his family in Kenya worth approximately $2 million.[49]

A report by Conflict Armament Research on the supply of weapons into South Sudan during the civil war identified further links with Kenya. In May 2014, a Chinese arms manufacturer sent tens of thousands of arms and munitions, including small caliber ammunition, rockets, grenades, grenade launchers, assault rifles, pistols, and machine guns, to Juba via Kenya. The UN arms embargo did not come into effect until July 2018; thus, the transfers likely did not violate international law at the time. As of 2017, around 56% of ammunition sampled by Conflict Armament Research in South Sudan included a code denoting that it was manufactured by a state factory in China.[50] In 2015, an official from the Sudan People's Liberation Army in Opposition (SPLA-IO) entered into negotiations for US individuals to supply and operate large civilian aircraft—used to move military personnel and equipment—via US and Kenyan companies. The deal was not finalized, and it is not clear whether US counterparts were cognizant that they had entered into negotiations with the opposition.[51] SPLA-IO officials also tried to acquire their own aircraft, entering into negotiations with a US lawyer and a Somali-US citizen to buy a second-hand aircraft for $4 million in late 2015 and early 2016. The seller was listed as a newly registered Kenyan subsidiary of a US company.[52]

Additional illicit finance risks

Terrorist financing to support local attacks

In recent years, Al-Qaeda Somali affiliate group Al-Shabaab has been raising funds and committing acts of terrorism in Kenya.[53] In 2013, militants launched an attack at Westgate Mall that resulted in the death of 67 people after an 80-hour siege.[54] In 2015, 147 students were killed at a shooting at Garissa University.[55] And in January 2019, 21 people were killed when Al-Shabaab militants stormed a luxury hotel in Nairobi.[56]

Terrorist financing in Kenya has been linked to corruption and mobile banking. Hawala networks, which have been linked to terrorist financing, and unlicensed remittance systems enable unregistered cash-based money flows.[57] Key controls to manage terrorist financing risk include sharing financial intelligence, including originator and beneficiary information on payments; placing loading limits and geographical transfer limits; recording available metadata from mobiles; and screening against domestic terrorist lists. However, these mitigants are not effective against cash-based transactions. A recent study found that some Kenyan officers fighting Al-Shabaab in Somalia have instead helped the group smuggle sugar over the border into Kenya.[58] It is estimated that approximately 150,00 tons of sugar are smuggled into Kenya each year and that the trade is worth between $200 million and $400 million.[59] Members of the Kenyan military are alleged to be assisting Al-Shabaab in charcoal smuggling, as well. It is estimated that charcoal worth more than 140 million shillings ($1.3 million) is smuggled out of Kenya monthly.[60, 61]

Kenyan court documents filed by the Anti-Terrorism Police Unit following the 2019 hotel attack identified mobile money transfers to terror suspects, including from South Africa, via 47 SIM cards.[62] Al-Shabaab, which released a public statement in January 2020 that "Kenya Must Take Heed,"[63] is also known to raise funds through diaspora remittances, charcoal trade-based money laundering, taxes, and checkpoint fees.[64] More financial intelligence sharing is needed to address the threat of terrorist financing.

A potential weakness in Kenya's regulation includes an amendment to the Finance Act 2018, which created a loophole that may be vulnerable to exploitation to finance terrorism. Clause 38 amended section 37B(4) of the Tax Procedures Act 2015, effectively extending the period of a tax amnesty—which was issued to encourage the return of funds held overseas—by one year.[65] Information about the tax amnesty indicates that funds transferred would be exempt from provisions of The Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) "or any other Act relating to reporting and investigation of financial transactions, to the extent of the source of the funds excluding funds derived from proceeds of terrorism, poaching and drug trafficking."[66] Tax Justice Africa argued that this loophole "weakens current financial reporting, investigations and surveillance mechanisms carried out by the Financial Reporting Centre" and could have been used to repatriate funds linked to terrorism and crime, creating a gateway for terrorist financing into Kenya.[67] The Finance Act 2020 subsequently introduced a Voluntary Tax Disclosure Program (VTDP) from January 2021 to December 2023 "to give opportunity to taxpayers who have undisclosed tax liabilities to disclose the same to the Kenya Revenue Authority (KRA) without facing any legal consequences such as prosecution."[68, 69] This new program may also be susceptible to being abused for criminal activity.

Mixed implementation leads to sanctions violations

Corporate structures and financial institutions operating in Kenya may be at risk of facilitating breaches of UN country sanctions. Kenya does not appear to have a body responsible for regulating, issuing guidance, enforcing, or monitoring compliance with UN sanctions programs (country programs) that fall outside Kenyan legislation covering terrorist financing or proliferation financing sanctions.[70, 71, 72] Article 2(6) of the Constitution of Kenya allows for any ratified treaty or convention to become part of the laws of Kenya, and because Kenya is a signatory of the UN Charter, this could include UN sanctions.[73] Only the High Court of Kenya can determine whether a certain "omission or violation has occurred and that the same amounts to a breach of law" and "a breach of the UN Charter."[74] This makes the application of UN sanctions programs related to non-terrorist or proliferation financing, such as the South Sudan program, uneven across the country and among differing industries. For example, there are individuals who are subject to UN travel bans under the South Sudan sanctions program who regularly visit Kenya.[75] In order for Kenya to live up to its UN obligations, further action is required.

With regard to extraterritorial sanctions, the US, the United Kingdom (UK), and the European Union (EU)—among others—have sanctioned Kenyan nationals linked to terrorism, corruption, or conflict.[76, 77, 78, 79] These sanctions have been portrayed by some in Kenya as being "politically motivated and designed to preserve geopolitical or business advantage."[80]

Laundering the proceeds of domestic corruption

Domestic corruption in Kenya is rife, but enhanced due diligence on PEPs can help prevent the laundering of the proceeds of corruption. In 2015, Kenyatta branded corruption a threat to national security and renewed the war on graft.[81] One year later, Kenya's anti-graft chief stated that the country was losing a third of its state budget—around $6 billion—to corruption.[82] A 2017 survey by Kenya's Ethics and Anti-Corruption Commission (EACC) found that "corruption and unethical conduct permeate all sectors both public and private."[83] In early 2021, Kenyatta was quoted stating, "The amount they [public officials] steal every day is more than Sh2 billion."[84] The use of offshore bank accounts in secrecy jurisdictions is widespread, and numerous Kenyan PEPs were exposed hiding their wealth offshore by the Panama Papers.[85, 86]

Corruption is often cited by businesses abroad as a barrier to investment,[87] and corrupt practices range from the most prevalent form—which involves payment of bribes for government services, particularly when registering or seeking identity records—to abuse of office, favoritism, and delays in service provision, among others.[88] The UN has also linked corruption by individuals involved in law enforcement operations—the police, military, and customs—to the illicit wildlife trade.[89]

A recent probe has been opened into the allocation of contracts linked to the country's COVID-19 response. Kenya received more than $2 billion in aid and grants to fight the pandemic, but some evidence indicates that multimillion-dollar contracts for the purchase of medical supplies were allocated to politically connected businesses and individuals, recently formed companies, or suppliers selling goods at overly inflated prices.[90] However, it may be some time before the people of Kenya see results from the COVID corruption probe, as political interference delaying judicial proceedings has been identified in multiple cases brought against politicians.[91]

Strong anti-corruption measures combined with community engagement continue to be key in driving out domestic corruption.

Illicit financial flows linked to environmental crimes

Laundering the proceeds of illegal wildlife trafficking, logging, and fishing remains a key risk in Kenya, which acts as a transshipment site for East Africa. These environmental crimes threaten the natural ecosystem, food systems, and income sources for Kenyans and are often linked to corrupt public officials and organized crime networks and cartels. The development of public-private information-sharing partnerships is key to addressing illicit financial flows linked to environmental crimes.

Countries that traffic wildlife products through Kenya include:

- Tanzania (ivory)

- Mozambique (ivory and rhino horn)
- DRC (ivory)
- Uganda (ivory, pangolin scales, and timber)
- Zambia (ivory)
- South Sudan (ivory)

Illegal wildlife products that originate in Kenya include elephant ivory, rhino horns, big cat skins, and pangolin scales.[92]

Kenya remains a key exit point for the ivory trade with Asia, including China and Hong Kong via Malaysia, Vietnam, Thailand, and Singapore.[93] The FATF recently published a case study that identified the use of front companies to conceal financial transfers and shipments of goods between Kenya and Asia. The syndicate commingled licit and illicit goods, and connected parties set up the companies used to buy, sell, and transport products.[94] Between 2011 and 2016, authorities seized over 20,000 kilograms (kg) of ivory in Mombasa, and between 2009 and 2016, over 26,000 kg of ivory that passed through Mombasa was seized elsewhere. This is equivalent to ivory sourced from almost 7,000 elephants.[95] The UN estimates that global illicit transactions could total $570 million for ivory and $390 million for rhino horn annually.[96]

With regard to illegal logging, Kenya loses 70,000 hectares of forest each year.[97, 98] As with illegal wildlife trafficking, Kenya acts as a transshipment point from Africa to Asia and the Middle East. In particular, sandalwood, a highly profitable endangered species, is trafficked to Uganda and back to Kenya before being shipped overseas. The illicit wood trade has been linked to cartels and corrupt public officials.[99, 100]

It is estimated that Kenya loses 10 billion shillings ($90 million) to illegal fishing every year.[101, 102] A recent report by Global Financial Integrity and Transparency International identified a Kenyan case in which complex corporate structures were used to hide the identity of the beneficial owners of a ship fishing in Kenyan waters without a license.[103, 104]

Kenya continues to step up the fight against environmental crimes, particularly via the work of the Kenyan Wildlife Service, but more remains to be done to manage illicit finance linked to environmental crimes.[105]

Laundering the proceeds of tax evasion

According to the KRA, tax evasion takes place through transfer pricing, mis-invoicing, trade in contraband, human and drug trafficking, and corruption, highlighting the need for suspicious activity reports (SARs) and transactional due diligence to understand the price of commodities and deal structures.[106] In 2013, it was estimated that Kenya lost $907 million in revenue due to trade mis-invoicing—under-invoicing exports or over-invoicing imports to lower tax liability—which accounted for approximately 8% of government revenues.[107] Multinational corporations engaging in profit shifting use transfer and trade mispricing and related-party transactions to ensure that accounting losses show in Kenya and that profits appear on the books in low-tax and offshore jurisdictions. Kenyan subsidiaries of Dutch flower firms, for instance, have been identified reporting losses, while their Netherlands-based parent companies report profits.[108] Tax evasion may also be facilitated by the presence of double-taxation treaties between Kenya and a number of other countries, some of which may be unfavorable to Kenya.[109]

The sale of counterfeit goods by criminal networks offers another avenue for tax evasion. The KRA indicated that, in 2016, "fake supplies" worth nearly $309 million were made, leading to a loss of revenue for Kenya.[110] But contraband also includes the sale of substandard food products such as "sugar, maize, rice, milk powder, vegetables and pulses full of mercury, lead and other insoluble matters unfit for human consumption" from Somalia, Tanzania, and Uganda, which has led to a rise in infant mortality and toxin-induced diseases such as liver cancer.[111] In 2020, the Kenyan government missed its revenue collection by approximately $5.38 billion, or 5.7% of national gross domestic product (GDP), which tax evasion has contributed to.[112]

Misuse of digital finance and illicit finance risks

There has been growth in digital finance to address financial inclusion in Kenya. This has been enabled by Kenya's mass adoption of mobile phone technology. By 2019, 91% of the population had a cellphone, and globally, Kenya has the highest share of mobile internet usage when compared to desktops.[113] This has led to a rise in digital financial services, including mobile banking, cryptocurrency and virtual assets, and other products that could be exploited by nefarious actors. The US government recently found that "Kenya's digital financial services and platforms are vulnerable to money laundering."[114] An update to AML/CFT legislation may be required to ensure that all relevant digital financial services providers are in scope and that firms are able to manage potential and identified risks.

Growth of mobile banking

Kenya has grown to be a global leader in mobile banking. While only 29% of the population has a digital bank account, 72% of the population has a mobile money account.[115] The value of transactions increased to 4.3 trillion shillings ($41.8 billion) in 2019, and while Kenya has 47.5 million citizens, it has 58.4 million mobile money subscribers.[116]

Mobile money accounts via apps such as M-Pesa allow for the digital storage and safe transfer of money in and out of Kenya instantly via text messaging. These accounts are fast, simple, and low cost; provide access to microfinance; and can be funded using cash or via an agent network or third party, making transactions difficult to monitor and vulnerable to abuse. Mobile money has allegedly been used as a payment vehicle in kidnappings and extortions, to bribe corrupt public officials, and to launder funds.[117] The international money transfer capabilities, combined with Kenya's "standing as 'a transit point for international drug traffickers and trade-based money laundering,'" also make mobile banking vulnerable to money laundering.[118] It is estimated that Kenya receives over $3 billion in diaspora remittances annually, many of which are sent via mobile money transactions.[119]

Emergence of cryptocurrency and virtual assets

Cryptocurrency use in Kenya is growing. By 2019, approximately 40,000 people had made Bitcoin transactions valued at approximately $1.5 million.[120] That same year, Kenya's Capital Markets Authority (CMA) issued a Cautionary Statement on Initial Coin Offerings and Coin Trading.[121] While there is little evidence of cryptocurrencies being used to launder funds, the industry has been tainted by fraud, and it may merit further attention from the MER team.

The Blockchain Association of Kenya recently released a guide to identifying Bitcoin and cryptocurrency scams in Kenya. It includes tips on how to avoid falling prey to membership and high-yield investment and exit scams.[122] Kenya has been rocked by three such scams. This included the Brazilian Velox 10 Bitcoin pyramid scheme, which took millions in shillings and suddenly closed its website,[123] and two Initial Coin Offering scams in which allocations of cryptocurrency were promised in exchange for payment (often via mobile) such as Onyx Coin and KeniCoin.[124]

The cryptoassets never materialized. All those stolen funds need to be laundered. KeniCoin is currently under investigation by the CMA of Kenya.[125] The Central Bank of Kenya (CBK) also issued a public caution against cryptocurrencies in 2015.[126]

The KRA recently highlighted that most payments facilitating illegal capital flight are made through "complex layered and encrypted online payment systems or through emerging technological stores of value like crypto currencies."[127] Services such as BitPesa leverage the M-Pesa network using a mobile phone or mobile banking account as the digital wallet to transfer funds and allowing individuals to easily convert cryptocurrency to fiat and vice versa.[128] This is an area that requires further investment in technology and monitoring to evaluate the potential for exploitation for money laundering or terrorist financing.

Assessment of AML/CFT Framework

This section provides a high-level assessment of Kenya's AML/CFT framework, informed by the 40 Recommendations developed by the FATF (FATF 40) and focused on areas that could be enhanced to mitigate illicit finance risks.[129] This assessment includes a review of Kenya's AML/CFT laws and regulations using open-source information. A full list of the FATF 40 is included as Appendix B.

Background

Kenya has numerous agencies and regulators responsible for implementing, supervising, and enforcing its AML/CFT regulations and legislation. It is also a member of international AML/CFT forums and works with international partners.

Kenya has had an AML framework in place since the adoption of POCAMLA, which came into effect in June 2010. Kenya enacted the following additional pieces of legislation that collectively create the legal structure for identifying, prosecuting, and dealing with the proceeds of crime, terrorist financing, and corruption:[130]

- Narcotic Drugs and Psychotropic Substances (Control) Act, 1994[131]
- Prevention of Organized Crimes Act, 2010
- Counter-Trafficking in Persons Act, 2010[132]
- Ethics and Anti-Corruption Commission Act, 2011
- Prevention of Terrorism Act, 2012 (POTA)
- The Capital Markets (Amendment) Act, 2012
- Proceeds of Crime and Anti-Money Laundering Act (2013)
- Companies Act, 2015
- Bribery Act, 2016

The Kenyan government has subsequently passed amendments to several of these acts to address deficiencies in its AML/CFT framework.[133]

Kenya's financial intelligence unit (FIU) is the Financial Reporting Centre (FRC), which disseminates intelligence to numerous law enforcement bodies. The CBK is the main regulator for AML/CFT and provides oversight for financial institutions. Banks must record and report transactions exceeding $10,000 to the CBK.[134] Other supervisory bodies are responsible for regulating DNFBPs.

At the international level, Kenya is a member of the FATF-style AML/CFT regional body ESAAMLG. However, it is not yet a member of the Egmont Group forum for information exchange between FIUs. Kenya is a member of the Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA), an informal information-sharing network, and engages with the World Bank's Stolen Asset Recovery (StAR) Initiative, although it is not a focus country.[135] The Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK) was set up between Kenya, Jersey, Switzerland, and the UK to confiscate and recover illicit funds stashed in those countries.[136] Kenya was elected to hold a nonpermanent seat on the UN Security Council (UNSC) and began its two-year tenure in January 2021.[137]

Kenya was subject to one mutual evaluation by the FATF in 2010, with two post-evaluation progress reports made publicly available. Following its first mutual evaluation, Kenya was placed on the FATF's list of NCCTs; it was removed in 2014 following Kenya's "significant progress in improving its AML/CFT regime."[138]

Assessment

This section provides an assessment against the main themes covered by the FATF 40, with a focus on recommendations that may need further exploration.

AML/CFT policies and coordination

FATF recommendation 1 (R1) requires that countries "identify, assess, and understand the money laundering and terrorist financing risks for the country," including proliferation finance risks.[139] R2 calls on countries to have national policies informed by an AML/CFT risk assessment and mechanisms in place to promote cooperation and coordination between relevant authorities.[140]

National risk assessment

In March 2019, the Government of Kenya created a Taskforce on National Risk Assessment on Money Laundering and Terrorism Financing to develop an NRA coordinated by the FRC. The Taskforce comprises 30 members from public sector agencies, regulators, and industry bodies, including the Kenyan Bankers Association and NGO Co-ordination Board.[141] Sources indicate that Kenya used a tool developed by the World Bank to conduct its money laundering and terrorist financing (ML/TF) assessment.[142] The CBK highlighted that a number of activities have been achieved on the NRA, including a sensitization workshop for the NRA Taskforce, the first meeting of the NRA Taskforce, and several meetings held by the NRA Secretariat, including to discuss the use of the World Bank's risk assessment tool.[143] The Taskforce was due to publish its final report by February 28, 2020, and a National Strategy on Combating Money Laundering/Terrorism Financing by March 31, 2020,[144] but it has been delayed due to COVID-19 and challenges around coordinating input from multiple stakeholders.[145] To date, the NRA process appears shrouded in mystery, and it is unclear how much input has been sought from civil society and the private sector.

Whether proliferation financing—which is a change to the FATF 40 adopted in October 2020—has been built into the NRA is currently unclear. The Nuclear Power and Energy Agency is not on the list of Taskforce members, and there is limited public information on proliferation financing risk in Kenya. When quoted in 2015 on the risks of a proposed nuclear power plant being seized by terrorists, nonproliferation expert Nicolas Kasprzyk indicated that he was confident Kenya could keep a nuclear facility safe but warned that the worst couldn't be excluded as a possibility and that there was "a genuine risk."[146] He further highlighted that government and the private sector "just don't have a dialogue on proliferation," which remains essential given the elevated risk of terrorist activity in Kenya.[147] Kenya recently delayed beyond 2030 the development of a nuclear power plant, which is estimated to cost between $5 billion and $20 billion, but the associated risks still need to be considered.[148] To further assess proliferation risks, officials should look at North Korean and Iranian exposure in Kenya. It was reported that Iran recently opened a large-scale innovation hub in Kenya to develop and export technology information on pharmaceuticals, manufacturing, biotechnology, and nanotechnology.[149] However, Kenya is a signatory to the African

Nuclear-Weapons-Free-Zone Treaty and the 1996 Comprehensive Nuclear Ban Treaty.[150] At a recent speech at the UN, Kenyatta highlighted Kenya's commitment to "a safer nuclear-free world."[151]

Money laundering and confiscation

FATF R3 requires the criminalization of money laundering, and R4 calls for the adoption of measures to allow for freezing or seizing and confiscating criminal proceeds. Money laundering was criminalized by section 3 of POCAMLA.[152] The Asset Recovery Agency (ARA), established by section 53 of POCAMLA, has the ability to initiate criminal forfeiture proceedings using production orders, confiscation orders, and restraint orders, as well as civil forfeiture proceedings through preservation and forfeiture orders as detailed under parts VII to X of POCAMLA.[153] Following an amendment, the ARA was given its own budget and the ability to recruit its own staff, subject to approval from the attorney general.[154] Although there is significant press surrounding High Court rulings requiring forfeiture of cars, land, and bank account funds, there is limited reporting from the ARA on asset freezing and confiscation. The ARA recently filed a case related to a South Sudanese official sanctioned in the US by the Office of Foreign Assets Control (OFAC), citing "reasonable grounds to believe that the funds held … are direct benefits, profits and or proceeds of crime obtained from a complex money laundering scheme."[155] The High Court froze the official's account, which had previously been linked to a US dollar-denominated account in his name, although the freeze has since been lifted.[156, 157] Another recent press article describes the ARA freezing 400,000 Kenyan shillings (approximately $3,800) and seizing vehicles that may have been acquired using proceeds from human trafficking and used to transport Ethiopians to other countries.[158] Nevertheless, the FRC website displays only limited public information on the ARA and its work. The EACC website and public reporting are the two primary information sources on the confiscation of criminal proceeds.[159]

Since its inception in 2003, the EACC has recovered 26.7 billion shillings (approximately $247.9 million). More recently, the EACC has been incredibly active as part of Kenyatta's war on graft. In 2019 and 2020, it recovered assets valued at approximately 11.3 billion shillings (nearly $103 million), including cash, land, and property, from corrupt officials.[160] Chief Executive Twalib Mbarak has been credited with shifting the agency's focus to high-value, high-profile cases that are of public interest.[161] The EACC also worked on the recent prosecution of a member of Parliament and the mother of a PEP linked to a $3 million maize procurement fraud.[162] EACC Chairman Eliud Wabukala was quoted saying, "We are going to upscale this kind of activity. This will certainly be a deterrent to those who benefit from taking from the public. They must gain nothing and thereby lose motivation."[163] Wabukala further indicated that the commission would focus more on asset recovery to deter corruption.[164] While it is clear that there is a vast amount of work being done on domestic corruption, there is limited information on confiscation of assets linked to foreign corruption into Kenya, which is a significant gap.

Given the value of funds being confiscated, the Criminal Assets Recovery Fund was established by a 2019 amendment made under section 109 of POCAMLA, indicating it was to be administered by the ARA.[165] The draft regulations indicate that the fund will manage seized assets linked to criminal activity and corruption, with a committee responsible for managing an initial budget of 20 million shillings (approximately $132,000).[166] Shortly after issuing the draft regulations detailing how the fund would be managed, the government extended the deadline for consultation from September 25, 2019, to August 28, 2020.[167, 168] The initial version of the regulations issued in 2019 listed the principal secretary of the National Treasury as the committee chair.[169] A more recent version dated 2020 lists the attorney general as the committee chair.[170] It does not appear that these regulations have been finalized.

Terrorist financing and proliferation financing

FATF R5 requires the criminalization of terrorist financing. FATF R6 and R7 call for the implementation of UNSC terrorism and nuclear proliferation sanctions, and R8 addresses the risk of abuse of nonprofit organizations (NPOs) for terrorist financing.[171] The threat of terrorist financing remains high in Kenya, whereas the risk of nuclear proliferation financing is unclear and needs to be explored further. Effective implementation of sanctions, however, is a key deterrent to these risks. Although efforts have been made by the Kenyan government to adopt the UN resolutions, more can be done to improve effectiveness. With regard to the NPO sector, application of AML/CFT measures has led to major de-risking and the freezing of accounts in Kenya with banking facilities not readily available.

Terrorist financing and sanctions

The FATF requires countries to criminalize terrorist financing. Part III of the Prevention of Terrorism Act, 2012 criminalized terrorist financing, including collecting, possessing, arranging, and dealing in property to support terrorist acts.[172] These offenses are punishable by up to 20 years in prison upon conviction.[173]

The FATF also requires countries to freeze the funds and other assets of those subject to actions taken under UNSC resolutions addressing the prevention and suppression of terrorism, terrorist financing, and proliferation financing, including Resolutions 1267, 1373, 1988, 1718, and their respective successor resolutions.[174, 175, 176, 177] Following its first MER, Kenya introduced new legislation "intended to implement UN Security Council Resolutions 1267 and 1373" that "clearly define processes for the implementation of the UNSC Resolutions 1267 and 1373."[178]

The Prevention of Terrorism (Implementation of Security Council Resolutions on Suppression of Terrorism) Regulations, 2013 (the Regulations) created the Counter Financing of Terrorism Inter-Ministerial Committee and the underlying processes to implement Resolution 1267/1989, on Al-Qaida and its associates; Resolution 1373, on developing national counterterrorism regimes; Resolution 1718, which deals with the Democratic People's Republic of Korea's nuclear program; and Resolution 1988, which sets measures against certain associates of the Taliban.[179, 180, 181] The Committee's functions include identifying persons or entities for designation, assessing and giving effect to a designation issued by a foreign country "that is consistent with the public interest of Kenya," and considering requests for de-listing; it also has the power to issue directives, guidelines, rules, or instructions to carry out its functions.[182] The Regulations state that when there is a breach of sanctions, persons are required to inform the Committee or local police. Penalties for sanctions breaches include payments of up to 3 million shillings (approximately $28,000) or imprisonment for up to seven years.[183]

With regard to the process for implementing these UN sanctions, the Regulations require the Kenyan Mission to the UN to submit designations made by the UNSC under the resolutions covered by Kenyan law to the Ministry of Foreign Affairs, which then submits the list to the cabinet secretary, who circulates the list to the Committee.[184] The Committee, in turn, shares the list with supervisory bodies, national authorities, law enforcement, and other authorized persons. The FRC is required to publish the list.[185] The FRC has a section on its website dedicated to the Resolution 1267 sanctions list, stating that "financial institutions are obliged to have measures in place to identify and freeze funds, financial assets or economic resources of such designated persons and entities immediately."[186] Beyond financial institutions, there is no mention of other types of persons or entities, including DNFBPs. The FRC webpage has two links under the headings "Press releases on updates to the UNSC 1267 list" and "Full UNSC 1267 list in various formats," both of which redirect people to the UNSC homepage, which contains a separate link to the UNSC consolidated list search function.[187, 188] The consolidated list on the UNSC homepage includes designated persons and entities that go beyond the FATF-mandated UN sanctions programs for which Kenya has legislated.[189]

As a complement to international sanctions obligations pursuant to Resolution 1267 and its successors, Resolution 1373 calls on states to take additional measures at the national level to prevent and suppress "the financing and preparation of any acts of terrorism."[190] This includes by criminalizing terrorist financing, immediately freezing assets linked to any terrorist act, denying safe haven to terrorists, preventing cross-border movement of terrorists, and prohibiting making funds or resources available to finance terrorism by nationals.[191] The Regulations detail communications and reporting requirements to implement UN sanctions, as well as the authority to freeze assets.[192] Section 13 of the Regulations contains provisions for the development of a domestic list by the Committee, stating the information and personal identifiers that such a list should contain.[193] The Regulations further require the Committee to circulate the designations or sanctions lists to supervisory bodies, national security bodies, law enforcement agencies, and persons authorized to detect, freeze, or seize suspicious funds or property.[194] The Regulations define reporting institutions as financial institutions and DNFBPs, which are required to freeze funds and submit specified details to the cabinet secretary and FRC within 24 hours of receiving a notice to freeze funds or property.[195] Financial institutions and DNFBPs are also required to monitor transactions against domestic or UN sanctions lists under the defined resolutions on an ongoing basis.[196]

The FRC website has a section dedicated to the Resolution 1373 sanctions list, which states that institutions must have sanctions mitigation measures in place.[197] Additionally, although the website indicates that the FRC will maintain the Resolution 1937 list "on this website," there does not appear to be a publicly available domestic terrorism list to screen against.[198] The section on Resolution 1373 on the FRC website does not appear to have been updated since 2017.[199] This does not necessarily mean that the domestic terrorism list does not exist, only that it may not be publicly available. It is also uncertain whether any individuals who returned to Kenya as part of the Al-Shabaab amnesty, announced in April 2015 to offer support and assistance in reintegrating into society, would be on the list.[200]

In addition to the Regulations, Kenya introduced various amendments to the Prevention of Terrorism Act, 2012 in The Security Laws (Amendment) Act, 2014. The amendment includes the following additional terrorism-related offenses and penalties under sections 30A to 30F:[201]

- Up to 14 years imprisonment for publishing material to encourage or induce an act of terrorism (30A)
- Up to 10 years imprisonment for training or receiving instructions to train for the commission of a terrorist act (30B)
- Presumption of traveling to a terrorist-designated country to be trained as a terrorist (30C)
- Up to 30 years imprisonment upon conviction for foreign terrorist fighters (30D)
- Up to 20 years imprisonment for aiding and abetting the commission of a terrorist offense (30E)
- Up to three years imprisonment or a fine of up to 5 million shillings (approximately $33,000) for broadcasting photographs and information without consent (30F)

The financing of any of these acts could also lead to the commission of a terrorist financing offense. Section 30C gives the cabinet secretary the power to designate a country as a "terrorist training country," which could assist in the management of cross-border movement of terrorists.[202] The Declaration of Designated Countries, 2015 lists the following designated countries: Somalia, Syria, Yemen, Libya, Iraq, and Afghanistan.[203] It is uncertain whether financial institutions are required to categorize these countries as being at a higher risk for terrorist financing and/or to act as a risk indicator to carry out enhanced due diligence.

NPOs

In at least 25% of ESAAMLG member countries, including Kenya, NPOs have had their relationships terminated by banks on account of conditions imposed by correspondent banks.[204] This denial of service has a negative impact on NPOs, particularly their ability to process operational expenses, support wider financial inclusion initiatives, and gain access to aid and funding. The FATF's interpretive note to R8 highlights that "not all NPOs are inherently high risk,"[205] and R8 itself calls on countries to apply "focused and proportionate measures, in line with the risk-based approach" and human rights law.[206] There is no public information available to indicate that the NPO sector in Kenya has been subject to a risk assessment to identify NPOs at risk of facilitating terrorist financing. In 2015, the inspector-general of police issued a public notice listing various NPOs among 85 legal and natural persons "suspected to be associated with Al-Shabaab."[207] The notice advised that those listed should "demonstrate within the next 24 hours why it should not be declared as a specified entity," after which the official list would be sent to the cabinet secretary for formal designation.[208] Limited information was provided as to why the NPOs were suspected of being linked to terrorist organizations, but there was a significant impact on the named organizations' ability to operate. Sources indicate that the bank accounts of several NPOs listed were closed, and to this day, they continue to have a difficult time accessing funding or other aid without contacting the Ministry of Interior.[209]

Preventative measures

FATF R9 through R23 provide details on AML/CFT systems and control requirements for financial institutions and DNFBPs. Areas that could be enhanced or assessed further include R9 on financial institution secrecy laws, R10 on customer due diligence, R12 on PEPs, R15 on new technologies, R19 on higher-risk countries, and R22 and R23 on DNFBPs.[210]

It should be noted that in 2019, the CBK issued a notice to all banking chief executives, reminding them of their obligation to have AML/CFT measures in place and for those measures to be independently assessed by an approved "independent and competent external third party" who was required to file an assurance report by May 31, 2019.[211] There is limited information on the outcomes of those assessments or on any actions taken by the CBK based on those assessments.

Financial secrecy

FATF R9 states that financial institution secrecy laws do not prevent the implementation of the FATF recommendations.[212] The 2020 Financial Secrecy Index found Kenya to be "exceptionally secretive," ranking it 24 out of 133 countries. The report highlights that Kenya's role as an offshore financial center may increase further as the NIFC comes to fruition as part of Kenya's Vision 2030.[213]

It has been argued that the NIFC will turn Kenya into a financial secrecy jurisdiction and that the funds lost to illicit financial flows will double when the NIFC becomes operational.[214] The confidentiality clause included in section 17 of the Nairobi International Financial Centre Act 2017 does little to dispel this notion. It states that any legal or natural person who has information or material relating to the NIFC Authority shall not divulge such information unless compelled to do so by law or they will be liable to a fine of 200,000 shillings (approximately $1,800) or imprisonment.[215] The Financial Secrecy Index further highlighted that Kenya's anti-money laundering regime requires "significant strengthening" and that a "strong secrecy regime combined with a corruption-ridden economy" could facilitate illicit finance.[216] The Sentry's public reporting has identified Kenyan companies as being used as vehicles for money laundering, and both the Panama Papers and the Mauritius Leaks have exposed Kenyans hiding assets offshore and exploiting dubious double taxation schemes for tax avoidance.[217, 218, 219] Taking a giant step to address tax malpractices, in July 2020, Kenya and Mauritius signed a double taxation treaty on tax avoidance and tax evasion and including information exchange provisions to ensure that businesses do not avoid paying taxes in either country.[220]

Due diligence and PEPs

FATF R10 requires financial institutions to apply customer due diligence (CDD) measures at onboarding and on an ongoing basis using a risk-based approach.[221] However, the FATF's accompanying regulations have not been amended in years, and there is limited guidance for reporting institutions. Part IV of POCAMLA sets out limited key legal requirements, including obligations to monitor and report suspicious activity (section 44), verify customer identity (section 45), carry out enhanced due diligence on business relationships linked to higher-risk countries (section 45A), and keep customer records (section 46).[222] The CBK issued a guidance document on conducting an ML/TF risk assessment, but further guidance is needed on what constitutes enhanced due diligence by reporting institutions.[223]

Over the past three years, the CBK has taken a number of actions against large financial institutions for having ineffective AML/CFT programs, and these appear to have been triggered by wider anti-graft investigations. In 2018, the CBK investigated Standard Chartered Bank Kenya Ltd., Equity Bank Kenya Ltd., KCB Bank Kenya Ltd., Co-operative Bank of Kenya Ltd., and Diamond Trust Bank Kenya Ltd., which were identified as handling the largest financial flows linked to the National Youth Service corruption scandal, and it issued fines for the five banks totaling 385 million shillings (approximately $3.5 million).[224] The National Youth Service scandal involved the use of ghost suppliers, fake invoices, and multiple payments to steal public funds through forgery and abuse of office.[225] The CBK found that banks failed to carry out appropriate CDD measures, did not have supporting records for large transactions, and failed to report large cash transactions and suspicious transaction reports (STRs) to the FRC.[226] These are all basic requirements of an effective AML/CFT program in a financial institution. The Directorate of Criminal Investigations conducted investigations following the CBK's findings, and in 2020, it recommended that charges be filed against the bank officials "for violating several provisions of the POCAMLA," according to Director of Public Prosecutions Noordin Haji.[227] The banks entered into a deferred prosecution agreement with the Office of the Director of Public Prosecutions.[228] In a separate case in April 2020, the CBK suspended ABSA Bank Kenya's ability to trade in the foreign exchange market for one week, citing the bank's "failure to provide information about some specific foreign exchange trades" and stating that the bank did not apply standard AML/CFT and know your customer (KYC) checks.[229]

As these banks are some of the larger financial institutions with resourcing available for AML/CFT compliance, it is likely that other financial institutions have less adequate AML/CFT programs in place, given the limited publicly available information on developing effective AML/CFT programs. A study on the challenges of implementing effective AML strategies in Kenyan commercial banks identified the following key barriers to effective implementation: organizational cultures that do not prioritize compliance; inadequate focus by senior executives and limited participation by key stakeholders in developing and implementing AML/CFT strategies; insufficient resourcing in AML/CFT functions; the need for better technology for CDD and transaction monitoring; the presence of outdated client information; and limited cooperation from clients in providing CDD information.[230]

FATF R12 calls on financial institutions to have measures in place to identify PEPs, including family members and close associates; understand their source of wealth and funds; and carry out enhanced monitoring on identified accounts.[231] PEP risk in Kenya is high, and there is no requirement for financial institutions to carry out enhanced due diligence or enhanced monitoring. The UK's Amber Alert issued on illicit finance risks linked to South Sudan cited Kenya as a transshipment point for the proceeds of corruption in the section on how foreign corrupt PEPs and their enablers access the UK.[232] An advisory issued in 2018 by the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) on human rights abuses and PEPs also includes a number of red flags associated with South Sudanese PEPs.[233] Lastly, Kenya was ranked 137 out of 180—with 180 being highly corrupt—on Transparency International's Corruption Perceptions Index, further shedding light on corruption risks associated with PEPs in Kenya.[234] However, there are no legal provisions in POCAMLA around PEPs and only three references in the CBK's Guidance Note on ML/TF risk assessment, which lists PEPs as a risk factor to consider, citing business relationships with PEPs as "reputational risks" rather than criminal liability risks.[235]

New technologies and wire transfers

FATF R15 requires the assessment of ML/TF risks that may arise in using new technologies. It also requires that countries regulate virtual assets service providers (VASPs) for AML/CFT.[236] R16 calls on countries to ensure that financial institutions include accurate originator and beneficiary information on wire transfers and related messages.[237]

POCAMLA and AML/CFT regulations do not contain information on the need to assess the ML/TF risks of new technologies. Nairobi continues to be recognized as a leading global fintech center and a world leader in global money.[238] Fintechs in Kenya have begun offering a number of innovative products, including mobile lending, banking, and payments; apps for fundraising and peer-to-peer lending; insure-tech; and services like business-to-business lending, digital payments, online trading, international money transfers, online foreign exchange, online procurement, online betting, and block chain applications.[239] There is a significant amount of innovation taking place with immense benefits to society, particularly from a financial inclusion perspective, but it could also expose the country to significant ML/TF risks. With regard to VASPs, Kenya does not currently regulate or recognize cryptocurrencies. Both the CBK and CMA have issued public warnings on cryptocurrencies,[240, 241] but there is no law prohibiting cryptocurrencies in Kenya.[242]

The requirements of FATF R16 are enshrined in section 33(2) of Kenya's 2013 Money Remittance Regulations, for "persons licensed to undertake money remittance business."[243] Section 3 of the Regulations states that they do not apply to authorized banks, mortgage finance companies, the Kenya Post Office Savings Bank, deposit-taking microfinance institutions, or other entities approved by the CBK.[244] Nevertheless, in 2019 and 2020, the CBK completed an overhaul of the Kenya Electronic Payment and Settlement System (KEPSS) platform, the bank's national Real Time Gross Settlement (RTGS) system, which increased the volume of transactions it can process from 50,000 to over one million per day.[245] Additional features include AML/CFT capabilities, configuration of customized alerts for "exceptional transactions," unique transaction reference numbers, and the ability to comply with ISO20022 SWIFT standards for messaging, which are modern standards for payment messaging that include information on the originator and beneficiary of payments.[246, 247] Both the East African Payment System, used by countries in the East African Community, and the Regional Payment Settlement System, used by countries in the Common Market for Eastern and Southern Africa, are integrated into KEPSS.[248] The CBK indicates that final settlement of retail or low-value payments—including from the Nairobi Automated Clearing House, the payment card industry, and mobile payment platforms—are channeled through the RTGS system.[249] Essentially, although the wire transfer recommendations do not legally extend to financial institutions, there is now de facto implementation of this requirement for cross-border payments.

DNFBPs

FATF R22 and R23 extend CDD and reporting requirements to defined DNFBPs.[250] Although the amended POCAMLA 2019 now covers trust and company service providers, other DNFBPs, such as lawyers, notaries, and other legal professionals, are not listed in the legislation.[251] This means that they are not monitored for compliance and are not legally subject to CDD or reporting obligations. Lawyers, including a former Law Society of Kenya president and ex-member of the Judicial Service Commission, lobbied significantly against updates under section 50 of the Finance Bill 2019 that would have extended POCAMLA to lawyers and notaries.[252] Some members of Parliament also opposed the amendments on the grounds of advocate-client privilege.[253] In March 2021, the FRC put forward amendments to POCAMLA to bring advocates, notaries, and other legal professions into compliance with AML/CFT legislation.[254]

Meanwhile, the Law Society of Kenya has developed draft AML guidance for legal practitioners that details good practices to mitigate ML/TF risks, including CDD on those authorized to transfer funds, recordkeeping of funds received, inquiries into the source or origin of funds, and information on how to decline instructions that could lead to money laundering.[255, 256] The guidance also covers legal services associated with real estate transactions, stating that lawyers "can be easily exposed to money laundering risks through these transactions," particularly when properties are registered in the names of nominees.[257] It details measures to guard against the risks of money laundering in real estate transactions, including by carrying out CDD; complying with due diligence requirements under the Land Act 2012 and the Land Registration Act 2012; and doing due diligence on the properties involved in the transaction by, for instance, establishing the source of funds for the transaction.[258] Additional AML/CFT guidance is detailed for legal work carried out in the formation of management companies, trusts, and charities that "may be exploited by criminals."[259]

Nairobi real estate remains attractive to foreign kleptocrats, yet limited information is available on supervision and guidance for real estate agents or money laundering risks associated with real estate. Guidance should be provided to the various parties to real estate transactions. Dealers in precious stones and metals, such as gold, should also be reminded of their obligations. The 2017 ESAAMLG Kenya post-evaluation report noted that a gap remains with regard to the reporting obligations of accountants acting for or on behalf of legal arrangements.[260]

Transparency of beneficial ownership

FATF R24 and R25 set out requirements regarding transparency of beneficial ownership of legal persons and legal arrangements such as trusts.[261] At the 2016 London Anti-Corruption Summit, Kenya committed to establishing a public beneficial ownership register accessible to domestic and international law enforcement and to increase beneficial ownership transparency for companies entering public tenders.[262] In 2019, Kenya added section 93A to the Companies Act 2015 requiring companies to keep a register of beneficial owners and submit it to the Business Registration Service (BRS) within 30 days or face a fine of 500,000 shillings (approximately $4,600).[263] Section 3(2) of the Companies (Beneficial Ownership Information) Regulations, 2020 defines a beneficial owner as holding at least 10% of shares, exercising at least 10% of voting rights, having significant direct or indirect control over the company, or holding a right to appoint or remove a director.[264] The regulations promote secrecy under section 12, which makes it an offense to disclose beneficial ownership information "in any manner other than for the purpose for which such information is obtained," punishable by a fine of up to 20,000 shillings (approximately $185) or imprisonment for up to six months.[265] The regulations further stipulate under section 13(4) that "beneficial ownership information shall not be made available to the public."[266] The government set an initial deadline of January 31, 2021, for filing beneficial ownership information by companies as part of the commitment to beneficial ownership transparency. The deadline has been extended by six months.[267]

The corporate registrar, the BRS, was established by the Business Registration Service Act, 2015 to—as set out in sections 4(2)(a) and (b)—register companies, partnerships, and firms and "maintain registers, data, and records" on the registrations carried out.[268] The BRS does not have the power to validate information prior to registration or to monitor the BRS for criminality, fraudulent registrations, or UN sanctions breaches. It also does not monitor compliance with beneficial ownership obligations.[269] It is, however, an offense for a person to "knowingly submit false or misleading information" to the BRS under section 29(b).[270] With regard to trusts, section 54B of the Income Tax Act compels the disclosure to the KRA of identities and addresses of trustees, settlors, and beneficiaries.[271] However, lawyers and advocates do not have an obligation to verify beneficial ownership information for their clients.[272] The Companies Act 2015 requires that all bearer shares be converted to registered shares under section 504(3) and that the BRS be notified within 30 days of conversion.[273] There are no prohibitions around nominee shareholdings in Kenya.[274] This means that the ultimate beneficial owner of an entity may choose to appoint a third party to hold shares on their behalf, making it more difficult to pierce the corporate veil.

Powers and responsibilities of competent authorities and other institutional measures

FATF R26 to R28 discuss the regulation of financial institutions and DNFBPs to ensure effective implementation of the FATF 40 and compliance with local AML/CFT requirements.[275] R29 through R32 detail operational and law enforcement requirements, including the need to establish an FIU, allocate ML/TF responsibilities to law enforcement authorities, create powers to allow law enforcement to obtain all necessary information, and have measures in place to detect cross-border movements of cash.[276] R33 and R34 consider general requirements for maintaining comprehensive statistics on AML/CFT systems and providing guidance and feedback to financial institutions and DNFBPs.[277] R35 recommends that countries have in place "effective, proportionate and dissuasive sanctions" for failure to comply with AML/CFT requirements.[278]

With regard to the regulatory environment, AML/CFT supervision is carried out by a number of bodies. The table below details the name of the regulator and entity types subject to regulation for AML/CFT compliance:[279]

Regulator Name	Entity Type
Central Bank of Kenya	• Commercial banks and mortgage finance institutions • Microfinance institutions • Foreign exchange bureaus • Money remittance service providers
Capital Markets Authority	• Approved institutions • Stockbrokers • Investment banks • Fund managers • Investment advisors
Insurance Regulatory Authority	• Insurance brokers • Insurance providers • Insurance agents

Betting Control and Licensing Board	• Casinos
NGO Co-ordination Board	• Nongovernmental organizations
Institute of Certified Public Accountants of Kenya	• Accountants (partners in professional firms or sole practitioners)
Estate Agents Registration Board	• Estate agents
Retirement Benefits Authority	• Administrators • Fund managers • Custodians

The CBK is the main supervisory body for AML/CFT compliance for financial institutions. As of June 2020, the CBK regulated the following:[280]

- 41 commercial banks
- 14 microfinance banks
- 9 representative offices of foreign banks
- 69 foreign exchange bureaus
- 19 money remittance providers
- 3 credit reference bureaus
- 1 mortgage finance company

The CBK extended its risk-based supervisory framework to AML/CFT in 2016 following an International Monetary Fund (IMF) visit to help design an ML/TF risk profiling methodology to apply to commercial and microfinance banks.[281] The technical assistance delivered provided a useful framework to help the CBK understand the risk profile of institutions under its supervision.[282] In 2015, the CBK issued a circular notifying financial institutions of the need to submit quarterly returns to identify banks' ML/TF exposure, as well as an annual questionnaire to be submitted by January 10 of each year.[283] Under section 16(2)(b) of POCAMLA, corporations can be fined up to 10 million shillings (approximately $93,000) or the amount of the property involved.[284] While the fines for each individual institution are not astronomical and are unlikely to be dissuasive, the ability of the CBK to work with other prosecuting authorities who can bring about personal criminal liability against senior management could have a massive impact. There is limited information on the effectiveness of supervision of DNFBPs in Kenya. The FRC deals with reporting institutions that do not have a regulator, and it has a memorandum of understanding in place with financial sector regulators. In addition to providing for supervision and enforcement by regulators for POCAMLA compliance, the memorandum of understanding also provides for the exchange of information to support effective AML/CFT supervision.[285]

The FRC was created as Kenya's FIU under section 21 of POCAMLA and commenced operations in April 2012.[286, 287] It was tasked with receiving reports of suspicious activity and sharing information with "investigating authorities, supervisory bodies and any other bodies relevant to facilitate the administration and enforcement of the laws of Kenya."[288] Its powers are enshrined in POCAMLA sections 24B and 24C, which allow the FRC to impose civil penalties and take administrative action for failure to comply, as well as sections 37 through 39, which detail the various orders that the FRC can issue.[289] Other law enforcement agencies with which the FRC shares intelligence include the National Police Service, the EACC, the KRA, and the ARA. The National Police Service receives and acts on intelligence relating to terrorism, fraud, money laundering, and corruption.[290] The EACC was established in 2011 to combat and prevent corruption, economic crime, and unethical conduct in Kenya.[291] The KRA is responsible for tackling tax evasion, tax fraud, and associated money laundering.[292] The ARA was established under POCAMLA and carries out asset confiscation and forfeiture activities.[293]

In the past few years, the EACC has worked very closely with the Office of the Director of Public Prosecutions (DPP), and it appears that their work has filtered into other law enforcement agencies and supervisory bodies, as evidenced by the fines issued by the CBK to five Kenyan banks linked to the National Youth Service scandal.[294] It appears that the relationship of trust built over the years between the head of the EACC, Twalib Mbarak, and the head of the DPP, Noordin Haji, has been key to successful prosecutions and assets seizures to date. In a recent interview, Mbarak indicated that the EACC had recovered assets worth over 20 billion shillings ($185.7 million) over five years, including parcels of land. He further indicated that the EACC receives over 3,500 corruption-related complaints per year.[295] Seizing accounts remains a key hurdle for the EACC and DPP in the war on graft. Police officers and prosecutors must present evidence of criminality in order to obtain a court order, and, due to limited confidentiality, this may tip off account holders to move their assets.[296] And while the EACC and DPP have been "accused of being part of the problem," with corrupt officers personally benefiting from trading in information, support from Kenyatta has created an environment conducive to law enforcement.[297] So although the powers of the EACC and the DPP are enshrined in legislation, political will and interpersonal relationships have allowed Kenya to move forward on its war on graft, which interplays with AML/CFT measures.

While there is information on corruption and graft, there are no publicly available statistics on Kenya's national AML/CFT systems. Although Kenya has flirted with the creation of a public-private partnership forum, a formal model has not emerged. Monthly roundtables have been held in Nairobi for several years, during which government agencies and financial institutions discuss financial crime trends.[298] In 2019, government officials traveled to the UK to observe the functioning of the UK's formal public-private partnership, the Joint Money Laundering Intelligence Task Force, and they have since engaged with banking partners.[299] However, it appears that little progress has been made to formalize this interaction.

International cooperation

FATF R36 through R40 include recommendations on promoting international cooperation, for instance by ratifying and implementing international conventions, and on legal frameworks for mutual legal assistance, including extradition and freezing and confiscating assets.[300]

While part XII of POCAMLA details international assistance principles and proceedings,[301] challenges remain in carrying out cross-border investigations and repatriation of assets. These challenges are best encapsulated by the ongoing saga—one that began in the early 2010s—involving former Energy Minister and Member of Parliament Chris Okemo and former Kenya Power and Lighting Company CEO Samuel Gichuru. Okemo and Gichuru were accused of abusing public office to squander hundreds of millions of dollars, which they embezzled offshore, and they now face money laundering and fraud charges in Jersey.[302] The Court of Appeal in Kenya overturned an earlier ruling granting permission to extradite the individuals to Jersey, and the case has been escalated to the Supreme Court. In 2019, the head of the DPP traveled to Jersey to allow for progress to be made and to, as he said, "think outside the box and circumvent some of these legal roadblocks that we have."[303] Kenyatta has blamed corrupt judges for nonconvictions, but lawmakers have highlighted existing loopholes and defense lawyers' blunders as being responsible, as well.[304] Additional critics cite arrests of corrupt public officials as "motion without movement," a way of silencing voices of dissent.[305]

In 2018, Kenya, Jersey, Switzerland, and the UK signed the Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK). FRACCK has been labelled as an "innovative" and "novel" way of returning assets by encouraging the use of repatriated assets for the benefit of civilians and to move forward sustainable development goals.[306] FRACCK created an avenue for the return of £3 million (approximately $3.9 million) from Jersey to Kenya following the prosecution of a company used to launder funds in Jersey.[307] To this day, however, Switzerland has not repatriated assets because Kenya authorities are required to issue a judgment confirming the assets were acquired illegally.[308]

Recently, the High Court of Kenya issued an asset-freezing order on an account held by a senior South Sudanese minister that had 13.42 million shillings (approximately $124,260).[309] The ARA filed the case on the grounds that the proceeds were liable to forfeiture under POCAMLA, citing "reasonable grounds to believe that the funds held by the respondent... are direct benefits, profits and or proceeds of crime obtained from a complex money-laundering scheme."[310] It remains to be seen whether and how these assets can be repatriated to the people of South Sudan.

Recommendations

As Kenya continues to evolve into a regional financial powerhouse and fintech hub, illicit finance risks will play a key role in the ability of the government of Kenya to attract business and investment from overseas. Gaps remain despite Kenya's reasonably documented AML/CFT framework, and there are legal, operational, political, and knowledge barriers to effective implementation.

The Kenyan banking system faces de-risking by global banks that are concerned about the risks in Kenya and the country's difficulties in addressing them. Taking action against illicit financial flows is a direct way that the Kenyan government and supervisors can demonstrate sound practices to the international community. Failing to prevent the transit of proceeds of crime and corruption through the Kenyan banking system is a serious risk factor and could easily imperil the financial system and the country's access to global finance. Kenya must not allow itself to become an offshore jurisdiction, and it must continue to address not only domestic corruption but also foreign corruption, especially from its neighbors in South Sudan. Only by addressing these challenges and signaling that Kenya is hostile to criminal funds will various initiatives like Vision 2030 and the NIFC bring wealth to benefit the people of Kenya.

To manage illicit finance risks, Kenya must have effective AML/CFT and anti-bribery and anti-corruption frameworks operating in concert. In order to tackle illicit financial flows and increase effectiveness, The Sentry recommends the following actions.

MER team

- **Widen stakeholder engagement.** As part of its assessment, the MER team should seek to consult external actors at both the domestic and international levels, in addition to various government bodies. This should include members of civil society, academia, and key industry bodies focused on banking, law, accounting, real estate, and gold and diamond dealing, as well as key private sector actors operating in technology and nuclear development.
- **Consider documents issued outside of the Kenyan government and identify nontraditional sources of intelligence.** As part of the MER process, the MER team should look to review publications issued by civil society, industry bodies, and academics, in addition to formal documentation presented by members of the Kenyan government.
- **Consult with civil society on the NRA process.** The MER team should consult with civil society on the NRA process to identify potential areas of risk and gaps that may not be fully incorporated in the assessment.
- **Hold a roundtable with international experts.** As part of its preparations, the MER team should consider hosting a roundtable in Kenya with international experts on AML/CFT who can share lessons learned.
- **Focus on areas identified as requiring enhancement by public reporting.** This could include FATF updates on nuclear proliferation financing, NRA, sanctions, requirements for PEPs, AML/CFT measures adopted by financial institutions and DNFBPs, effective supervision, and enforcement.

Government of Kenya

Managing illicit finance risks

- **Finalize the NRA and assess against specific risks identified in this report.** This should include adding South Sudan as a higher-risk country for money laundering, the risks of terrorism from Somalia, tax evasion as a predicate offense for money laundering, ports being vulnerable for trafficking in arms and illegal wildlife, and risks associated with emerging technologies such as unregulated cryptoasset service providers. Mobile money providers should be encouraged to develop transaction-monitoring solutions to detect suspicious behavior.
- **Provide clearer communications on how Kenya complies with UNSC resolutions relating to the prevention and suppression of terrorism, terrorist financing, and nuclear proliferation.** The government of Kenya should update the FRC website to more clearly communicate how it implements UNSC resolutions and issue guidance on how persons and entities—including financial institutions and DNFBPs—can comply with sanctions; where to find sanctions lists; and where specifically to report sanctions breaches, providing an email address or direct point of contact.
- **Enact and enforce sanctions through a central body responsible for the coordination and enforcement of all UN sanctions programs, including against South Sudanese profiteers and their international collaborators.** Steps should include enforcing the travel ban and freezing physical property, such as real estate, that should be considered financial assets of UN-sanctioned persons. According to UNSC Resolution 2206 (2015) on South Sudan, member states are to "freeze without delay all funds, other financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by any individuals or entities that may be designated by the Committee, or by any individuals or entities acting on their behalf or at their direction, or by entities owned or controlled by them, and … all Member States shall for this initial period ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, by their nationals or by persons within their territory."[311] Kenya should also ensure cooperation with relevant sanctions committees and panels of experts where set out by UN resolutions establishing country sanctions programs—for example, UNSC Resolution 2206 (2015) on South Sudan.[312]
- **Make Kenya hostile to South Sudanese illicit financial flows.** The government of Kenya should issue an advisory on the risks of dealing with corrupt South Sudanese PEPs and their ill-gotten gains, targeting the financial services industry, real estate, private schools, and providers of luxury goods.
- **Escalate financial pressure on South Sudan or risk damage to financial systems.** Kenya has been reluctant to enforce and escalate international political and financial pressures against South Sudan. It should not only issue an advisory on South Sudan but also follow up on information collected from any advisory issued, which will focus the attention and resources of banks and other private sector actors on corruption and money laundering in South Sudan.
- **Investigate and sound the alarm on corrupt real estate acquisitions from foreign PEPs without political interference and reach out to foreign counterparts to coordinate on joint cases.** The Sentry's investigations have revealed properties owned by South Sudanese elites. Kenya's Ethics and Anti-Corruption Commission and Financial Reporting Centre should investigate and seize real estate properties possibly belonging to South Sudanese PEPs and prevent the misuse of the country's real estate sector.

- **Implement National Action Plan components related to corruption and human rights.** Kenya has recognized that corruption is a human rights issue, within the scope of its National Action Plan on Business and Human Rights, in order to implement the UN Guiding Principles on Business and Human Rights. As one of the first countries in Africa to issue a National Action Plan, Kenya's various implementing agencies should ensure that real estate acquisitions by foreign PEPs from conflict-affected jurisdictions like South Sudan are addressed.
- **Strengthen customs controls to guard against the shipment of illicit arms, gold, wildlife, and timber through Kenyan ports.** This may require additional technical training, technology system upgrades, and enhanced policies and programs to address corruption at ports and borders.
- **Invest in training and technology to address emerging threats.** This will require individuals who understand cybersecurity and virtual assets to effectively counteract new adversaries and vehicles to launder funds.
- **Adopt a multifaceted response that combines political will with community engagement.** Given the breadth and range of threats that Kenya faces, it needs to adopt a multifaceted approach—driven by political will and community engagement—to tackle illicit financial flows and further develop a culture that rejects unjust self-enrichment by domestic and foreign public officials and their associates. This includes not only closing legal and regulatory gaps against the FATF40 Recommendations but also building awareness, technical capacity, and transparency across customs control, public tendering, law enforcement, environmental protection, intelligence, trade, finance, and technology. Addressing known barriers to effective enforcement at the judiciary is key, as is collaboration between government, business, civil society, and local communities, not only via public-private partnerships but also by adopting wider community engagement and mobilization strategies.
- **Interrogate the Kenyan corporate registry to identify companies controlled by South Sudanese political elite.** Once beneficial ownership information has been registered, Kenyan authorities should sweep the Kenyan corporate registry to identify corporations owned or affiliated with South Sudanese political elite, corporations that could be misused, and how Kenya is being used to launder the proceeds of corruption.
- **Ensure adequate resourcing is available to tackle illicit financial flows.** The government of Kenya should ensure that it has adequate numbers of properly trained staff and the technology necessary to fight financial crime in a country with high digital finance adoption rates.

Enhancing AML/CFT framework

- **Create a body responsible for the development, implementation, enforcement, and issuing of guidance on all UN sanctions.** This could also include the development of a new supervisory authority under the FRC or the allocation of powers to an existing body to monitor and enforce compliance with all UN sanctions. Legislative changes or the issuance of guidance may be necessary to ensure that persons and entities are aware of their sanctions requirements. An active communications strategy detailing why sanctions compliance is important and how to comply with sanctions would be beneficial.
- **Update POCAMLA to address identified deficiencies and issues supporting guidance for industry.** Given the war on graft and the significant risk of corruption from South Sudan commingling with domestic corruption, section 45 of POCAMLA should include a requirement to carry out enhanced due

diligence—including determining source of funds and source of wealth checks—on both foreign and domestic PEPs. The CBK and other supervisory bodies should issue detailed practical guidance on how to develop and monitor the effective functioning of an AML/CFT framework. Additional training needs to be provided to banking CEOs to make them aware of illicit finance risks and their personal responsibility to prevent and detect illicit financial flows in their banks. With the volume of illicit proceeds flowing through Kenya, additional capacity building is required for regulators to issue more detailed guidance and for financial institutions to prioritize AML/CFT compliance.

- **Strengthen regulatory bodies to track money and issue effective financial deterrents to dissuade financial institutions from laundering funds.** The legal, regulatory, and technical capacity of frontline state regulators, such as FIUs, are vital to guard against corruption and money laundering. Regulatory authorities in Kenya should have greater insight into how some of its businesspeople are operating in neighboring countries, particularly South Sudan, and should tap into ESAAMLG research.
- **Promote transparency through public reporting.** The Kenyan government could allay concerns about the NIFC becoming a financial secrecy haven by publicly reporting on financial inflows and outflows and by building transparency into national AML/CFT reporting. Little information is publicly available regarding non-EACC asset seizures, budgets for the various agencies involved, the number of SARs and STRs submitted, AML/CFT fines, and more. This makes it difficult to ascertain the effectiveness in tackling illicit financial flows of the various agencies involved in the war on graft.
- **Focus on supporting the repatriation of assets linked to corrupt public officials.** The EACC, DPP, and ARA should work with government officials to tackle the key barriers to effective repatriation of assets linked to both foreign and domestic corruption. This could include tackling corruption in the judiciary, as well as other measures to reduce blockers to an independent legal process.

Kenya's international partners

- **Kenya's overseas partners and international financial institutions should continue to provide technical assistance in AML/CFT.** Special focus should be placed on helping Kenya update its AML/CFT regulations, set up its public-private partnership to share intelligence, and develop industry guidance on how to operationalize AML/CFT legal and regulatory requirements.
- **Members of the UNSC should encourage Kenya to implement all UN sanctions.** Kenya currently has a seat at the UNSC. Its overseas partners must help Kenya understand the importance of complying with the commitments to the international community that it adopted when it ratified the UN convention.
- **The African Union should work with Kenya to tackle illicit financial flows and proceeds of corruption.** The Africa Union should work in partnership with Kenya to prevent it from becoming a regional money laundering hub as it moves toward its Vision 2030. This should include ensuring that Kenya continues to comply with its commitments under the African Union Convention on Preventing and Combating Corruption.
- **The UK and the US should support Kenya in issuing a warning on the money laundering risks associated with South Sudanese political corruption.** The US and the UK have both issued advisories against South Sudan and should work with Kenya's Central Bank to further build on the circular sent to the country's financial institutions in October 2017, which emphasized their legal obligation to freeze the accounts of UN-sanctioned South Sudanese officials and required that they report back to the Central

Bank on what measures they had undertaken to implement these actions. The Kenyan Bankers Association should similarly work with its member banks to assist them in addressing these risks.

- **International donors should prioritize support to anti-money laundering efforts in Kenya.** Kenya's regulators are developing the technical capacity to identify suspicious funds and trace financial transactions, but international parties could give further assistance to help Kenya identify how to implement tactical and strategic solutions to operationalize its AML/CFT framework. International donors should also coordinate among themselves and support the provision of training and resources to bolster anti-money laundering capabilities. No such programs are currently operational in the region, so this action should be prioritized.
- **International partners should encourage Kenya to join the Egmont Group.** The Egmont Group provides a platform for intelligence sharing among national FIUs in a secure manner. Given the amount of funds sent offshore, Kenya would benefit from gaining membership to the Egmont Group, as it would be able to leverage the vast network and experience in countering terrorist financing and detecting money laundering.
- **International partners should encourage local banks to adopt the Wolfsberg Group's correspondent banking due diligence questionnaire (CBDDQ).** The Wolfsberg Group comprises global banks that have developed guidance on AML/CFT; it recently updated its CBDDQ and FAQs to standardize how banks manage financial crime risks. This CBDDQ should be more widely adopted.

Appendix A: Risk Indicators

Key risk indicators:

- Payment for luxury property in cash
- Purchase of luxury real estate by a foreign PEP or a family member of a foreign PEP
- Purchase of luxury real estate by an individual subject to sanctions
- Purchase of luxury real estate using corporate structures owned or controlled by family members of foreign PEPs or their business associates
- Sale of property to a sanctioned person
- Joint ventures with foreign PEPs
- Use of enablers to set up companies
- Presence of shell companies
- Involvement of corporations in foreign mining operations or extractive industries
- High-value payment transfers from a corporate structure into a personal bank account
- US dollar accounts for foreign retail client
- Large cash withdrawals
- Large cash withdrawals in US dollars by a foreign PEP
- Payments to sanctioned individuals
- Payments from an overseas corporate structure into the personal bank account of a domestic PEP
- Payments for arms and munitions
- Correspondent banking relationships with banks in South Sudan and the DRC
- Joint bank ownership with foreign PEPs
- Presence of nested accounts in correspondent banking relationships
- Irregularities between public accounts and state assets deposited into banks
- Citation of "accredited mines" in Kenya as the source of precious metals that have been sold
- Use of shell companies to make or receive payments
- Cross-border smuggling and sale of agricultural goods
- Use of SIM cards to transfer money using mobile phones
- Trade-based money laundering
- Abuse of public office
- Payment of a bribe for government services
- Allocation of inflated public tenders

- Use of front companies to conceal financial transfers
- Commingling of licit and illicit goods
- Use of newly formed companies to launder funds
- Transfer pricing and trade mispricing
- Over-invoicing and under-invoicing
- Related-party transactions
- Exploitation of double taxation treaties
- Sale of counterfeit goods
- Use of complex layered and encrypted online payment systems
- Use of emerging technological stores of value

Vehicles and instruments used to disguise illicit funds:

- Cash
- Personal bank accounts
- Corporate bank accounts
- Nested accounts
- Corporate payments, regional and domestic
- Mobile banking
- Correspondent banking
- Bank ownership
- Transfer of corporate shareholding
- Corporate structures
- Front companies
- Shell companies
- Real estate
- Luxury goods
- Private schooling
- International payments
- Remittances
- Cryptocurrency and virtual assets
- Use of agent networks or third parties

Higher-risk industries:

- Oil and gas
- Mining
- Defense
- Real estate
- Public procurement
- Health and pharmaceutical
- Food and agriculture
- Remittances
- Emerging technologies and digital finance
- Correspondent banking

Appendix B: FATF 40 Recommendations[313]

A – AML/CFT POLICIES AND COORDINATION	
1	Assessing risks and applying a risk-based approach
2	National cooperation and coordination
B – MONEY LAUNDERING AND CONFISCATION	
3	Money laundering offence
4	Confiscation and provisional measures
C – TERRORIST FINANCING AND FINANCING OF PROLIFERATION	
5	Terrorist financing offence
6	Targeted financial sanctions related to terrorism and terrorist financing
7	Targeted financial sanctions related to proliferation
8	Non-profit organisations
D – PREVENTIVE MEASURES	
9	Financial institution secrecy laws
Customer due diligence and record keeping	
10	Customer due diligence
11	Record keeping
Additional measures for specific customers and activities	
12	Politically exposed persons
13	Correspondent banking
14	Money or value transfer services
15	New technologies
16	Wire transfers
Reliance, Controls and Financial Groups	
17	Reliance on third parties
18	Internal controls and foreign branches and subsidiaries
19	Higher-risk countries
Reporting of suspicious transactions	
20	Reporting of suspicious transactions
21	Tipping-off and confidentiality
Designated non-financial Businesses and Professions (DNFBPs)	
22	DNFBPs: Customer due diligence
23	DNFBPs: Other measures
E – TRANSPARENCY AND BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND ARRANGEMENTS	
24	Transparency and beneficial ownership of legal persons
25	Transparency and beneficial ownership of legal arrangements

F – POWERS AND RESPONSIBILITIES OF COMPETENT AUTHORITIES AND OTHER INSTITUTIONAL MEASURES	
Regulation and Supervision	
26	Regulation and supervision of financial institutions
27	Powers of supervisors
28	Regulation and supervision of DNFBPs
Operational and Law Enforcement	
29	Financial intelligence units
30	Responsibilities of law enforcement and investigative authorities
31	Powers of law enforcement and investigative authorities
32	Cash couriers
General Requirements	
33	Statistics
34	Guidance and feedback
Sanctions	
35	Sanctions
G – INTERNATIONAL COOPERATION	
36	International instruments
37	Mutual legal assistance
38	Mutual legal assistance: freezing and confiscation
39	Extradition
40	Other forms of international cooperation

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