EVALUATION OF THE NAMIBIAN LEGAL FRAMEWORK ON
MONEY LAUNDERING AND ASSOCIATED OFFENCES

A RESEARCH THESIS SUBMITTED IN FULFILMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS

OF
THE UNIVERSITY OF NAMIBIA

BY
MBEHA, CHARLES NTEMA

200407031

2019

Supervisor: Professor John Baloro
# TABLE OF CONTENTS

ABSTRACT.............................................................................................................................................. 6

ACKNOWLEDGEMENTS .......................................................................................................................... 8

DEDICATION............................................................................................................................................. 9

SUPERVISOR’S CERTIFICATE.................................................................................................................. 10

DECLARATION.......................................................................................................................................... 11

LIST OF ACRONYMS ............................................................................................................................... 12

CHAPTER 1 .................................................................................................................................................. 15

INTRODUCTION AND HISTORICAL BACKGROUND ........................................................................... 15

1.1 Introduction ......................................................................................................................................... 15

1.2 Orientation of this study ....................................................................................................................... 22

1.4 Research questions .............................................................................................................................. 25

1.5 Objectives of the study ......................................................................................................................... 25

1.6 Significance of this study ...................................................................................................................... 26

1.7 Limitations of the study ....................................................................................................................... 27

1.8 Research Methodology ......................................................................................................................... 27

1.8.1 Research design .............................................................................................................................. 27

1.8.2 Population of this study .................................................................................................................... 28

1.8.3 Sampling method ............................................................................................................................ 29

1.9 Methods of Data Collection ................................................................................................................ 30

1.9.1 Interviews ....................................................................................................................................... 30

1.9.2 Field notes ..................................................................................................................................... 30

1.9.3 Technique ....................................................................................................................................... 31

1.9.4 Documentations (hard and electronic reproductions) .................................................................... 31

1.9.5 Shortcomings .................................................................................................................................. 32

1.10 Ethical concerns ................................................................................................................................. 32

CHAPTER 2 ................................................................................................................................................ 34

LITERATURE REVIEW ............................................................................................................................. 34

2.1 Introduction .......................................................................................................................................... 34

2.2 General background to literature on money laundering .................................................................... 35

2.3 Terminological inconsistencies, linkages, gaps and discussions ....................................................... 39

2.3.1 General ........................................................................................................................................... 39
A CRITICAL ASSESSMENT OF THE NAMIBIAN LEGAL FRAMEWORK ON MONEY LAUNDERING

6.1 Introduction

6.2 Problematising the definition

6.2.1 General

6.2.2 Interrogating the link between money laundering and its associated offences

6.3 Namibian legislation in the international setting

6.4 Formulation of working definitions

6.4.1 Principles for determining what constitutes the crime of money laundering

6.5 Consequences of money laundering

6.6 Summary and conclusion
## CHAPTER 7

### 7.1 Introduction

### 7.2 General observations from the chapters

### 7.3 Three major points of consideration in line with research questions

#### 7.3.1 The inadequacy of definitions

#### 7.3.2 Money laundering as having many predicate and associated offenses

#### 7.3.3 The ineffectiveness of the Namibian legal system in combating money laundering

### 7.4 Recommendations

#### 7.4.1 Expanding the definitions

#### 7.4.2 Reforming the Financial Intelligence Centre (FIC) administration and mandate

#### 7.4.3 Empowering the law enforcement, security investigative agencies

#### 7.4.4 Empowering the Judiciary system

### 7.5 Recommendations for further research

### 8. LIST OF REFERENCES

#### 8.1 Books

#### 8.2 Articles and Reports

#### 8.3 Newspaper Articles and Periodicals

#### 8.4 Acts of Parliament and Regulations

#### 8.5 List of International Instruments

#### 8.6 Judiciary Decisions/Cases

#### 8.7 Internet Sources

#### 8.8 Meetings and Conferences attended on money laundering and related offences

#### 8.9 Television Documentaries
ABSTRACT

The Money laundering offence was identified as such in the late part of the 20th century in the United States of America. Since this period, it has been a crime that has received immense attention for various reasons. This study aims to illustrate that, although the crime has received so much attention over the years, there still exists some areas on the subject matter that still require further research.

In this study it is demonstrated that the concept of money laundering is not properly defined. This is exemplified by the different jurisdictions that have been analysed herein, namely; the United States of America, United Kingdom, South Africa, Singapore and Namibia respectively. Furthermore, it is found that diverse authors fail to question the unclear areas that exist within the conceptual framework of money laundering. Similarly, international treaties of the United Nations are no exception to this analysis.

The study further discusses the relationship between money laundering and its associated offences and clearly illustrates that it is a crime that does not operate in isolation from other associated offences, and as such this connection needs to be understood by all concerned stakeholders in the fight against it. This is important in order to effectively and progressively combat the crime of money laundering vis-à-vis its associated offences.

In assessing its definition, the study illustrates the relationship that is inherent between the crime of money laundering and its associated offences, how this relationship comes about, and why the two go hand in hand. Additionally, the study shows that money laundering is a world-wide problem, and as such it, without doubt, requires world cooperation in order to be appropriately addressed.
This study involves two parts. Firstly, desk research (national, international, case law and writings of various authors mostly from the afore-mentioned jurisdictions, amongst others.) Secondly, the study comprises of interviews amongst selected money laundering regulators or officials in Namibia. The participants in these interviews were chosen by way of sampling technique as it would have been impractical to assess the understanding of all stake-holders in Namibia as far as money laundering and its associated offences are concerned.

This study does not only display problems that border money laundering and its associated offences, but it also suggests solutions to the identified issues bordering this crime.
ACKNOWLEDGEMENTS

I would like to extend my whole-hearted appreciation to my supervisor, Professor John Baloro, the Dean of the Faculty of Law at the University of Namibia for his supervision in this study. I would also like to acknowledge the guidance of the late Professor P.B Wanda and Doctor Aimite Jorge of the said university, in compiling this thesis. Furthermore, I would like to thank all the people who agreed to be interviewed for this study. Your support in this study is exceedingly cherished.

Last but not least, I am also grateful for the emotional upkeep and inspiration rendered to me by the following persons: Ms. Metilda Sitali Ntomwa and Mr. Christian Harris.
DEDICATION

I would like to dedicate this Masters study to the following persons because they have played an important and much treasured role in my upbringing and education:

- My late father – Mr. David Mbeha Mukono (DOB- March 31, 1932 – DOD – July 24, 1996)
- My uncle – Mr. Boniface Katombolo Mukono and his wife Mrs. Imelda Mwaka Mukono
SUPERVISOR’S CERTIFICATE

I, Professor John Baloro, hereby certify that the research and writing of this study was carried out under my supervision.

____________________
Professor John Baloro

Date
DECLARATION

I, the undersigned, hereby declare that this study is a true reflection of my own research and that this work, or part thereof, has not been submitted for a degree in any other institution of higher education. No part of this thesis may be reproduced, stored in any retrieval system, or transmitted in any form, or by any means (e.g. electronic, mechanical, photocopying, recording or otherwise) without the prior permission of the author, or the University of Namibia, in that behalf.

I, the undersigned, grant the University of Namibia the right to reproduce this thesis in whole or in part, in any manner or format, which the University may deem fit, for any person or institution requiring it for study and research; provided that the University of Namibia shall waive this right if the whole thesis has been or is being published in a manner satisfactory to the University.

Charles Mbeha

Date
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACA-</td>
<td>Anti-Corruption Act</td>
</tr>
<tr>
<td>ACC-</td>
<td>Anti-Corruption Commission</td>
</tr>
<tr>
<td>AI-</td>
<td>Accountable Institution</td>
</tr>
<tr>
<td>AIS-</td>
<td>Automatic Identification System</td>
</tr>
<tr>
<td>AML-</td>
<td>Anti-Money Laundering</td>
</tr>
<tr>
<td>ATM-</td>
<td>Automated Teller Machine</td>
</tr>
<tr>
<td>BCCI-</td>
<td>Bank of Credit and Commerce International</td>
</tr>
<tr>
<td>CDD-</td>
<td>Customer Due Diligence</td>
</tr>
<tr>
<td>CDSA-</td>
<td>Corruption Drug Trafficking and other Serious Crimes Act</td>
</tr>
<tr>
<td>CFT-</td>
<td>Countering Financing of Terrorism</td>
</tr>
<tr>
<td>CIO-</td>
<td>Chief Information Officer</td>
</tr>
<tr>
<td>CPA-</td>
<td>Criminal Procedure Act</td>
</tr>
<tr>
<td>EC-</td>
<td>European Communities</td>
</tr>
<tr>
<td>EC-</td>
<td>European Council</td>
</tr>
<tr>
<td>ESAAMLG-</td>
<td>Eastern and Southern Africa Anti-Money Laundering Group</td>
</tr>
<tr>
<td>EU-</td>
<td>European Union</td>
</tr>
<tr>
<td>FATF-</td>
<td>Financial Action Task Force</td>
</tr>
<tr>
<td>FBI-</td>
<td>Federal Bureau of Investigation</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>FIA-</td>
<td>Financial Intelligence Act</td>
</tr>
<tr>
<td>FIC-</td>
<td>Financial Intelligence Centre</td>
</tr>
<tr>
<td>FNB-</td>
<td>First National Bank</td>
</tr>
<tr>
<td>FSSA-</td>
<td>Financial System Stability Assessment</td>
</tr>
<tr>
<td>FTC-</td>
<td>Federal Trade Commission</td>
</tr>
<tr>
<td>GAO-</td>
<td>Government Accountability Office</td>
</tr>
<tr>
<td>GDP-</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>ICA-</td>
<td>International Compliance Association</td>
</tr>
<tr>
<td>ICCMA-</td>
<td>International Co-operation in Criminal Matters Act</td>
</tr>
<tr>
<td>IMF-</td>
<td>International Monetary Fund</td>
</tr>
<tr>
<td>ISA-</td>
<td>Internal Security Act</td>
</tr>
<tr>
<td>JMLSG-</td>
<td>Joint Money Laundering Steering Group</td>
</tr>
<tr>
<td>MACMA-</td>
<td>Mutual Assistance in Criminal Matters Act</td>
</tr>
<tr>
<td>MAS-</td>
<td>Monetary Authority of Singapore</td>
</tr>
<tr>
<td>MHA-</td>
<td>Minister for Home Affairs</td>
</tr>
<tr>
<td>ML-</td>
<td>Money Laundering</td>
</tr>
<tr>
<td>MLRO-</td>
<td>Money Laundering Reporting Officer</td>
</tr>
<tr>
<td>NAMFISA-</td>
<td>Namibia Financial Institutions Supervisory Authority</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>NGISC</td>
<td>National Gambling Impact Study Commission</td>
</tr>
<tr>
<td>OAU</td>
<td>Organization for African Unity</td>
</tr>
<tr>
<td>PACOTPA</td>
<td>Prevention and Combatting of Terrorist and Proliferation Activities Act</td>
</tr>
<tr>
<td>PF</td>
<td>Proliferation Financing</td>
</tr>
<tr>
<td>POCA</td>
<td>Prevention of Organised Crime Act</td>
</tr>
<tr>
<td>RICO</td>
<td>Racketeer Influenced and Corrupt Organisations</td>
</tr>
<tr>
<td>RI</td>
<td>Reporting Institution</td>
</tr>
<tr>
<td>RIS</td>
<td>Research Information System</td>
</tr>
<tr>
<td>SOCA</td>
<td>Serious Organized Crime and Police Act</td>
</tr>
<tr>
<td>TF</td>
<td>Terrorism Financing</td>
</tr>
<tr>
<td>TOC</td>
<td>Transnational Organized Crimes</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCAC</td>
<td>United Nations Convention against Corruption</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>USA</td>
<td>United States of America</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
</tbody>
</table>
CHAPTER 1
INTRODUCTION AND HISTORICAL BACKGROUND

1.1 Introduction

It would seem that the definition of money laundering is multidimensional as there are many definitions by persons that attempt to define it. Nevertheless, the traditional definition among scholars is that; “money laundering is a process of transforming the proceeds of illegal activities into legitimate capital.”\(^1\) In the same vein, according to the Namibia Financial Institutions Supervisory Authority, (NAMFISA),\(^2\) “money laundering is the process whereby criminals take the money they make from their criminal activities and perform one or more transactions with it so that in the end the criminal origins of that money is concealed.”\(^3\)

Additionally, the process of money laundering entails three stages, placement (introducing the illegal proceeds into the financial system), layering (moving the money around to avoid detection by authorities), and integration (authentication of the illegal funds).\(^4\)

---


2 Introduction to NAMFISA http://www.namfisa.com.na/about-us/Mission-Vision-and-Values/1/ last accessed on July 25, 2016: The Namibia Financial Institutions Supervisory Authority (NAMFISA) is an independent institution established by virtue of Act No. 3 of 2001 to regulate and supervise the non-banking financial sector in Namibia. This relates inter alia to the business of the Namibian Stock Exchange; Long-term Insurance; Short-term Insurance; Asset Management; Unit Trusts (Collective Investment Schemes); Pension Funds; Medical Aid Funds; Public Accountants and Auditors; Exchanges, Stock Brokers; Brokers and Agents of Insurance companies and Money Lenders.


The diagram below:⁵ depicts the afore-mentioned. This graph will be analysed in more detail in chapter 3 of this study.

![A Typical Money Laundering Scheme](image)

The definition of money laundering has been broadened over the decades as the crime took different dimensions in response to changes in the law and its enforcement. It is clear from the terms of the legislation that conventional concepts of money laundering have been extended to include circumstances where untainted money or property is dealt with in circumstances where it presently has the capacity to become an instrument of crime, and is intended by the person dealing with the property to become an instrument of crime in the future. That is to say, the money or property is intended to be used to facilitate the commission of a relevant criminal offence.

Therefore, as we shall see after understanding the selected statutes in Chapter 3, it should be given a broad and purposive interpretation. Various jurisdictions have done this as Chapter 6 below shows.⁶

---

One way criminals launder money is by using money earned from illegal activities to buy things such as property, shares, or liquor stores which are legitimate business activities. The criminals then sell these items to get the money back or buy and sell things many times. In this process, one hides the illicit source or the unlawful source of the money to make it appear legitimate. At the end of the day, the procedure applied by criminals will make the money appear clean and this makes it hard for the police to find out where they got it from.\(^7\)

Blatantly, this crime occurred across the globe but the Unites States of America’s monetary system, decades ago, observed a certain pattern of money transfers which were not regulated by law. Scholars thus agree that this practice was criminalised in the USA around the 1930’\(^8\). The term *money laundering* is said to have originated from the mafia’s ownership of laundromats.\(^8\) Criminals were earning huge sums in cash from extortion, prostitution, gambling and bootleg liquor, amongst others. They needed to show a legitimate source for these monies and, one of the ways in which they were able to do this was by purchasing outward legitimate businesses and then mix their illicit earnings with the legitimate earnings they received from these businesses. Laundromats were chosen by these criminals because they were cash businesses.\(^9\)

Be that as it may, historian Sterling Seagrave has written that more than 2000 years ago, wealthy Chinese merchants laundered their profits because the regional governments had banned many forms of commercial trading. He writes that the government considered merchant activities with a great amount of suspicion as they were considered to be ruthless, greedy and followed different rules. Besides this, a considerable amount of the income of

---

\(^6\) See for example the approach in the Canadian money laundering case of *Milne v R* [2012] NSWCCA 24 held that misrepresentation of one’s shares to avoid tax amounts to money laundering.


\(^8\) In general terms these are self-service laundry where coin-operated washing machines are available to individual customers.

merchants came from illegal marketing, extortion and bribes. The merchants who remained invisible were able to keep their wealth safe from the continuous extortions by bureaucrats. So they used techniques like converting money into readily movable assets and moving the cash out of the jurisdiction in order to invest the money in the business. This technique is still used by many money launderers. However, the term money laundering originated in the 1920’s during the period of its prohibition in the United States of America. Nevertheless, the term was first used in 1973 in relation to the Watergate scandal. Sterling continues to say that this case describes money laundering perfectly, despite its origin. In that case, the dirty or illegal money was put through a series of transactions to make it appear clean or legal at the other end. This period could be stated as the known origin of money laundering as we know it today.

It would seem that the crime of money laundering does not exist in isolation from other criminal activities because it starts and ends with a crime, which is not money laundering. The crime of money laundering conceals other crimes, either before its commission or afterwards. This is evident within certain offences associated to that of money laundering, as some of these offences are outlined in the treaties aimed at combating it. Nevertheless, one would see that these treaties combat money laundering alongside other offences.

On the backdrop of the preceding, this study aims to substantively illustrate the relationship of money laundering with its associated offences. In so doing, it will take a closer look at the definition of money laundering. The importance of this analysis is that, the current different conceptual framework of money laundering seems to be incomplete, inadequate or ineffective.


This is the case, as the definitions of money laundering fail to take into account that legitimately obtained money may also be used to fund illegitimate activities and illegitimate funds may also be used to fund legitimate activities. Therefore, money laundering can take place without all its three stages as depicted in the preceding graph (placement, layering and integration). Moreover, clean money may be laundered when persons involved in offences associated with this crime conceal their identities by washing their identities off the dirty money as opposed to only cleaning it. For this reason, this study illustrates how this is made possible and how it is relevant to the concept of money laundering.

In addition, this study also examines the legal framework governing money laundering in Namibia and international treaties respectively. A lot has been written regarding Namibia’s legal framework on money laundering. This study is distinct from what has been written on this subject in Namibia to date, in that, most writings make reference to the Financial Intelligence Act, 2007.\textsuperscript{12} This piece of legislation has been repealed in its entirety by the Financial Intelligence Act, 2012.\textsuperscript{13} Hence there is a need for a new discussion on this new Act of Parliament, as it is different from the repealed Act and this study illustrates such.

In the undergraduate studies,\textsuperscript{14} the researcher of this study hereof noted that the crime of money laundering is not appropriately distinguished from other offences, because at times a person may be charged with it but in the end they are convicted of a different offence. This is the phenomenon across the world, thus the researcher hereof noted on a historical note before, that:

\textsuperscript{12} Act, No.3 of 2007.
\textsuperscript{13} Act, No 13 of 2012.
The crime of money laundering originated in the United States of America during the 1930’s. Although the first person to be charged with the crime of money laundering was eventually only found guilty of tax invasion, the quest to combat money laundering began. After a number of cases before courts and enactment of money laundering laws in the United States of America, it then used its influence on the global level and this lead to the formation of Conventions on the combating of money laundering on a global scale.

This is the case because at times written sources and treaties seem to treat related offences as money laundering. This study aims to make a clear distinction between money laundering and its associated offences. In addition, it also aims to critically discuss the definition of money laundering and suggest how the current one may be incomplete.

Money laundering is a crime of relatively recent concern in Namibia, although it has been prevalent and common in other jurisdictions across the world. In Namibia for instance, the crime was only codified in 2004 and 2007 respectively and the regulatory body, the Financial Intelligence Centre of Namibia, came into being the same year (2007). The Money Laundering Unit, within the High Court of Namibia, afterwards. In 2012, the Financial Intelligence Act, 2007 was repealed; hence the new Act, amongst other laws, will essentially form part of this study.

---

15 The Early History of Money Laundering: https://www.lawteacher.net/free-law-essays/commercial-law/the-early-history-of-money-laundering-commercial-law-essay.php last accessed on August 16, 2017 “money laundering may be traced back 2000 years in China, and in the USA for instance the term money laundering came about in thence the 1920s.

16 See the Prevention of Organized Crime Act, No.29 of 2004 (POCA) and Financial Intelligence Act, No.3 of 2007 (FIA) section 4 of POCA and section 1 of FIA.

17 Act No.3 of 2007.
This study furthermore assists by adding knowledge of this type of crime (money laundering) to all concerned parties (Financial Intelligence Centre (FIC), Namibia Financial Institutions Supervisory Authority (NAMFISA), Anti-Corruption Commission (ACC), the Namibian Police Service (Money laundering Unit), Commercials Crime Department of the High Court, Ministry of Justice, institutions of higher learning and respective banks, amongst other institutions) particularly in Namibia. This is done through a discussion on money laundering definition, its associated offences and the legal framework governing it in Namibia and the international treaties of the United Nations.

The study discusses the concept of money laundering, deliberates on the offences associated to the crime and also illustrates how this process practically occurs. Additionally, in this study it is demonstrated that money laundering is nothing more than a tool used by its offenders to advance their financial crimes that are associated with it.

It has to be noted, as emphasized in Chapter 3 that the various legislation in force has attempted to structure offences to give some guidance as to the seriousness of the conduct by reference to the applicable maximum penalty for each offence. The scheme is that, the greater the sum of money involved, the more serious the offence. However, the legislation also takes into account the mental state of the offender, so that an offence involving intentional dealing with proceeds of crime or instruments of crime, is more serious than one where the state of mind is recklessness as to the criminal nature of the money being laundered.
Furthermore, one notes that money laundering is vital to the functioning of organised criminal syndicates, and in particular drug trafficking. In such cases, it is a necessary part of the criminal activities of those syndicates, and the money launderer is an important component in the wheel of organised crime. Accordingly, the offence of money laundering is one in respect of which the principle of general deterrence is given significant weight globally as the courts have noted.\textsuperscript{18}

Additionally, this study discusses the concept of money laundering in depth and further looks at the offences associated with it and how these offences are interconnected to the crime. Some authors do make a link between money laundering and other offences; however they fail to make a more meaningful, in-depth and critical discussion on the subject matter, but merely state the said link. To the contrary, this study states the link and makes a substantive discussion on the matter accordingly.

1.2 Orientation of this study

As the literature review below shows, there are numerous writings on money laundering since its origin. The aim of this study is not to repeat what has been written on the subject but, to supplement onto what has been written about it. This will be the case for the reason that, unlike the traditional approach of discussing money laundering in isolation from its associated offences, this study discusses the subject matter of money laundering in context with other crimes that are referred to as offences associated with it.

In addition, the study scrutinizes money laundering in relation to these offences for the reason that without them, one wonders whether money laundering as a crime would even exist at all.

\textsuperscript{18} See the cases of \textit{Trandy v R} [2009] VSCA 321, [96], \textit{R v Li}, 204 [40]; \textit{R v Nguyen}, 256 [58].
Nonetheless, before looking at the associated offences, this study evaluates the current definition of money laundering; shows the loopholes that exist in the definition and how it might negatively affect the combating of this crime. In so doing the legal framework governing money laundering in Namibia is evaluated as well. In particular, the Financial Intelligence Act, 2012\textsuperscript{19} which repealed the Financial Intelligence Act, 2007\textsuperscript{20} and the Prevention of Organised Crime Act, 2004,\textsuperscript{21} amongst other applicable laws.

1.3 Statement of the problem

It is difficult to define that which is hidden or covered in some fake gleam. The criminal activities of concealment and converting dirty money are essential to, and indeed are the core of the money laundering process. Laundered money does not get clean at all but it just gains the appearance of legitimacy and legal cleanliness. The money is not the problem but the process of giving it fake legitimacy and appearance of legal cleanliness, which is criminal, is what the problem is. How does one define this activity and the processes involved? How does one deal with the proceeds of crime in this process as well? What are the associated crimes involved in giving dirty money some kind of legitimacy? Can clean money be really laundered?

This study aims to illustrate whether the current definition of money laundering is adequate for purposes of combating this illegal activity in Namibia. Some relevant statutes, as analysed in the forthcoming chapters, do not elaborate on the elements of this offence and related ones which may, in some circumstances, present problems of definition.

\textsuperscript{19} Act, No. 13 of 2012.
\textsuperscript{20} Act, No 3 of 2007.
\textsuperscript{21} Act, No. 29 of 2004.
Furthermore, this study makes a substantive discussion on money laundering and the associated offences, and demonstrates whether the crime of money laundering can possibly exist without any of the related offences. The study digs deeper into the terminology of money laundering, identifying that these associated offences are more extensive than its traditional perception which usually implies some process associated with the tainted money in an attempt to divest it of its criminal character.

The study also assesses whether Namibia as a country, through its legislative framework, adequately addresses the problem of money laundering in the context of the current legal regime and international instruments such as regional and global treaties.

Ultimately, the study shows that money laundering has numerous offences associated with it. It also demonstrates how these offences are interrelated to this crime. Failure to understand definition of money laundering and how it is interconnected to other offences may lead to ineffective mechanisms to combat it.

Furthermore, the study examines the legal framework of money laundering in Namibia, through a comparative analysis with other relevant jurisdictions. These jurisdictions comprise of the United Kingdom, because it has a wide definition of money laundering; South Africa, as it has a similar definition as that of Namibia; Singapore, to have a position from the Asian countries and the USA since it is where money laundering was first codified and it is also a global leader in the fight against money laundering.

This comparative study assists in determining whether the legislative framework of Namibia is sufficient for the purposes of combating money laundering.
1.4 Research questions

On the foregoing, the following are formulated as the research questions for this study:

1. Is the concept money laundering properly defined by respective authors, national laws and international treaties?

2. Can money laundering exist in isolation from other offences?

3. Is Namibia’s legal framework effective in the combating of money laundering and offences related to this crime?

These questions, as shall become more apparent below, might have sub or subsidiary ones. The chapters below tackle any relevant question which aids in answering the main research question.

1.5 Objectives of the study

In defining the objective of a research study, the researcher is specifying who or what they want to draw conclusions on.22 As the literature review below shows, the crime of money laundering is misunderstood. Some money laundering regulators themselves do not fully understand the concept in relation to other offences and this comes to light during the interviewing stage of this study. As Chapter 2 shows in detail, a considerable number of authors seem not to discuss the concept of money laundering substantively alongside its associated offences, as they appear to discuss it, in most instances, in isolation from its associated offences. Authors on the subject, merely state the relationship but fail to go into a substantive discussion, in order to assist those that might not fully comprehend how money laundering functions vis-à-vis its associated offences.

Therefore, the objective of this study is to clearly show that it is incorrect to discuss money laundering in isolation from other associated offences. Consequently, the study shows how this is incorrect; provide reasons thereof and also demonstrate how the current definitions of money laundering are short sighted. In a nutshell, this study clearly outlines the close relationship that exists between money laundering and its associated offences, the legal framework on money laundering in Namibia and the short falls in the definition thereof.

1.6 Significance of this study

If money laundering is not properly monitored in any given country, it may attract criminal activities since it is a way through which criminals profit from their activities without compromising their identities and illicit sources. In addition, should money laundering flourish in a country, it could cause a negative relationship with the international community, and this could have devastating economic effects on that country as it might not qualify for financial aid or even be able to borrow money from the international banks, amongst other things.

Hence, trying to understand money laundering in isolation from its associated offences, may amount to not understanding it at all, since it goes hand in hand with these crimes. Equally, the significance of this study is to assist money laundering regulators in Namibia to effectively combat it and the offences linked to it, by educating relevant persons concerned, on how money laundering functions in conjunction with its associated offences.
1.7 Limitations of the study

In the process of this research, it was discovered that there is insufficient literature available on money laundering in Namibia. Purchasing these materials might be costly, considering that this study is not sponsored. Furthermore, the materials may have to be imported from abroad, thus increasing the costs involved. Moreover, conducting interviews with the relevant persons might be challenging as these people might be very busy or skeptical about being interviewed. Lastly, I have a full time job which is highly demanding and the study also requires a lot of my time as well. Thus, devoting my time to the two tasks simultaneously may be extremely challenging.

1.8 Research Methodology.

1.8.1 Research design

Methodology is an activity or business of choosing, reflecting upon, evaluating and justifying the methods that are used.\(^\text{23}\) Martin Terre Blanche\(^\text{24}\) states that methodology is a method adopted in a particular study. Therefore, one of the most common contrasts presented in social science research is the distinction between quantitative and qualitative research approaches.\(^\text{25}\) Hence, it is significant to draw a distinction between the two methods in order for a researcher to properly make the necessary selection as to which approach to use in conducting their study.


\(^{24}\) Ibid, at 12, p.98.

\(^{25}\) Ibid, at 27, p. 20.
Ospin et al, contend that qualitative research is a form of systematic empirical inquiry into meaning. By systematic empirical inquiry they mean planned, ordered and public procedures agreed upon by members of the qualitative research community which is grounded in the world of experience. Through inquiry into meaning, researchers try to understand how others make sense of their experience. Quantitative research on the other hand focuses on gathering numerical data and generalising it, across groups of people.

This study utilises the qualitative approach at most because a great deal of it comprises of desk study in which primary sources such as legislation, case law, to mention some. Secondary sources such as writings of jurists are also consulted and analysed accordingly.

**1.8.2 Population of this study**

The target population for this study mainly involves regulatory bodies on money laundering, banking institutions, Namibian Police Service, Anti-Corruption Commission and non-banking financial institutions within Namibia. In other words, the Financial Intelligence Centre; Money-Laundering Unit in the High Court; Ministry of Justice, NAMFISA; commercial banks in Namibia to the exclusion of the Bank of Namibia as it is covered under the Financial Intelligence Centre which is, a department within the Bank of Namibia; the Law Society of Namibia and some of the insurance companies in Namibia.

---

1.8.3 Sampling method

The practice of inferring things about a broader category of people or things from observation of a smaller subsection of that category is a central component of social scientific research. This process of selecting cases to observe is called sampling.\textsuperscript{28} The target population was chosen using random sampling is as follows:

a) In the Financial Intelligence Centre, its head will be interviewed.

b) As for the commercial banks, two were selected randomly and from those, one will be interviewed, namely; the Anti-Money Laundering Compliance Officer.

c) From the Namibian Police Service, the Inspector-General and/or the head of the Money Laundering Unit will be interviewed.

d) Namibian Financial Institutions Supervisory Authority (NAMFISA), the head of the Anti-Money Laundering Unit will be interviewed.

e) As for the Law Society of Namibia, its Director will be interviewed.

f) Under the Money laundering Unit in the High Court, its head will be interviewed.

g) There are about 30\textsuperscript{29} insurance companies in Namibia and the study will only interviewee two of those. Selection was on a random basis and from those, only one person will be interviewed (The Anti-Money laundering Compliance Officer and/or The Legal Advisor).

h) The Anti-Corruption Commission (ACC), its Director and/or Deputy Director will be interviewed.

\textsuperscript{28} Blanche supra, p. 133.

\textsuperscript{29} Anonymous interviewee, January 05, 2016 it transpired that there about 30 insurance companies and in those 30 only 9 are registered accordingly.
1.9 Methods of Data Collection

1.9.1 Interviews

Conducting an interview is a more natural form of interacting with people than making them fill out questionnaires, do tests, or perform some experimental tasks therefore, it fits well with the interpretive approach to research. Interviews are often said to reach the parts which other methods cannot reach. For instance, during observations it might not be possible to understand why things are done in a certain way, but in interviews, unclear issues can be questioned and subsequently understood. Therefore, in this study, interviews are one of the methods of data collection. The questions within these interviews are questionnaire structured in order to ask similar questions to the concerned respondents.

1.9.2 Field notes

During interviews, note taking was adopted in order to only select relevant information. Audio recordings are not used because some people may not be comfortable with being voice recorded. Besides, audio recording can be problematic due to background noise hence, it is avoided. On the other hand, “note taking is the preferred method because a lot of very bad things can happen to a tape, and if you do not have backup notes, you are out of luck…”

31 Ibid. 27, p. 81
32 Blanche supra, p. 307.
1.9.3 Technique

During interviews, the respondents mentioned in the sample were interviewed regarding their understanding of money-laundering, its related offences, the legal regime on money laundering in Namibia and the role of their respective institutions regarding the combating of this practice.

Questions were formulated and these were asked to all the respondents specified in the sample. The information gathered from them was analysed and incorporated in the study accordingly.

1.9.4 Documentations (hard and electronic reproductions)

Documentary sources such as letters, newspaper articles, official documents, and books can be useful in all forms of qualitative research. Such materials are also particularly suitable for constructionist analysis, as they are a means by which ideas and discourses are circulated in our society.34

In this study, the following sources, relevant to money laundering were scrutinized: Law textbooks (Economic; International; Commercial; Criminal) amongst others; The United Nations treaties; bilateral and multilateral treaties; case law; relevant websites and Namibian Acts of Parliament, Regulations and Governmental Notices

In a nutshell, most available public libraries in Windhoek were utilised during this study, where possible. Where relevant materials which were not available at these institutions of information, the internet was utilised, and some of the text books were acquired when personal funds allowed.

34Blanche supra, p. 316.
1.9.5. **Shortcomings**

Conducting this study took quite a number of years to complete because my job is very demanding. Out of the listed selected institutions for the interviews, three quarters of them could not be interviewed. The reasons ranged from busy schedules, skepticism as to why they were chosen from the many institutions in Namibia, while others indicated that they were not authorised by the law and/or by their respective policies to divulge the information requested of them. Most of them just failed to revert back even after numerous follow-ups. Moreover, I am a technical committee member on the Namibia’s Anti-Money Laundering and Combating of the Financing of Terrorism Council, thus, I had to walk a thin line by not including any of the confidential information regarding my field of study, that come to my knowledge during council meetings.

1.10. **Ethical concerns**

Qualitative research should be done only with informed consent, explicit confidentiality agreements, and the application of a rigorous analytical process to ensure that valid and supportable conclusions are drawn.\(^{35}\) Apart from and complementary to the issues above, social scientists are expected to observe the highest levels of scientific and professional integrity, and avoid falsification, fraud, and plagiarism, as well as abuse of employees, students, or research participants in any way that takes advantage of the power of the research position or which compromises the researcher’s objectivity.\(^{36}\) In other words, I referenced all the work that was produced by other authors. During interviews, consent of the participants was sought accordingly.

---

\(^{35}\) Blanche *supra*, p. 76.

\(^{36}\) Blanche *supra*, pp. 76-77.
Furthermore, it was made clear to the participants that confidentiality would be respected at all times and that no information would be disclosed without their consent. Additionally, the researcher undertook to abide by all applicable laws of Namibia in dealing with this research, and all the rules and regulations of the University of Namibia’s School of Postgraduate Studies respectively.
CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

This chapter offers some review of both primary and secondary sources. Specifically, it reviews legislation as well as studies done by other researchers on the crime of money laundering. It also seeks to find out the global best practices which are ideal for the subject. Scholars have noted that it is always important to come up with a review of literature on a topic in order to produce intellectual work.\textsuperscript{37} As Mapaure notes, literature review exposes the theoretical foundation of the study.\textsuperscript{38} In other words, a literature review creates a general understanding of the subject matter under investigation.

According to Blanche et al,\textsuperscript{39} literature review puts a research project into context by showing how it fits into a particular field. It also helps a researcher to identify the general problem area. The literature review below thus serves the purpose of showing the relevance of the literature under review to the research questions and the way the information therein can inform one about how money laundering is intertwined with other offences. It also shows how such literature can aid Namibia in so far as the effectiveness or adequacy of legislation on money laundering is concerned. This is analytically done under several sub-topics in this chapter.

This literature review is in the context of the foregoing, comprised three parts:

\textsuperscript{39} Supra, at p.19.
The first part of the review looks at what has been and has not been written regarding money laundering and its associated offences. The significance of this is to clearly illustrate the gaps on money laundering and these offences.

The second part of the literature review concentrates on the conceptual frame-work of money laundering. Numerous researchers, legal instruments, both at national and international level, seem to define money laundering in an incomplete manner. This part of the literature review shows how and why the current definition is incomplete, from the perspectives of different authors, national laws and international laws respectively.

The third and last part of the literature review focuses on the current legal framework of money laundering in Namibia. A number of researchers have written on this subject but most of them, on the Financial Intelligence Act, 2007 (No. 3 of 2007). This Act of Parliament has now been repealed in its entirety by the Financial Intelligence Act, 2012 (No. 13 of 2012), hence this study focuses on this new Act, amongst others. Moreover, even researchers who wrote on the repealed Financial Intelligence Act do not look at money laundering in relation to its associated offences nor do they examine/dismiss its current definition. This part of the literature review points out this gray area.

2.2 General background to literature on money laundering

At the international level there is a broad spectrum of literature on money laundering and anti-money laundering legislation.40 From the mid-nineties the discussion on money laundering intensified and became broader. This could be attributed to more international instruments and institutions that came about, with the sole purpose of combating it.41

---

40 See for example the literature reviewed by Mei, D., Ye, Y. and Gao, Z. 2014, Literature Review of International Anti-Money Laundering Research, A Scientometrical Perspective, Open Journal of Social Sciences, 2, 111-120.

41 See: United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances(1988); The International Convention Against Transnational Organized Crime(2000);
Gordon\textsuperscript{42} questions the way the international community has advanced anti-money laundering crusade. This is not surprising, especially when one looks at the Security Council Resolution 1373, which is binding on all UN Member States. It also does not need ratification or consent from such Members’ States. Furthermore, it does not request, but obliges Member Countries to criminalize actions that finance terrorism in their respective countries, which is said to be funded through the process of money laundering.\textsuperscript{43}

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention), is the first treaty of the United Nations (UN) to combat money laundering. In this study it is illustrated that most definitions on money laundering subscribe to that of the afore-mentioned Vienna Convention.

Some researchers do take a neutral approach, for instance: Schott\textsuperscript{44} looks at the history of money laundering and also at international treaties that have been passed by the international community, and discusses such in a way that does not condemn nor condone the actions of the international community towards this practice.\textsuperscript{45}

Schott’s\textsuperscript{46} work looks at what money laundering is, what the treaties in place are and what they entail. However, the said author does not look at what these treaties are lacking, nor does he question the definition of money laundering therein.


\textsuperscript{45} \textit{Ibid}, p. 8.

\textsuperscript{46} \textit{Ibid}, at pp. 8-9.
The literature generally shows that principally, all countries in the world are more or less in agreement that there is need to cooperate in the global fight against money laundering.\textsuperscript{47}

Literature also shows that there is consensus about the existence of some reciprocal causality of illicit economic activities involved in money laundering. An example is given in the quote below:

The prevalence of an underground economy and illicit financial flows and the intrinsic opacity of such activities create a fertile ground for corruption to thrive. Corruption is in turn an enabling factor for illicit economic activities. This becomes a vicious cycle, with illicit trade damaging the state structure and legitimate economy, then using these conditions to facilitate more trafficking and laundering of dirty money.\textsuperscript{48}

Mathers\textsuperscript{49}, like most of the authors discussed earlier in this literature review, defines and traces the origin of money laundering. However, what makes Mathers’\textsuperscript{50} work unique may be attributed to his background.\textsuperscript{51} His book goes in-depth on how money laundering works practically, and how people are affected by this crime. He does not question the international laws on money laundering but, the implementation process of Anti-Money Laundering treaties, in that they are not properly implemented. This author also shows flaws in these laws as well. For instance, he illustrates these flaws by narrating his experiences as an undercover detective before he went into academia. He goes on further to give suggestions on how best these treaties may be implemented effectively.


\textsuperscript{50}Ibid.

\textsuperscript{51}Mathers C is a former Commissioner of the RCMP and Former President of Interpol.
Nonetheless, even with his background as a law enforcer, he fails to discuss money laundering in relation to other offences.

Some of the authors discuss Anti-Money Laundering (AML) and Money Laundering (ML) in a totally different context. Bartllet demonstrates how money laundering affects the economy of a country both at micro and macro levels. He outlines in his work that money laundering does not only affect banks but other financial institutions as well. Bartllet makes two important points in his article. The first being that, money laundering does not only affect the developed world as most people contemplate, but on the contrary it has devastating effects on the developing world just as much. Secondly, he states that it does not only affect banks but also all financial institutions in any country. Bartllet further suggests how best to protect these financial institutions with guidance from money laundering Conventions.

Research on money laundering has been divided generally between those who write about it and those who write on Anti-money Laundering (AML). The content however does not differ much as one deals with the crime itself, while the other deals with the measures (AML) taken by various countries and institutions to counter the crime or to enforce the law.

In this context, it is important to note that the literature further shows that the United States is at the leading position in the international AML research field, followed by China, Britain, Germany, Australia, Romania, Canada, The Netherlands, Italy and Ukraine, all of which are the champions in the field of AML.

52 Chapter 2 of this study.
54 Ibid.
2.3 Terminological inconsistencies, linkages, gaps and discussions

2.3.1 General

The term ‘money laundering’ is derived from the gangster, Al Capone’s operations. He funneled his ill-gotten gains through launderettes to make it appear legal.\textsuperscript{56} It is reported that Al Capone literally used launderettes for disguising illegal alcohol revenues during the prohibition in the USA. During this period, launderettes were a flourishing cash-intensive business in the 1930s, when almost no household had a washing machine. They were an ideal location to slip the money from illegal alcohol sales into the cash register.\textsuperscript{57}

Money laundering\textsuperscript{58} however is even older than Al Capone’s “washing of money.” One of the oldest techniques to circumvent government scrutiny was to use international trade to move money, undetected, from one country to another, by means of fake invoicing or falsely declared merchandise. This informs us why in modern terms money laundering is defined as the process by which one conceals the existence, illegal source, or illegal application of income to make it appear legitimate.\textsuperscript{59} All other definitions across the world may be said to be centered on this general meaning.


According to Hynes et al\textsuperscript{60} “in its simplest form, money laundering is the process by which the origin of property is disguised. This may be a simple lie as to the source of money or an asset, or involve complex property movements through many countries, institutions, entities, assets and individuals, but the essence is the same: the creation of a false impression that something was legitimately acquired. \textsuperscript{61} Hynes et al\textsuperscript{62} go on to state that, the elements of an effective scheme appear in the United Nations Global Programme Against Money Laundering”… a process which disguises illegal profit without compromising the criminal who wishes to benefit from the proceeds. \textsuperscript{63}

The South African Law Commission defines money laundering as “\textit{the manipulation of illegally acquired wealth in order to obscure its true source or nature}”. \textsuperscript{64} This is achieved by performing a number of transactions with the proceeds of criminal activities that, if successful, will leave the illegally derived proceeds appearing as the product of legitimate investments or transactions.

\textsuperscript{61} Ibid, p. 5.
\textsuperscript{62} Ibid.
\textsuperscript{63} Ibid, p. 4.
The South African Law commission published a report in 1996 which is relevant as it shows the definition under South African law and also reflects on the different stages of money laundering. The report shows that internationally, money-laundering takes place in at least three major stages, which are: placement, layering and integration. During the placement stage the proceeds of criminal conduct, usually in the form of cash, are moved away from the location where it was obtained and placed in the financial system. Entry into the financial system is usually gained through financial institutions.\(^65\)

In the second stage, the money, which is now in the form of electronic funds, is distributed through the financial system. This is done by layering one transaction involving these funds on top of another by means of electronic transfers, shell companies, false invoices, and related transactions or methods. The result of these transactions is that the laundered money becomes mixed up with the legitimate one and thus becomes indistinguishable from legitimate money.\(^66\)

The third stage is that of ‘integration’. The money that was spread into the commercial sphere is collected and made available to the culprit under the guise of being legitimate earnings.\(^67\)

According to the South African Law Commission, the money-laundering process illustrates a vital system to the money launderer. It is used as a device to transfer his or her proceeds of crime and to modify the appearance of such proceeds so as to appear legitimate.\(^68\)

\(^{65}\) Ibid, p. 2.
\(^{66}\) Ibid, p. 2-3.
\(^{67}\) Ibid, p. 2-3.
\(^{68}\) Ibid, p. 2-3.
In this literature review, it is further noted that people commit money laundering for the following reasons:

Money represents the lifeblood of the organization that engages in criminal conduct for financial gain because it covers operating expenses, replenishes inventories, purchases the services of corrupt officials to escape detection, furthers the interests of the illegal enterprise, and pays for an extravagant lifestyle. To spend money in these ways, criminals must make the money they derived illegally appear legitimate. Secondly, a trail of money from an offense to criminals can become incriminating evidence. Criminals obscure or hide the source of their wealth or alternatively disguise ownership or control of, to ensure that illicit proceeds are not used to prosecute them. Thirdly, the proceeds from crime often become the target of investigation and seizure. To shield ill-gotten gains from suspicion and protect them from seizure, criminals must conceal their existence or, alternatively, make them look legitimate.69

2.3.2 International Law

The definitions above have shown that money laundering is basically the processing of criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardising their source. Most countries subscribe to the definition of money laundering adopted by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Vienna Convention).70

---

70 Article 3(b).
In this Treaty, money laundering is defined as the *concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property which is derived from an offence or offences or from an act of participation in such an offence or offences.* This illustrates that the use of the term “money laundering” at international level is of recent concern in the field of law. As a result, the sources used at most in this study will typically be those that were written after this Treaty came into effect.

Another major instrument used to combat money laundering is the Financial Action Task Force (FATF), 40 recommendations and 9 special recommendations (Hereinafter referred to as the FATF 40 + 9 recommendations). The FATF 40 + 9 Recommendations are the internationally endorsed global standards against money laundering and terrorist financing. They increase transparency and enable countries to successfully take action against the illicit use of their financial system.

The definition of FATF is not different from the Vienna and the Palermo Conventions, as both these instruments entails that money laundering is an act of legitimizing unlawful proceeds.

---

73 Who we are? “The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.” Available at [http://www.fatf-gafi.org/about/](http://www.fatf-gafi.org/about/) last accessed May 14, 2016.
74 What is money laundering? [http://www.fatf-gafi.org/faq/moneylaundering/#d.en.11223](http://www.fatf-gafi.org/faq/moneylaundering/#d.en.11223) last accessed April 25, 2019 “Money laundering is the processing of these criminal proceeds to disguise their illegal origin.”
Moreover, the FATF has responded to the threat of illicit proliferation of weapons of mass destruction by updating its standards to include measures on the implementation of targeted financial sanctions related to proliferation. In this regard and according to FATF, corruption and money laundering are inherently linked as both are generally committed to obtain or hide financial gain. Article 8 of the Palermo Convention thus criminalises corruption and encourages member states to combat it with appropriate measures. Anti-money laundering and counter-terrorist financing measures are powerful tools that are effective in the fight against corruption.\textsuperscript{75} However, not only corruption but also terrorism and illicit proliferation of weapons of mass destructions are linked to money laundering. This study illustrates that numerous offences are interlinked to money laundering.

The problem with FATF’s approach is that it seems to imply that crimes associated to money laundering have an exhaustive list. Additionally, FATF does not go in-depth on how corruption is linked to money laundering, but merely mentions the link.

Corruption is a huge problem in Namibia\textsuperscript{76} hence it is important to fully understand it in relation to money laundering in order for the country to effectively curb this crime and its associated offences. These are some of the areas that this study fulfills.


\textsuperscript{76}All the interviewees in this study agreed, that corruption is a huge problem in Namibia. See also Namibia slipping into endemic corruption also accessible at \url{http://www.aljazeera.com/news/africa/2014/09/} last accessed on August 18, 2017; Namibia Corruption Report, “highest corruption are found in the Public Procurement” accessible at \url{http://www.business-anti-corruption.com/country-profiles/namibia} last accessed on August 18, 2017; It is no surprise that Namibia has passed the Public Procurement Act, 2015 (Act No. 15 of 2015) to increase transparent in the public procurement government system.
The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (also known as the Vienna Convention) defines the crime of money laundering as follows: 77

(b) (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a)78 of this paragraph, or from an act of participation in such an offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;

The Vienna Convention defines money laundering as the disguising of something prohibited by law, be it money or property.

---

77Article 3(1)(b)(i) and (ii).
78a i) The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in i) above;

iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

v) The organization, management or financing of any of the offences enumerated in i), ii), iii) or iv).
However, this study indicates that even money or property that is legally obtained may also be laundered if the culprit intends to channel such for illegitimate activities e.g. terrorism support, drugs trade, arms trade, etc. To put it differently, a person may acquire money legally and advance it for unlawful activities. This may be done through the same processes that illegal money is laundered. Nonetheless, the definition of money laundering in the Vienna Convention does not cover this perspective of this activity. Therefore, this study aims to advance this argument regarding its definition and ultimately propose one that includes this aspect of money laundering.

The United Nations Convention against Transnational Organized Crime 2000 (also known as the Palermo Convention), defines money laundering as:

Article 6 (1) (a) (i) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

The Palermo Convention’s definition includes the acquisition, possession or use of property, knowing at the time of receipt that such property is from the proceeds of a crime.
The Palermo Convention, unlike the Vienna Convention, widens the definition by including more serious offences in its conceptual framework. Even so, the Palermo Treaty fails to cover cases whereby a perpetrator of money laundering generates funds legally and processes such funds towards unlawful activities. Similarly, both treaties define money laundering by way of disguising illegally obtained funds or property. However, this study demonstrates that even legally obtained funds may and can be laundered.

2.3.3 Namibian legislation

Generally speaking, in Namibia money laundering is defined in a manner that is consistent with the Vienna and Palermo Conventions. Under the applicable legislation, Namibia adopts a list and threshold approach to define the associated/predicate offences, which includes any offence punishable by more than 12 months. The authorities advise that the offence of money laundering as currently provided in the Prevention of Organised Crime Act, No. 29 of 2004 (POCA), applies to persons who commit a predicate offence and can be prosecuted for the laundering of one’s own illicit funds. There are penal and financial sanctions available for the offence, which are applicable to both natural and legal persons. This has made FATF to say that Namibia has “made significant progress in improving their AML/CFT regime and will therefore no longer be subject to the FATF’s monitoring process.”

There are quite a number of pieces of legislation which have been passed in Namibia which are relevant to the topic of money laundering. The details of such legislation are found in Chapter 4 below. In this chapter it is worth mentioning that the Namibia’s Financial Intelligence Act, 2012 (No. 13 of 2012) defines money laundering as:

---

(a) the act of a person who –

(i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;

(ii) acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or

(iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity: Where-

(aa) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is a proceed from any unlawful activity; or

(bb) in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is a proceed from any unlawful activity; and

(b) any activity which constitutes an offence as defined in sections 4, 5 or 6 of the Prevention of Organized Crime Act (POCA)

80 POCA define money laundering as doing any act that constitutes an offence under section 4 to 6 of the said Act. Any person who knows or ought reasonably to have known that property is or forms part of proceeds of unlawful activities and – (a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; or (b) performs any other act in connection with that property, whether it is performed independently or in concert with any other person, and that agreement, arrangement, transaction or act has or is likely to have the effect – (i) of concealing or disguising the nature, origin, source, location, disposition or movement of the property or its ownership, or any interest which anyone may have in respect of that property; or (ii) of enabling or assisting any person who has committed or commits an offence, whether in Namibia or elsewhere – (aa) to avoid prosecution; or (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, commits the offence of money laundering. Assisting another to benefit from proceeds of unlawful activities: 5. A person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into an agreement with anyone or engages in any arrangement or transaction whereby – (a) the retention or the control by or on behalf of that other person of the proceeds of unlawful activities is facilitated; or (b) the proceeds of unlawful activities are used to make funds available to that other person or to acquire property on his or her behalf or to benefit him or her in any other way, commits the offence of money laundering. 6. Any person who – (a) acquires; (b) uses; (c) has possession of; or (d) brings into, or takes out of, Namibia, property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities commits the offence of money laundering.
It can respectfully be submitted that the definition of money laundering in the legal framework of Namibia is broad. However, it is still incomplete, as this study illustrates. This definition fails to make provision for legally obtained money which is intended for illegal activities.\textsuperscript{81} Similarly, the definition of money laundering in the context of Namibia, has emphasis made on \textit{proceeds from which illegal activities generate funds}. The definition fails to take into account that legally obtained funds may likewise be laundered for various reasons and this study demonstrates such.

Albanese’s\textsuperscript{82} book discusses the definition of what organized crime is. He looks at the elements of the crime, statistics of its occurrences, real life cases and how they are handled by relevant authorities (courts and law enforcements amongst others). The author of the book further illustrates how other crimes are inter-linked to organized ones. Money laundering should have been discussed as one of those related to organized crime but the book fails to illustrate the relationship between money laundering and organized crime. Hence, this study illustrates the relationship of money laundering with other offences, including organized crime, in chapter 5 of this study.

Alldridge’s\textsuperscript{83} book does a critical analysis of the responses to money laundering from three perspectives, namely: how the law of money laundering has developed, justification for regulating money laundering and human rights aspects affected by money laundering laws. Further, he agrees that money laundering is a problem that needs to be resolved, but in the same instance he argues that the way it is being regulated is exaggerated.

\textsuperscript{81}Similarly in the Namibian Newspaper dated March 02, 2015, p. 09. NAMFISA issued a Public Notice titled “Money Laundering” and defined money laundering as the process whereby criminals take the money they make from their criminal activities and perform one or more transactions with it so that in the end the criminal origins of that money is concealed. However, this definition by NAMFISA fails to take into account that legally obtained funds may too be channelled through the processes of money laundering for purposes of funding illegal activities (Terrorism financing).


\textsuperscript{83} Alldridge, \textit{supra} note 41. p. 2.
Alldridge\textsuperscript{84} mentions that terrorism is funded through money laundering but does not make a substantive analysis on how this occurs. As a result, the author misses the following aspects: he only mentions terrorism as the only offence related to money laundering, but does not go in-depth as to how terrorism and money laundering are associated.

Given the foregoing, it is imperative that this study shows other crimes associated with money laundering and clearly illustrate how the link between money laundering and other offences occurs. This will assist money laundering regulators in better combating the crime and any other persons interested in the concept, its related offences and how to identify offences related to the crime.

It is for this reason that this study is being conducted to illustrate the relationship between money laundering and many other offences related to it.

The following three definitions from three different authors will also support that authors partially define money laundering:

(a) Money Laundering is broadly the process or scheme by which both the identity of dirty money or money representing the proceeds of crime and the true nature of ownership of those proceeds, are changed so that the money appears to come from a legitimate or lawful source.\textsuperscript{85}

(b) Money laundering is the process by which illegal origins of money are disguised, thereby hindering detection of the crime and allowing those involved to enjoy the fruits thereof.\textsuperscript{86}

(c) Money Laundering is the process of concealing the origin, nature, source, and ownership of funds in order to confuse law enforcement.\textsuperscript{87}

\textsuperscript{84}Ibid.
All of these definitions, from three different jurisdictions, use different wordings to define money laundering but, the merit of these definitions is still the same. That being, money laundering is the process of legitimizing funds gained from illegal activities and benefiting from such activities e.g. buying property and/or using it for illegal activities e.g. terrorism financing amongst others.

As already noted above, money laundering refers, in general, to any act that disguises the criminal nature or the location of the proceeds of a crime. However, the South African legislation broadened this concept to virtually every act or transaction that involves the proceeds of a crime, including the spending of any funds that were acquired illegally. The problem with the South African definition is that it was broadened to only include funds that were illegally acquired, whereas legally acquired funds may also be laundered, and this study demonstrates this argument.

2.3.4 Literature on Namibia

Numerous articles have been written on the legislative framework governing money laundering in Namibia. One of which, is a report in Namibia on Mutual Evaluation/Detailed Assessment report on Money Laundering: Anti-Money Laundering and Combating the Financing of Terrorism-Republic of Namibia (2007). This report outlines the consequences of this activity, namely: that it facilitates corruption and makes financial crimes attractive, but fails to illustrate how it facilitates corruption or how it makes other financial crimes attractive.

88 Money Laundering Control: A Guide For Registered Accountants And Auditors (June, 2003), pp.7-8.
89 Republic of Namibia, National Strategy on Anti-Money Laundering and Combating the Financing of Terrorism, p.4.
The report further acknowledges the achievements of Namibia in the combating of this crime, such as the ratification of certain international treaties.\textsuperscript{90} Furthermore, it is recommended in the report that certain law enforcement agencies\textsuperscript{91} receive training in money laundering courses.\textsuperscript{92} It can be clearly seen that the authors of this report look at money laundering holistically however, they do not discuss it in connection with other financial crimes but merely make a statement that there is a link. Nevertheless, in this study there is an outline of what the financial crimes linked to money laundering are, how the relationship comes into effect and how one may identify a crime that is linked to money laundering.

Several researchers *Hakweenda*,\textsuperscript{93} Nsundano,\textsuperscript{94} Shivute (2010), and Kavejamua Kazondunge (2011 amongst others), wrote on the subject in the context of Namibia. Hakweenda\textsuperscript{95} broadly discusses the concept and goes on to mention cases of fraud and tax evasion that Namibia has experienced.\textsuperscript{96} In her analysis, it is not clear what the relationship of money laundering with tax evasion is. The greater part of the researcher’s paper focuses on the effects of money laundering laws in Namibia *vis-à-vis* client-lawyer privilege.

\textsuperscript{91}Namibian Police Service; Prosecutor-General; Anti-Corruption Commission; Office of the Judge President; Magistrates Commission and Customs under the Ministry of Finance amongst others.
\textsuperscript{92}Ibid, 47 at p. 4.
\textsuperscript{94}Nsundano, P.M. (2007). A comparative legal analysis of the contemporary treatment of money laundering under the jurisdiction of Namibia and South Africa, University of Namibia
\textsuperscript{95}Hakweenda, supra note 90, pp. 4-9.
\textsuperscript{96}Ibid, pp. 8-10.
Nsundano,\textsuperscript{97} as with most researchers on money laundering, looks at its conceptual framework. Furthermore, he does a comparison between the legal framework governing money laundering in South Africa and that of Namibia. His work is more concerned with the different regimes that exist and does not look at the short-comings of the conceptual framework of money laundering, nor does he look at it in relation to other offences.

Shivute’s\textsuperscript{98} work generally is based on the functions of the Bank of Namibia. The researcher does this by discussing the different types of laws administered by the Bank of Namibia. One of the chapters in Shivute’s work looks at money laundering. In that chapter there is the definition of money laundering and stages involved, and he goes on to summarize some of the aspects that exist in the Financial Intelligence Act, 2007.\textsuperscript{99} As with all other authors already discussed, Shivute\textsuperscript{100} does not discuss money laundering in context with other crimes, nor does he question the short-comings that exist within the conceptual framework of money laundering.

Kazondunge\textsuperscript{101} looks at money laundering in the context of the Prevention of Organized Crime Act, No. 29 of 2004 and the Financial Intelligence Act, No. 03 of 2007. This researcher goes on to state that corruption and money laundering are intertwined, but does not clarify this observation in more detail. The researcher further argues that the two are separate offences although these crimes at times do overlap.\textsuperscript{102}

\begin{flushleft}
\textsuperscript{97} Nsundano, \textit{supra} note 91, pp. 12, 25-31.
\textsuperscript{98} Shivute, S, 2010. The effectiveness of the Bank of Namibia’ legal powers in the Namibian banking industry, University of Namibia.
\textsuperscript{99} Act, No. 3 of 2007.
\textsuperscript{100}Ibid.
\textsuperscript{101} Kazondunge, K. (2011). The impact of the implementation of legislation combating transnational organized crime on the deterrence of money laundering in Namibia, University of Namibia. pp. 9-14 and 29-30.
\textsuperscript{102} Ibid, p. 29.
\end{flushleft}
Whereas this study clearly illustrates that money laundering is always linked to one or numerous offences e.g. corruption, terrorism, fraud, cyber-crime, organized crime, amongst others. It shows how this link comes into existence and how the definition may be ill-defined in Namibia and the international community.

Yikona et el\textsuperscript{103}'s work focuses on money laundering in Namibia by looking at how it affects its economy, then goes on to discuss the Anti-Money Laundering regime in the said country together with the main sources of the crime therein. This book is important in this study for two reasons. Firstly, it looks in depth at the situation in Namibia regarding money laundering. Secondly, it goes on to discuss numerous offences related to this crime.

Although the book discusses some of the offences that are associated with the crime of money laundering, the problem still exists. The offences are discussed from an economical perspective and not from a legal context. In other words, this book is a good discussion for offences related to money laundering for economic purposes. However, it is not very useful, to someone trying to understand money laundering and its associated offences from a legal point of view.

2.4 Money laundering and associated offences: a comparative analysis

Money laundering can be a predicate offence or can have such, i.e. an offence associated with it. Literature shows that a predicate offence is a crime that is a component of a more serious criminal offence. For example, a bank which releases unlawful money has committed the main offence and money laundering is the predicate offence. In this context different jurisdictions define crime predating the offence of money laundering in different ways and international law recognizes those differences.

However, it must be noted that the Palermo Convention, including its associated protocols and amendments, defines a predicate offence as “any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 broadly in their anti-money laundering laws.” This must include all serious crimes, offences regarding participation in organised crime, offences regarding corruption, and offences regarding obstruction of justice as predicate offences.

Nonetheless, if the Anti-money Laundering Laws of the Member States to the Palermo Convention set out a list of specific predicate offences, those states can choose to include offences associated with organised criminal groups in that list rather than include the said four categories of offences. In terms of Article 2 of the said convention, an “organized criminal group” means a structured group of two or more persons existing for a period of time, and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

The phrase “serious crime” in the context of the Convention means conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. In terms of Article 2(c) a “structured group” means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

---

104 Article 2(a) of the said section.
105 Article 2(b) Palermo Convention. See also Art. 6 para. 2(b).
106 Article 2(b).
National and international law definitions can thus differ. Generally, as International Compliance Association (ICA)\(^{107}\) explains, the differences between the definitions may be summarised as follows:

(a) Differences in the degree of severity of crime regarded as sufficient to predicate an offence of money laundering. For example in some jurisdictions it is defined as being any crime that would be punishable by one or more year’s imprisonment. In other jurisdictions the necessary punishment may be three or five years imprisonment;\(^{108}\) or

(b) Differences in the requirement for the crime to be recognized both in the country where it took place and by the laws of the jurisdiction where the laundering activity takes place or simply a requirement for the conduct to be regarded as a crime in the country where the laundering activity takes place irrespective of how that conduct is treated in the country where it took place.\(^{109}\)

The International Compliance Association thus concludes that in practice, almost all serious crimes, including drug trafficking, terrorism, fraud, robbery, prostitution, illegal gambling, arms trafficking, bribery and corruption are capable of predating money laundering offences in most jurisdictions.

In South Africa, as shown in Chapter 3 below, the crime of money laundering also overlaps with certain common law crimes such as: fraud, forgery and uttering and statutory offences such as, corruption. Given that the elements of these offences under South African Law are more or less the same, an examination of the South African jurisprudence will be of importance to the Namibian system hence it provides answers to the research questions that are listed in Chapter 1 of this study.


\(^{108}\) Ibid.

\(^{109}\) Ibid.
In the United Kingdom, The Proceeds of Crime Act, 2002 (POCA), unified all the monetary
laws of the land, especially laws regarding money laundering. This was also enhanced by
the creation of a disclosure system which obliges anybody who has the knowledge or
suspicion of money laundering scheme to disclose, failure of which such a person is part of
the crime. Several cases\textsuperscript{110} have been decided which consider the principles of the common
law as well as the statutory ones in the Act. The United Kingdom is rich with information
regarding money laundering and for that reason it is considered in detail below.

Williams writes on how money laundering works, in other words, the different stages
involved in the process,\textsuperscript{111} but does not state the relationship that exists between money
laundering with other offences. Paust et al state that, although Anti-Laundering Laws are
mentioned substantively in the 1990s, one could not help notice that these laws are almost
never questioned and, to the contrary, countries that did not sign these money laundering
treaties were considered devious. Thus, the focus from Paust et al’s point of view is an
analytical approach to the anti-laundering treaties.\textsuperscript{112} In other words, there is an explanation
of money laundering treaties with no debate on crimes related to that.

\textsuperscript{110} See for example \textit{S L Wines Ltd v Revenue & Customs} (Money Laundering Regulations 2007) [2015] court
held that a maximum fine for breach of money laundering was appropriate. UKFTT 575 (TC) (24 November
2015), \textit{Axton & Anor v GE Money Mortgages Ltd & Anor} [2015] EWHC 1343 (QB) (22 May 2015), \textit{Plevin
\textsuperscript{111} Williams, P. 1997. Money Laundering, Volume 5, Number 1, The South African Journal Of International
\textsuperscript{112} Jordan., J. Paust., M, Bassiouni, C., Scharf MP., Sadat, L, Gurule, J., Zagaris, B.

Williams and Jordan\textsuperscript{113} discuss money laundering partially, since their focus is on what money laundering is and how it benefits the people involved in such activities. Even though banks were also parties to these illegal transactions, nothing is said regarding how they contributed towards them. Additionally, there is no mention of money laundering and related crime hence; this is a gap that this study fulfills.

The foregoing explains the contents of Chapter 4 below, which shows the linkage between money laundering and other crimes. More importantly, why this phenomenon became an issue of international concern, especially after the terrorist attacks on the USA on 11 September 2011, when it was discovered that money laundering was both a national and international safety concern, hence gained prominence on the agenda of international organizations.\textsuperscript{114}

The South African Law Commission Report mentioned earlier fails to discuss money laundering in context with its related offences. This article focuses on the functions of the concerned bodies (Financial Intelligence Unit)\textsuperscript{115} on how the Centre should go about in implementing the aspects outlined in the Proceeds of Crime Act, No. 76 of 1996. Furthermore, it is also proposed that, the terminology of money laundering be broadened to include more illegal activities to be covered within the framework of the definition of the term under the Proceeds of Crime Act, No. 76 of 1996.

Section 1 of the Act does not defines money laundering but define \textit{proceeds of criminal conduct} as follows:

\begin{flushleft}
\textsuperscript{113}\textit{Ibid.}
\textsuperscript{115}In South Africa it is the Financial Intelligence Unit which is similar to the Financial Intelligence Centre of Namibia.
\end{flushleft}
Property or part thereof derived directly or indirectly from—(a) the commission in the Republic of an offence, or (b) an act or omission outside the republic that, if it had occurred in the Republic, would have constituted an offence.

This definition seems to merely criminalize money laundering both in and out of South Africa. Put differently, the issue of money laundering in relation to other offences has not been discussed and as such, this study fills this gap.

Louis de Koker\textsuperscript{116} focuses on money laundering from a South African perspective. He has written numerous articles on the subject of money laundering. Interestingly enough, the author’s work does not cover substantively on the topic and its related offences but merely makes a connection. On the contrary, Alldridge,\textsuperscript{117} mentions that terrorism is funded through money laundering but does not explain this statement in detail \textit{vis-à-vis} his argument. De Koker\textsuperscript{118} puts forward a similar argument by simply affirming that terrorism is funded through terrorism.

Nonetheless, Louis De Koker\textsuperscript{119} further states that the term money laundering overlaps with certain common law (for instance, fraud, forgery and uttering) and statutory offences (for instance, corruption). Hence, he outlines some of these offences but does not comprehensively discuss the connection between them. This study does just that and also illustrates how one may be able to identify a crime that is interconnected to the crime of money laundering.


\textsuperscript{117}Allridge, supra note 41, at p.21.


\textsuperscript{119}See also Money Laundering in South Africa at kms1.isn.ethz.ch/serviceengine/files/ISN/111885/.../en/chap4. pd.
Ellinger, Lomnicka, and Hare\textsuperscript{120} are some of the most recent authors on the subject. As with earlier authors, they look at international laws on money laundering in conjunction with national laws. These authors do this by comparing the laws of the United Kingdom with international treaties on the subject. The authors further illustrate that money laundering came as a result of crimes such as drug trafficking and organized crime, amongst others, but fail to comprehend that it is still continuing as a result of these crimes that gave rise to them in the first place. Furthermore, there is no discussion of money laundering and other offences but merely affirming that a relationship exists. This study broadly discusses the relationship of money laundering to other offences indicated by Ellinger et al, amongst others, and also shows how this relationship is created and how it functions, in chapter 5 of this study.

Dyson\textsuperscript{121} defines terrorism substantively; however he looks at terrorism in isolation from money laundering. In other words, he discusses offences related to money laundering in isolation from the offence itself. In his book he indicates the root causes of terrorism, how it comes about and also shows how enforcement officers investigate and combat it. The author could have indicated that, in counter attacking terrorism, one needs to block the financial movement of terrorist’s resources, but the author over-looks this important element. Hence this study is being conducted to illustrate how money laundering is indispensable from other offences, terrorism included. The study also shows the relationship between money laundering and terrorism.


As a result of this literature review, it can be established that there exists a lot of authorities on what money laundering is, how it functions and its effects. The long term effects of money laundering on the economy seem not to be well known as authors in this literature review agree that it should be regulated but they do not specify its possible long term negative economic effects on a country. What is acknowledged though seems to be its short term consequences such as attracting criminal activities. Be that as it may, it can be said that in order to understand money laundering, one has to understand the United Nations Conventions on the issue, as this seems to be its foundation in terms of definition and best practices in combating money laundering.

Money laundering maybe associated with organized crime, drug trafficking, terrorism, embezzlement, corruption, bribery, fraud, tax evasion, illegal trade of minerals and cyber-crime, to mention some. These crimes are some of the offences related to the crime of money laundering.

In the literature review, authors over-look these offences, while some merely mention them in the context of money laundering, but do not properly show how they are interconnected to money laundering. Therefore, this study identifies the offences related to the crime, and demonstrates how money laundering functions in relation to these offences. Chapter 5 of this study illustrates this relationship in more detail.

It can also be seen from the below-mentioned definitions of money laundering, that it does not include legally obtained funds. This is also another important gray area this study aims to fill. In other words, the study demonstrates that even legally obtained funds may be laundered. This argument is established under the sub-topic of terrorism in chapter 5 of this study.
Hynes\textsuperscript{122} emphasizes that money laundering occurs when illegally obtained funds are made to look like they were legally acquired. The said definition goes on to include the different stages of money laundering. However, it fails to include the aspect of legally acquired funds which are too, susceptible to money laundering. Bantekas and Nash\textsuperscript{123} state that the term money laundering is used to describe the process whereby the proceeds of crime are converted for the purposes of concealing or disguising their illicit origin.

This process is necessary in order to sever the link between the origin of criminal conduct and the proceeds of crime.\textsuperscript{124} The above definition does not materially differ from the former. Bantekas\textsuperscript{125} contends that the process of money laundering is to sever the link between the origin of the criminal conduct and proceeds of crime. This definition does not take into account that the process can sever the link of legal proceeds with criminal intentions afterwards. This is also centrally discussed and illustrated in this study.

\textbf{2.5 Summary}

This literature review has looked at international and national laws and diverse authors. Nevertheless, it still found that the relationship between money laundering and associated offences is ill-defined. In addition, the definition of money laundering is not satisfactorily defined nor does it cover all aspects of this seemingly difficult crime whose elements are constantly re-defined as they are as dynamic as the criminal activity itself.

\textsuperscript{122}\textit{Ibid}, at 38.
\textsuperscript{124} \textit{Ibid}, p. 60.
\textsuperscript{125} \textit{Ibid}, at 41.
CHAPTER 3
INTERNATIONAL LAW AND THE NAMIBIAN MONEY LAUNDERING LEGAL REGIME

3.1 Introduction
This chapter examines the Namibian money laundering legal regime. It reveals the provisions relevant to money laundering as shown in the selected statutes. In so doing, the chapter discusses the concept as it stands under the Namibian Constitution, international law and the various municipal laws which are inevitably designed in conformity with the international treaties discussed below.

The purpose of analyzing the definition of money laundering both at international and municipal level is to determine the effectiveness of the Namibian legal system.

3.2 The Namibian Constitution
The Republic of Namibia was established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.\textsuperscript{126} The Constitution is the supreme law of Namibia. Therefore all branches of government, its agents and its citizens can be held accountable before the Constitution and the law enacted under it.\textsuperscript{127} The Constitution was adopted in 1990 and in general terms it characteristically embodies the principles of equity, legality, democracy and respect for human rights.\textsuperscript{128}

The Constitution creates a general framework within which all laws are enacted and enforced or applied. It also creates institutions which are relevant to this study. For example the judiciary adjudicates cases of money laundering and interprets the relevant laws, including striking down certain legislation as unconstitutional.

\textsuperscript{126} Article 1(1) of the Namibian Constitution.
\textsuperscript{127} See the Preamble to the Namibian Constitution read together with Article 1.
\textsuperscript{128} Chapter 3 of the Constitution embodies broadly framed universal human rights and it is entrenched.
Further, it must be noted in similar veins that the Constitution was amended in 2015 to include the Anti-Corruption Commission, (ACC) which is now specifically entrusted to take measures that oblige the state to set up administrative and legal measures necessary to investigate and battle corruption.\textsuperscript{129} During the interviews of this study it transpired that the ACC has a specialized division that investigates cases of money laundering.\textsuperscript{130}

Initially the Ombudsman had constitutional powers to investigate cases of corruption under any law and the Ombudsman Act, 1990 (Act, No. 7 of 1990) which is the enabling legislation for that institution. The said amendment removed the power to investigate corruption from the functions of the Ombudsman and brought such to the ACC, which was established in terms of the Act as already mentioned. Thus the ACC became a creature of the Constitution in 2010.

The Constitution does not create crimes as such since it is the general framework for all laws. It thus promotes good governance and conduct in all spheres of life. It is the three arms of state which should apply this constitution which includes, amongst others, the ratification of international conventions on money laundering. In this context it must be noted that the government has put in place a number of measures to curb this crime, and the legislature has passed a number of laws affecting some. The judiciary has also clarified the law and adjudicated cases of money laundering.

\textsuperscript{129} See Article 94A of the Constitution.
\textsuperscript{130} Anonymous, January 07, 2017.
Furthermore, the Prosecutor-General is also a constitutionally created office. This office has the responsibility to prosecute all money laundering suspects through the course of the criminal justice system. Thus, the Prosecutor General, by virtue of both article 88 of the Constitution\textsuperscript{131} and Section 2(1) of the Criminal Procedure Act, 1977,\textsuperscript{132} has the powers to institute criminal prosecutions as the \textit{dominis litis} over all offences that fall within the jurisdiction of the Namibian courts. Obviously this also includes money laundering which even crosses the borders of Namibia.

The Office of the Prosecutor-General falls under the Office of the Attorney-General administratively.\textsuperscript{133} The Attorney-General’s Office has numerous functions\textsuperscript{134} such as to provide legal advice to the Government of the Republic of Namibia, whether to ratify international treaties including money laundering ones. In other words, all laws regarding money laundering, amongst others, have to receive approval from the Attorney-General from a constitutional point of view.

\textsuperscript{131} Article 88 States: “(1) there shall be a Prosecutor-General appointed by the President on the recommendation of the Judicial Service Commission. No person shall be eligible for appointment as Prosecutor-General unless such person:
(a) possesses legal qualifications that would entitle him or her to practise in all the Courts of Namibia;
(b) is, by virtue of his or her experience, conscientiousness and integrity a fit and proper person to be entrusted with the responsibilities of the office of Prosecutor-General.
(2) The powers and functions of the Prosecutor-General shall be:
(a) to prosecute, subject to the provisions of this Constitution, in the name of the Republic of Namibia in criminal proceedings;
(b) to prosecute and defend appeals in criminal proceedings in the High Court and the Supreme Court;
(c) to perform all functions relating to the exercise of such powers;
(d) to delegate to other officials, subject to his or her control and direction, authority to conduct criminal proceedings in any Court;
(e) to perform all such other functions as may be assigned to him or her in terms of any other law.”

\textsuperscript{132} Act No. 51 of 1977.
\textsuperscript{133} Ex Parte: Attorney-General In Re: Constitutional Relationship between Attorney-General and the Prosecutor-General (SA 7/93) [1995].
\textsuperscript{134} Article 87 of the Namibian Constitution stipulates that: the powers and functions of the Attorney-General shall be: (a) to exercise the final responsibility for the office of the Prosecutor-General; (b) to be the principal legal adviser to the President and Government; (c) to take all action necessary for the protection and upholding of the Constitution; (d) to perform all such functions and duties as may be assigned to the Attorney-General by Act of Parliament.
3.3 International Law

Money laundering is a transnational crime and as such, countries need to join forces in order to effectively combat the said crime. Some members of international community have an aggressive approach towards Anti-Money Laundering. This can be implied due to numerous treaties that have been enacted since the 1980s for the purposes of combating the aforementioned crime.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988\(^{135}\) defines the crime of money laundering as follows: \(^{136}\)

(b) (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a)\(^{137}\) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences.

\(^{135}\)Article 3 (1) (b) (I) and (ii);

\(^{136}\)Article 3(1)(b)(i) and (ii);

\(^{137}\)a) i) The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;

ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;

iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in i) above;

iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

v) The organization, management or financing of any of the offences enumerated in i), ii), iii) or iv).
This Convention defines the concept “money laundering” in two facets:

In the first instance, it is defined as the exchanging of illegally obtained property for money or simply moving the said property from one place to another. This property has to be one of those listed in Article 3(1) (a) (i) – (v) of the Convention, and the culprit should have knowledge that it is an offence. Hence this definition implies that if a person exchanges or transports these prohibited substances unintentionally then such a person could escape prosecution under this treaty.

In the second instance, if the perpetrator conceals the proceeds, foundation, site or rights over the substances listed in Article 3(1) (a) (i) – (v) of the Convention, with the knowledge that they are prohibited, such party commits the offense of money laundering.

This is the definition of money laundering under the above-mentioned treaty and this analysis shows that the definition is broad. In addition, The 40 Financial Action Task Force (FATF) and the 9 Special Recommendations\textsuperscript{138} specifically state as follows under Recommendation one:


\textsuperscript{138}The FATF is an inter-governmental body which sets standards, and develops and promotes policies to combat money laundering and terrorist financing. It currently has 36 members: 34 countries and governments and two international organisations; and more than 20 observers: five FATF-style regional bodies and more than 15 other international organisations or bodies. A list of all members and observers can be found on the FATF website at \url{www.fatf-gafi.org}. Moreover, The FATF Forty and Eight Special Recommendations have been recognised by the International Monetary Fund and the World Bank as the international standards for combating money laundering and the financing of terrorism.
The United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention), define the concept money laundering as follows:

**Article 6- Criminalization of the laundering of proceeds of crime**

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

   (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

   (b) Subject to the basic concepts of its legal system: (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

The Vienna and Palermo Conventions’ definition of money laundering is similar. The major difference lies with the conventions themselves. The Vienna Convention deals mainly with the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension.\(^\text{139}\) Article one of the Palermo Convention states that, its purpose is to promote cooperation to prevent and combat transnational organized crime more effectively.

\(^{139}\) Article 2(1) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
Therefore, one can affirm that international law makers found that money laundering has application in both conventions. This could be the intention the definition was incorporated in both treaties. Therefore, it may be inferred that international law implies that money laundering may only occur if the source of the money or property is illegal. However, this chapter, and chapter 4 of this study, illustrates the contrary.

3.4 National Laws

The first money laundering legislation in Namibia was passed in 2004.\textsuperscript{140} Two years later, the Financial Intelligence Act\textsuperscript{141} came into effect and in 2012 a new Act of Parliament repealed the earlier Financial Intelligence Act. The main Acts of Parliament which deal with money laundering in Namibia are the following:

1. Prevention of Organized Crime Act, 2004\textsuperscript{142}

2. Financial Intelligence Act, 2012\textsuperscript{143}

3. Prevention and Combatting of Terrorist and Proliferation Activities Act, 2014\textsuperscript{144}


5. The Criminal Procedure Act, 1977

6. The Customs and Excise Act, 1998


\textsuperscript{140}Prevention of Organized Act of 1998.
\textsuperscript{141} Financial Intelligence Act, No.3 of 2007.
\textsuperscript{142} Act, No.29 of 2004.
\textsuperscript{143} Act, No. 13 of 2012.
\textsuperscript{144} Act, No. 4 of 2014.
These Acts will now be considered in the order stated above.

3.4.1 The Prevention of Organized Crime Act (POCA)

The purpose of POCA, as a legislative framework for a certain area of law is mostly intended to combat the rush of composed wrongdoing, and to give an authoritative component to denying lawbreakers, by and large, of the returns of unlawful action.\(^{145}\)

As was noted by the High Court in \(S \, v \, N e l^{146}\), the POCA has heavy penalties which should be balanced against the interests of the community. The interests of the community not only call for increased penal provisions but also for the need to deter crime by stripping criminals of the proceeds of their crime and the instrumentalities thereof, as shall be shown in more detail in the case of \(T r a n s n a m i b \, H o l d i n g s \, L t d \, v \, E n g e l b r e c h t^{147}\).

Furthermore, under the POCA \textit{ex parte} proceedings, especially instituted by the Prosecutor-General, are one of the circumstances in which a deviation from the open justice principle is justified, and that this avoids creating the opportunity for assets to be spirited away, concealed and dissipated before they are secured. This shows how significant this Act is in combating money laundering in Namibia. Without going into areas outside this study, the POCA Act defines money laundering as doing any act that constitutes an offence under sections 4 to 6 of the said Act. These provisions need to be reproduced here since they are key in shaping the law of money laundering in the Namibia:

4. Any person who knows or ought reasonably to have known that property is or forms part of proceeds of unlawful activities and –(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; or (b) performs any other act in connection with that

\(^{145}\) See for example in the case of south African POCA, the case of National Director of Public Prosecutions and Another v Mohamed NO and Others (2002 (4) SA 843; 2002 (9) BCLR 970; [2002] ZACC 9).

\(^{146}\) 2015 (4) NR 1057 (HC).

\(^{147}\) 2005 NR 372 (SC) at 373J – 374A; see also similarly, \(S \, v \, W e i n b e r g^{1979} (3) \, S A \, 89 \, (A) \, a t \, 98E – F.\)
property, whether it is performed independently or in concert with any other person, and that agreement, arrangement, transaction or act has or is likely to have the effect – (i) of concealing or disguising the nature, origin, source, location, disposition or movement of the property or its ownership, or any interest which anyone may have in respect of that property; or (ii) of enabling or assisting any person who has committed or commits an offence, whether in Namibia or elsewhere – (aa) to avoid prosecution; or (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, commits the offence of money laundering.

5. A person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into an agreement with anyone or engages in any arrangement or transaction whereby – (a) the retention or the control by or on behalf of that other person of the proceeds of unlawful activities is facilitated; or (b) the proceeds of unlawful activities are used to make funds available to that other person or to acquire property on his or her behalf or to benefit him or her in any other way, commits the offence of money laundering.

6. Any person who – (a) acquires; (b) uses; (c) has possession of; or (d) brings into, or takes out of, Namibia, property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities commits the offence of money laundering.

The definition of money laundering in the Namibian context is comprehensive. In other words, it leaves less room for interpretation as it tries to explain all possible scenarios which may possibly occur during the offence of this type of crime.

From the definition of ‘proceeds of unlawful activities,’ as contained in section 1 of the POCA, it appears as it was noted in *Pinto v First National Bank of Namibia Ltd and Another*, that this concept includes:

---

148 2013 (1) NR 175 (HC), paragraph 2.
any property or any service, advantage, benefit or reward that was derived, received or retained, directly or indirectly in Namibia or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived and includes property which is mingled with property that is proceeds of unlawful activity - the definition of ‘property’ includes money.

Section 4 creates the offence of disguising the unlawful origin of property. More particularly, this section brings within the ambit of the Act that, any person who knows or ought reasonably to have known that property is, or forms part of the proceeds of unlawful activities and engages in any arrangement or transaction. The section is thus embedded in extremely wide terms in so far as the definition of money laundering is concerned.

It ought to be emphasised that in accordance with the provisions of section 6, even a person who has possession of property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities, commits the offence of money laundering as per section 6. This section may be illustrated as below:

If a banker therefore knows or ought reasonably to have known that such money is or forms part of the proceeds of unlawful activities and engages in any arrangement or transaction with anyone, (inclusive of his or her clients), in connection with such moneys - or if a banker performs any other act in connection with that money and the transaction is likely to have the effect of concealing or disguising the nature, origin, source, location, disposition or movement of the money or its ownership, or that the arrangement enables or assists any person who has committed or commits an offence to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, the banker – and one would imagine the client as well – would commit the offence of money laundering in terms of Section 4 of the POCA.
In terms of section 7 of the POCA, the liability of persons under sections 4, 5 or 6 quoted above is extended to a director, managers, secretaries or other similar office holders of corporations. As usual, in cases of money laundering, severe penalties are imposed. Namibia is no exception to this rule. For instance section 3 of POCA imposes a fine not exceeding N$1 billion, or imprisonment for a period not exceeding 100 years, or both the fine and imprisonment.

Section 7 therefore means that, a court of law can pierce the corporate veil of a corporation and implicate the individuals involved. In this regard, the POCA overrides the common law.

Taking into consideration of South African cases, one notes as it was said in Ex parte Gore and Others NNO\textsuperscript{149} that statutory provisions allowing the piercing or lifting of the corporate veil are supplemental to, rather than substitutive of, the common law. It has been accepted generally that the approach at common law has not been clearly defined, but its essence is captured in the following pronouncement of Corbett CJ in The Shipping Corporation of India Ltd v Evdomon Corporation and Another:\textsuperscript{150}

\begin{quote}
It seems to me that, generally, it is of cardinal importance to keep distinct the property rights of a company and those of its shareholders, even where the latter is a single entity, and that the only permissible deviation from this rule known to our law occurs in those (in practice) rare cases where the circumstances justify "piercing" or "lifting" the corporate veil. And in this regard it should not make any difference whether the shares are held by a holding company or by a Government. I do not find it necessary to consider, or attempt to define, the circumstances under which the Court will pierce the corporate veil.
\end{quote}

\textsuperscript{149} 2013 (3) SA 382 (WCC) in para 34.
\textsuperscript{150} See also Van Zyl And Another NNO v Kaye NO And Others 2014 (4) SA 452 (WCC).
Suffice it to say that they would generally have to include money laundering, and or any other associated offence showing improper conduct in the establishment or use of the company or the conduct of its affairs. As stated in Gore, this rule brings about a remedy that can be provided whenever the illegitimate use of the concept of juristic personality adversely affects a third party in a way that reasonably should not be tolerated. This is the exception to the juristic personality of a company.

Furthermore, other examples of ‘improper conduct’ on which basis our courts have pierced the corporate veil are; when a legal entity is found to be the ‘instrumentality’ or ‘alter ego’ or ‘agent’ or ‘puppet’ or ‘mask’ of its shareholders. Money laundering cases often involve this, shown in Chapter 5 below. In those cases the owner or owners of the shares have managed their company in such a way as not to separate their personal affairs from those of the legal entity. The company does not, in truth, carry on its own business or affairs, but acts merely in the furtherance of the business or affairs of its shareholders. The company is a mere instrumentality for business conduct promoting, not its own business or affairs, but those of its controlling shareholders. Largely however, as was held in the case of RP v DP And Others the point of departure is that courts, when dealing with companies, should not lightly disregard a company's separate personality, but should strive to give effect to and uphold it, “but where fraud, dishonesty or other improper conduct is found to be present, other considerations will come into play.”

---

151 1994 (1) SA 550 (A) at 566C – F.
153 Ritz Hotel Ltd v Charles of the Ritz Ltd and Another 1988 (3) SA 290 (A); Cape Pacific Ltd supra; and see generally Blackman, Jooste & Everingham Commentary on the Companies Act vol. 1 at 4 – 140 – 2 revision service 6.)
154 2014 (6) SA 243 (ECP).
155 See also Cape Pacific Ltd (supra) at 803H – I; Ebrahim v Airport Cold Storage (Pty) Ltd 2008 (6) 585 (SCA) ([2009] 1 All SA 330) para. 22.
One may argue that the POCA is draconian and invasive on the constitutional rights of those involved in any matter where the Act is involved. This matter is covered below under the forfeiture of illegally obtained property or proceeds of crime in general. The case of *Lameck and Another v President of The Republic of Namibia and Others*\(^{156}\) shows these constitutional dimensions. The details or critical analyses thereof are contained in Chapter 5 below.

However, for the purposes of this chapter and on this point, it is important to mention that the grounds upon which provisions of the POCA were challenged were *inter alia*: that they violated the fundamental principle in Article 12(3) of the Namibian Constitution by retrospectively criminalising and imposing penalties for conduct which was lawful when it was committed, and also by contravening Article 21(1)(j) of the Constitution and other articles reinforcing those provisions such as Articles 7, 8, 11 and 16 of the Constitution. They sought to have the definitions of ‘unlawful activity’ and ‘proceeds of unlawful activities’ set aside. These provisions related to money laundering offences and asset forfeiture. The court noted that the definition of ‘unlawful activity’ and 'proceeds of unlawful activities' includes reference to conduct ‘before or after the commencement of this Act’.

\(^{156}\) 2012 (1) NR 255 (HC).
In the consequence, the court held that what were criminalised were the current possession, acquisition and use of the proceeds of unlawful activities and not the original conduct which rendered those proceeds as unlawful. That conduct could have occurred before the POCA came into force, but it was the subsequent possession, use or acquisition after the POCA came into force which was criminalised by the POCA. The offences did not operate retrospectively and thus, did not contravene article 12(3)\(^\text{157}\) of the Namibian Constitution.

3.4.2 The Financial Intelligence Act, No. 13 of 2012

The Financial Intelligence Act, 2012\(^\text{158}\) repealed the Financial Intelligence Act, 2007 (Act, No. 3 of 2007) in whole. This is vital to mention in this study for the reason that, as it shall be seen herein, some cases will make reference to the 2007 Act as they were decided before its repeal.

The Financial Intelligence Act (FIA) was enacted to combat money laundering in Namibia, the process by which proceeds of a criminal activity are disguised to conceal their illegal origins. In its simplest form, it is “dirty” money that was gained illegally and then used in numerous legal transactions to make it appear “clean”.\(^\text{159}\)

\(^{157}\) No persons shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

\(^{158}\) Talman Friedrich and Sabine Halberstadt. (2013). Retirement Fund Solutions - *The new FIA Act (Act 13 of 2012)*: The 2012 Act introduced provisions that were not in the 2007 Act: The new Act is considerably more detailed and specific than the old Act; It establishes the Financial Intelligence Centre (Centre) that takes over the responsibilities previously shouldered by the Bank of Namibia; The Centre now has its own staff and several new definitions were introduced amongst others.

\(^{159}\) Staff Reporter. “Why the Financial Intelligence Act was enacted”. New Era, 19 August 2013.
The Financial Intelligence Act, 2012 (FIA) defines the concept of “money laundering” or “money laundering activity” in the following manner:

"money laundering” or "money laundering activity" means-

(a) the act of a person who-

(i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;

(ii) acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or

(iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity,

where-

(aa) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or

(bb) in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity; and

(b) any activity which constitutes an offence as defined in sections 4, 5 or 6 of the Prevention of Organised Crime Act, 2004 (Act 29 of 2004)

Two sides of the afore-mentioned definition are, in the main, of relevance in this instance: there must be a transaction, including banking transactions, which involve the proceeds of unlawful activity - as may be inferred from objective factual circumstances. And where a person knows, or has reason to believe, that the property is a part or whole proceeds from any unlawful activity – or where in respect of the conduct of a person – engaged in a transaction which directly or indirectly involves the proceeds of unlawful activity – such person – without reasonable excuse fails to take reasonable steps to ascertain whether or not
the property is proceeds from any unlawful activity – or – there must be activity which constitutes an offence as defined in sections 4, 5 or 6 of the Prevention of Organised Crime Act, 2004[^160].

Authors that were consulted in the literature review (chapter 2), international law and national laws of Namibia define money laundering as simply making illegal money or property appear legitimate. This definition may be illustrated in the graph below:[^161]

**Figure 1: Schemes and processes in conventional money laundering[^162]**

![Process of Money Laundering](https://www.google.com.na/search?q=pictures+of+money+laundering&safe=strict&rlz=1C1OPRB last accessed on July 25, 2016.)

This study does not totally agree with the afore-mentioned graph because it reflects an incomplete mirror of the money laundering dynamics. Put differently, a person may earn his or her funds legitimately and then afterwards use the process depicted above to hide his or her identity, and subsequently use such funds to support illegal activities e.g. terrorism. The conceptual framework of terrorism in relation to money laundering is dealt with in chapter 5 of this study.

Nevertheless, one of the interviewees during this study argued that it is not possible to launder clean money, in that one cannot clean money that is already clean. This study is of the view that, money laundering process does not clean money because unclean money will always remain unclean. However, what money laundering does is to make such money appear clean and hide its sources. Therefore, the respective interviewees of this study, respective authors, national and international laws that were consulted fail to comprehend that clean money may also be laundered in the same process that illegal money or property is laundered. The following is an illustration on how this may be made possible:

Suppose X intends to support a terrorist organization with his legitimate funds. X will conceal his or her identify in order to move his or her money to a terrorist organization. In order to achieve this, X will have to use the same stages of money laundering as depicted in the afore-mentioned graph titled: ‘processes of money laundering’, in order to conceal the origin of his or her legitimate funds. In other words, money laundering is mostly about hiding the source of money or property, be it illegal or legal funds.

Similarly an illustration of money laundering without the layering stage is exemplified below:

X is a drug trafficker who makes N$10 000 per day and is to date worth one million. X goes to a furniture shop and buys furniture worth N$15 000 and also treats him or herself with a car worth N$100 00, and pays all this in cash.

The question that follows is, did X commit the crime of money laundering? Bearing in mind that the afore-mentioned figure\textsuperscript{163} implies that money laundering consists of three stages (placement, layering and integration). This study opposes this view that this criminal act is only possible when the three stages are present.

In the afore-mentioned scenario, X paid cash for the furniture and motor vehicle. This amounts to placement of illegal money in the financial system, the first stage of money laundering. Additionally when the shop owners give X the furniture and the motor vehicle, it amounts to integration, the last stage of money laundering. It can be seen that, in this case money was laundered without having to go through stage two, layering.

It may be said that, money laundering involving the three stages (placement, layering and integration) amounts to the conventional approach because this is how most authors seem to perceive it.164 This study’s approach may be said to be the unconventional approach because it is different from other views.165 In that money laundering will not always comprise the three stages, as the two (placement and integration) may be enough to constitute the act of money laundering.

It is often assumed that money laundering commences with the collection of illegal funds (conventional approach) and ends up with clean activities. However, clean money may be laundered as well. This may be possible in the financing of terrorism activities/rebel organisations, as these gangs are more concerned with hiding the identity of their financier regarding their illegal activities.

The foregoing can be explained by the case of Ngeve Raphael Sikunda v the Government of the Republic of Namibia:166

---

165 Ibid.
Home Affairs from expelling his father, Domingos Sikunda, who had been residing in Namibia since 1976. On a number of occasions, Sikunda had publicly held himself to be the official representative of UNITA in Namibia. For 21 years Sikunda had been operating a thriving restaurant and lodge business at Rundu on the border with Angola and close to areas then controlled by UNITA. It was believed that Sikunda, who claimed through newspapers and correspondence sent to the Office of the President, that he was the official representative of UNITA in Namibia, was actively involved in the UNITA cause. He was using the proceeds of his business to fund the UNITA war efforts, which the international community considered to be acts of terrorism. Other examples of businesses which were set up to support terrorist activities in Angola are two fuel service stations in the Caprivi (now Zambezi Region), one at Divundu and the other at Kongola on the border with Angola, close to UNITA-controlled territory.

These service stations are owned by Portuguese-speaking residents of Namibia, and appear to have been established to provide fuel to rebel UNITA forces. Furthermore, the criminal investigations into the attempt by Mishake Muyongo’s supporters to bring about the secession of the Caprivi Strip, which led to about 130 Namibians being indicted for treason, suggest that there was collaboration between the secessionists and UNITA. Some of the weapons used in the unsuccessful insurrection of 2 August 1999 were obtained from UNITA in exchange for fuel. It appears that UNITA had always obtained its fuel supplies from Namibia, through Namibians residing in the Zambezi Region. In other words, there had been long-standing collaboration in that region between Namibians and UNITA.

The Sikunda case shows that it may be possible to launder legally obtained funds because he used legal money to support the UNITA group (illegal activities). The authorities did not know how he gave the funds to UNITA prior to his public statements. This may be an indication that he might have laundered his clean money to this rebel group, and eventually these funds were used for illegal activities.
This analysis shows that it is possible to launder legally obtained funds. Money laundering is premised on disguising the origin or source of the money whereas, this study’s view is that the identity of the launderer may be disguised as well and eventually achieve the same results through the processes of money laundering.

It is against this background that this study argues that a complete definition of money laundering should be as follows:

*Money laundering is a process of placing illegitimate or legitimate money or property into the financial system and advancing such for illegitimate or legitimate purposes.*

In the afore-mentioned definition, it can be seen that the moment illegal money is introduced into the financial system, it amounts to money laundering, layering is not necessary. However legitimate money or property has to reach the end user to constitute money laundering.

This study further proposes that, the complete graphs, as far as the money laundering stages are concerned, should appear as follows:

---

167 Offences associated with money laundering.
Figure 2: The three processes of money laundering according to this study:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Placement of clean money/dirty money</td>
</tr>
<tr>
<td>2.</td>
<td>Layering of clean money/dirty money</td>
</tr>
<tr>
<td>3.</td>
<td>Integration of clean money/dirty money</td>
</tr>
</tbody>
</table>

The graph above has been formulated as a result of this study since it does not agree with the conventional approach of money laundering. It can be appreciated from the graph above that clean or dirty money are both susceptible to money laundering.

Be that as it may, the FIA has other important aspects worth discussing in this study. It may be said that the FIA mainly revolves around three institutions as far as its administration is concerned, namely accountable\textsuperscript{168}, reporting\textsuperscript{169} and supervisory institutions\textsuperscript{170}. This is reflective in \textit{Pinto v First National Bank of Namibia Ltd and Another}\textsuperscript{171}. In this case, it was noted that the FIA does indeed make a bank an ‘accounting institution’ on which, in terms of sections 19, 20 and 21, reporting obligations are imposed. Accountable institutions are listed in Schedule 1 of FIA.

\textsuperscript{168} Section 1 of FIA II define “accountable institution” as a person or institution referred to in Schedule 1, including branches, associates or subsidiaries outside of that person or institution and a person employed or contracted by such person or institution.

\textsuperscript{169} Section 1 of FIA II “reporting institutions” means a person or institution set out in Schedule 3. SCHEDULE 3, REPORTING INSTITUTIONS, (Section 2): 1. A person or institution that carries on the business of a motor vehicle dealership, 2. A person that carries on the business of second hand goods. 3. A person that carries on the business of a gambling house, a totalisator or bookmaker. 4. A person or entity that carries on the business of trading in jewellery, antiques or art. 5. Any person or entity regulated by the Namibia Financial Institutions Supervisory Authority (NAMFISA) who conducts as a business one or more of the following activities - (a) Short term insurer.

\textsuperscript{170} SCHEDULE 2, SUPERVISORY BODIES, (Section 3) – 1. The Namibia Financial Institutions Supervisory Authority established in terms of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001).

\textsuperscript{171} 2013 (1) NR 175 (HC), discusses FIA Act of 2007 which is now repealed however, its principles of this case are still valid in the context of the new Act because the sections referred to in the afore-mentioned case have been retained in the new Act.
The term ‘business relationship’ is defined in section 1 to mean “an arrangement between a client and an accounting institution for the purpose of concluding transactions on a regular basis” - that would obviously include banking transactions. The word “client” is defined to mean ‘a person who has entered into a business relationship or a single transaction with an accounting institution’ – it is clear that a person who holds a bank account with a banking institution has entered into such a business relationship with the particular bank in question.

Additional factors such as that the banker-client relationship is contractual, in terms of which the bank will conduct banking transactions with or on behalf of the client, and that a client has to pay banking charges for the services so rendered, are all suggestive that the relationship between banker and client is also a ‘business relationship’ which would fall within the ambit of the above definitions.\(^\text{172}\)

In terms of section 25, accounting institutions, i.e. banks, must adopt, develop and implement a customer acceptance policy, internal rules, programmes, policies, procedures and controls as prescribed to protect its systems against any money laundering activities. An accounting institution must designate compliance officers at management level who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and the reporting of suspicious transactions.\(^\text{173}\)

\(^{172}\) Ibid paragraph 68. 
\(^{173}\) Ibid paragraph 69.
It is to be noted that section 26 of the FIA imposes reporting obligations on accountable and reporting institutions as well as ‘reporting procedures’\textsuperscript{174} – which – as far as supervisory bodies are concerned may attract – on non-compliance, a fine not exceeding N$500 000 or, in the case of an institution which is an individual, to imprisonment for a period not exceeding 30 years or to both such fine and imprisonment.

Furthermore, it must be noted that an accountable institution that has made a report to the Bank of Namibia concerning a suspicious transaction, may continue with and carry out the transaction in terms of section 27, unless the Bank of Namibia directs such an accountable institution in terms of section 28 not to proceed with the transaction. The Bank of Namibia, in turn, is afforded the right in terms of section 28 to direct the accountable institution in writing, not to proceed with the carrying out of a suspicious transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction, for a period determined by the Financial Intelligence Centre under the Bank of Namibia, in order to allow the Centre to make the necessary inquiries concerning the transaction. If the Centre deems it appropriate, to inform and advise an investigating authority and the Prosecutor-General.\textsuperscript{175}

\textbf{3.4.3 The Link between the POCA and the FIA}

The FIA and the POCA are definitely linked and serve the same purpose in many respects and one of such purposes is to combat money laundering, one of the main aims of the FIA.\textsuperscript{176} The POCA was also enacted, \textit{inter alia}, to introduce measures to combat money laundering\textsuperscript{177}. It is not surprising therefore that the definition of ‘money laundering’ – as contained in section 1 of FIA– then contains a direct link to the POCA, which Act then

\textsuperscript{174} Section 40.
\textsuperscript{175} Pinto \textit{v First National Bank of Namibia Ltd and Another}, supra note 174, paragraph 70.
\textsuperscript{176} See Preamble to FIA.
\textsuperscript{177} See preamble to POCA.
responds to the link to the FIA in section 9.

This link was further shown in the case of *Pinto v First National Bank of Namibia Ltd and Another*:178

The applicant had won an amount of N$250 000 in a lottery. He deposited the cheque issued to him by the lottery company into his bank account. When he tried to withdraw an amount of money from his account, he discovered that the deposit had been reversed. His bank account was with the First National Bank, who had acted following a request from Standard Bank. The applicant sought an order declaring this action null and void and an order for the repayment of the money into his bank account. It was the respondents' case, *inter alia* that the transaction which had led to the applicant winning the money had been fraudulent and that it was in contravention of the POCA and the FIA.

The parties were in agreement that the relationship between a bank and its client depended on the contract and basically that of bank-client relationship. The inquiry which the court was called upon to consider was whether the POCA and the FIA had changed that legal relationship and whether Standard Bank had a true blue purpose behind its demand that FNB reversed the deposit into the applicant’s account.

The court held that, in the enquiry - of whether or not any statutory terms could be superimposed on a contract - one would have to consider the circumstances of the particular case, the ‘*naturalium*’ of the agreement, whether or not the contract was of the type in which the law implied the term and whether or not the parties had expressly excluded such term. One would also have to consider whether or not the legislature intended to use its overriding power to nullify or control any attempt by the parties to exclude a term imposed by statute or the common law in their contract. It was further held that, in terms of the Act, a bank was an 'accounting institution' and that a banker and customer had a “business relationship” in terms of the FIA. The purpose of both the FIA and the POCA in this context was to prevent money laundering or any suspicious transactions. Consequently, the Bank of Namibia has authority under the FIA to direct a bank to refrain from

---

178 2013 (1) NR 175 (HC).
entering into transactions which were considered suspicious.\textsuperscript{179}

Thus it was emphasized that the FIA was linked with the POCA in serving to deal with suspicious transactions and money laundering.

The court also said that the cumulative effect of the provisions of the POCA and the FIA was ultimately to the effect that a bank may lawfully refuse to honour a client's instructions for payment in the given circumstances; a particular credit entry may thus also be validly reversed by a bank on that same account. For this reason, as the court held, the provisions of the FIA and the POCA, in so far as they affected the banker-client privilege, were to be regarded as terms imposed by law on the traditional banker-client relationship and the contractual bond that existed between them. The first respondent had been under an obligation to act in accordance with the directive from the Bank of Namibia regarding the suspicious transaction from which the applicant had benefitted. The application was thus dismissed with costs.

Furthermore, in the \textit{Pinto} case, the court reiterated that the following factors are indicative of the legislature’s intention in regard to the question whether or not the applicable provisions of the FIA and the POCA are to be regarded as contractual terms implied by law, which would thus have to be superimposed on the standard banker-client agreement. It appeared that the court agreed that the banker and client can exclude the operation of the POCA or from their underlying agreement. In such an instance, the court will raise the question whether the legislature has intended to use its overriding power to nullify or control any attempt by the parties to exclude the terms imposed by the FIA and the POCA on their contract. The court stated the position clearly:

\textsuperscript{179} \textit{Ibid} 176.
a) the provisions of the FIA and the POCA have expressly been made applicable to banking transactions and thus also on the banker and client relationship and on any business they may transact;

b) the provisions of the FIA and the POCA impact directly or indirectly on banking business and thus on the banker-client relationship;

c) both contraventions of the FIA and the POCA attract severe penalties; these penalties apply to banks as well, whose business operations very often lie at the core of money laundering activities; and

d) it would have been an easy matter for the legislature to have provided for the exclusion of certain categories of persons and entities – such as bank and bankers and their clients - from the operation of these statutes – which it did not do for obvious reasons. ¹⁸⁰

In the view of the court decision above, there can be no question that it is the intention of the legislature to use its overriding power to nullify an agreement between parties that has excluded the terms imposed by the FIA and the POCA in their agreement. Therefore, the FIA and the POCA should be regarded as terms imposed by law on the traditional banker-client relationship and the contractual bond that exists between them.¹⁸¹

According to the court, this finding in turn exonerates the banks who in terms of the residual obligations imposed by the FIA legislation – not only have the obligation to report the suspicious transaction – but who are also obliged to honour the Bank of Namibia’s request, not to proceed with the carrying out of the suspicious transaction or any other, in respect of the funds affected by that transaction or the proposed one for the period determined by the Bank of Namibia, in order to allow it to make the necessary inquiries concerning the transaction, and to inform and advise an investigating authority and the Prosecutor-General thereof.

¹⁸⁰ it is to be noted however that only the FIA has limited exemption provisions in terms of Section 51 ‘The Minister may, on the recommendation of the Bank, if he/she considers it consistent with the purposes of this Act or in the interest of the public, by order published in the Gazette, exempt a person or class of persons from all or any of the provisions of this Act for such duration and subject to any conditions which the Minister may specify.’

¹⁸¹ Pinto case, supra note 174 paragraph 93.
3.4.4 Prevention and Combatting of Terrorist and Proliferation Activities Act, 2014
(PACOTPAA)

The enactment of the PACOTPAA has put Namibia amongst the first countries in the world which effectively contribute to international peace, democracy, security and stability in this regard.182

Large-scale money laundering schemes invariably contain cross-border elements. Since money laundering is an international problem, international co-operation is a critical necessity in the fight against it.183 Therefore, since it is an international crime one may state that, globally it is a duty upon every state to detect and deter this criminal activity, and also curb the financing of terrorism which is linked to it. This is analysed in more detail in chapter 5 of this study. It is in this light that the PACOTPAA was passed, in order to cover the offences of terrorism, proliferation and other offences connected to or associated with terrorist or proliferation activities which are inevitably associated to money laundering.

Connected to this, the PACOTPAA provides for measures to prevent and combat terrorist and proliferation activities, measures to give effect to the international conventions, Security Council Resolutions, instruments and best practices concerning measures to combat terrorist and proliferation activities.

The PACOTPAA further provides for measures to prevent and combat the funding of terrorist and proliferation activities, and for the investigative measures concerning terrorist and proliferation activities. The Act also covers issues relating to measures to proscribing persons and organisations that conduct terrorist and proliferation activities.

More particularly, the PACOTPAA is very important to the crime of money laundering for it makes it an offence in sections 2, 3 and 23 to deal with, enter into or facilitate any

---

transaction or perform any other act in connection with funds connected with or owned by individuals, entities and other groups associated with individuals or/and entities listed by the United Nation (UN). The prohibitions further establish an effective freeze over the funds connected with or owned by the said individuals, entities and other groups as contained in the lists to ensure that no transaction or any other act is performed in connection with such funds. This means that (PACOTPAA) is very much linked to the POCA and the FIA under the general anti-money laundering regime of the Namibia.

The PACOTPAA does not deal directly with money laundering but seems to have an underlying assumption that money can be laundered in order to sponsor terrorism. That is the primary target of the PACOTPAA, to stop or curb the use of money for illegal activity. Thus, any money from Namibia should not be used for the sponsorship or proliferation of terrorist activities.

The PACOTPAA is further connected to the FIA, because the FIA is the major law governing money laundering in Namibia and the PACOTPAA combats the funding of terrorist and proliferation activities. This study analyzes the relationship between money laundering and the funding of terrorism in Chapter 5 of this study.

3.4.5 International Co-operation in Criminal Matters Act, 2000 (ICCMA)

It is mentioned in Chapter 1, and chapter 2 that indeed money laundering is not just a national concern but a global one as well, which calls for various States’ cooperation. Namibia is a signatory to the United Nations Convention against Transnational Organised Crime. In this context there is need for international cooperation in combating money laundering. The Act thus provides for facilitation of the provision of evidence, the execution

---

of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between Namibia and other countries.

This Act was passed on the basis of the dualistic nature of the Namibian law as mentioned above. It has to be reiterated that dualist systems are subject to one constraint. International and domestic laws exist separately and most often function independently of one another. In contrast to monist systems, where a State with a dualist system binds itself to an international treaty, the treaty does not automatically have the authority of national law. Accordingly, national legislative action is required for incorporation in order to give the treaty its full effect.

The Act aims to facilitate the provision of evidence, the execution of sentences in criminal cases and the confiscation and transfer of proceeds of crime between Namibia and foreign States. Schedule 1 lists the foreign States in respect of which Act No. 9 of 2000 applies.\footnote{These include all the SADC countries, namely: the Democratic Republic of Congo, Lesotho, Swaziland, Angola, Botswana, Malawi, Mauritius, Mozambique, Seychelles, South Africa, Zambia, Zimbabwe and Tanzania.} The Act specifically provides for the mutual provision of evidence; the mutual execution of sentences and compensatory orders; the confiscation and transfer of proceeds of crime. The concept of confiscation seizure and forfeiture is covered below.

Part VI provides for the confiscation and transfer of proceeds of crime. This part is relevant to money laundering as it shows that even if the criminal got the proceeds of money laundering from outside the country, such proceeds can still be forfeited, as it was noted by Prosecutor-General v Uuyuni.\footnote{2015 (3) NR 886 (SC) paragraph 28, deriving authority from National Director of Public Prosecutions v Mohamed NO and Others 2002(4) SA 843 (CC) the Constitutional Court of South Africa after stating the purpose of POCA in paras 16 to 19 and 22.} One may say that this Act represents the culmination of a protracted process of law reform, which has sought to give effect to Namibia’s international obligation, to ensure that criminals do not benefit from their crimes. The Act uses two
mechanisms to ensure that property derived from crime or used in the commission of crime is forfeited to the State. These mechanisms are set forth in Part IV of the Act. The provisions are very complementary to those of the POCA as already mentioned above.

Where property has been suspected to be derived from some crime, the act provides for mutual assistance in granting a restraint order. In terms of section 23, where the High Court makes a restraint order, the High Court may, on application made to it, issue a letter of request in which assistance from a foreign State is sought in enforcing such order in that foreign State, if it appears to the High Court that the person against whom such order has been made, holds property in that foreign State.

The Act is also linked to the POCA, for example, once a foreign order is registered and has the effect of a domestic order, it is for the purposes of the POCA to register it. This makes an order effective, where the restraint order itself is not enough, or requires that the property be seized. It might also be necessary that some other kind of ancillary order — for example, the interdictory order in this case — be granted, that the court considers appropriate for the proper, fair and effective execution. So, if registration of a foreign restraint order gives it the effect of a local judgment, it then empowers the court to grant ancillary orders that render the registration more effective. This will help in curbing money laundering.

There have been no prosecutions in the Namibian courts under this Act. It has to be mentioned that sometimes cases which fall under this Act are difficult to handle judicially. Thus at times the law of diplomacy trumps the municipal courts. Compounding this also are other technical issues including that of locus standi. The South African case of *Tulip Diamonds Fze v Minister of Justice and Constitutional Development and Others* is of relevance here:

---

187 2013 (1) SACR 323 (SCA).
The Belgian authorities were investigating criminal charges against a Belgian company (Omega Diamonds) and a Belgian national (Goldberg). During the course of these investigations, they found invoices issued by a South African company (Brinks SA) showing that it had transported diamond shipments to the appellant, a company based in Dubai.

The Belgian authorities then requested their South African counterparts to seize and make copies of the documents relating to similar shipments to the appellant. The first and second respondents acceded to the request made in terms of the provisions of the South African International Co-operation in Criminal Matters Act, 1996\(^\text{188}\) and issued a subpoena requiring Brinks to produce the required documents and they were willing to comply. The appellant, however, applied in the high court for an order setting aside the decisions of the respondents.\(^\text{189}\) The application was refused on the basis that the appellant was a foreign company which had no presence in South Africa and no standing to invoke any constitutional rights. The application was also refused on the merits, including on the appellant's claim to confidentiality.

On appeal the court held that it had based its conclusion on the appellant's standing on a faulty premise. All that the appellant had to show was that it had a direct and substantial interest in the right that was the subject-matter of the litigation. There was no bar to a foreign litigant, who had a protectable interest in this country, seeking to protect that interest before a South African court.\(^\text{190}\) The court held however that the appellant’s difficulty in establishing its standing was that its assertion of confidentiality was unsubstantiated and amounted to no more than a bald claim to confidentiality: One needed only to have regard to the documents referred to in the founding affidavit to see that by their very nature they were not confidential.\(^\text{191}\)

This might be informative to the jurisprudence to be developed under the Namibian Act in the context of money laundering.

---

\(^{188}\) Act 75 of 1996.

\(^{189}\) *Tulip Diamonds Fze v Minister of Justice and Constitutional Development and Others*, supra p324.

\(^{190}\) Paragraph 13 at 328f and 14 at 329a.

\(^{191}\) Paragraph 15 at 329d–e.
3.4.6 The Criminal Procedure Act, 1977 (CPA)

The purpose of criminal procedure is to prescribe the technical and procedural aspects of criminal law. This Act precisely covers this area of the law and in context it determines what can be done procedurally in apprehending and prosecuting accused persons of the crime of money laundering. Therefore the Act covers both pre-trial and trial aspects related to money laundering and other crimes in general. The CPA also lays down the procedure with regard to searching and seizure.

Money laundering is treated as a serious crime under Schedule 1 of the CPA. An important point to note here is that the CPA, just like other statutes, contains provisions linked to certain offences which are not expressly identified in such provisions, but are merely described as offences listed in Schedule 1 to the CPA. These Schedule 1 offences carry heavy penalties and are closely linked to others; hence one can be a competent verdict for the other. One should note, however, that the considerations relevant to sentencing may overlap with those governing the imposition of an administrative penalty since both are designed to prevent statutorily prohibited conduct. This will become clearer as we consider the contents of Chapter 6 below.

3.4.7 The Customs and Excise Act, 1998

Since money laundering and its associated activities can be transnational as pointed above, there is an imperative to stop it from crossing the borders. This is obviously not possible in absolute terms, thus, there are pieces of legislation such as the Customs and Excise Act, 1998. This Act was passed in order to provide for the levying, imposition, payment and collection of customs and excise duties, of a surcharge and of a fuel levy; to prohibit and control the import, export or manufacture of certain goods; and to provide for matters incidental thereto.
The Act is administered by the Ministry of Finance, under the department of customs and excise. This department is entrusted with customs and excise responsibilities as envisaged by the Act. Under this Act, if any activity across the borders is suspicious, it can be investigated, leading to arrest of the criminals involved. In addition, if any consignment is found on any vehicle, and such is not declared as per the requirement of the Act, such action can also lead to an arrest and conviction. In an Unreported case in March 2016, two truck drivers were found guilty of contravening Section 14 (a) read with Sections 1 and 91 of the Act for non-declaration of goods upon entering Namibia – as well as contravening Section 6 (c) read with Sections 1, 10 and 11 (1) of the Prevention of Organised Crime Act, 29 of 2014 involving money laundering.

3.4.8 The Anti-Corruption Act, 2003 (ACA)

The Anti-Corruption Commission was established under the Constitution. This Act is an enabling piece of legislation which provides for the prevention and punishment of corruption; and to make provision for matters connected therewith. The Act therefore is relevant in the context of money laundering as it covers some ancillary or associated crimes. This point is made much clearer in Chapter 6 below, which notes that corruption is a broadly defined crime and it can even include money laundering or activities and crimes associated with it.

The broad definition of corruption however has been a source of contestation in the courts of Namibia. Particularly, the ACA was challenged as unconstitutional in the Teckla Lameck v

---

192 (Namibia) Rundu Regional Court.
194 See Preamble to the Act.
The constitutional challenge to ACA, related to the definitions of ‘corruptly’ and ‘gratification.’ The applicants in this case argued that these terms violated the Constitution because they were too broad and vague and did not adhere to the principle of legality which was entrenched in the Constitution.

The court held that the definition of ‘corruptly’ was unduly vague and did not meet the test of indicating with reasonable certainty what was hit by it to those who were bound by it, as was required by the principle of legality. Thus accordingly, the court held that this definition should, in its current form, be struck down.

In regard to the definition of ‘gratification’, the court held that although wide, it was not unduly vague. It explained that the concept of gratification in the context of corruption would doubtless take on many varying forms; the definition would of necessity be wide, but that did not translate itself into impermissible vagueness in the sense referred to it. In all, therefore it was held that the applicant had not established that the definition of corruption was impermissibly vague under the constitution.

On appeal of the Lameck case, judgment was delivered in February 20, 2012 court held that “corruptly” should remain intact in the Anti-Corruption Act, 2003 (Act No. 8 of 2003) and be given its ordinary meaning. Therefore, the Appeal court reversed the High court decision and gave guidance on how the definition of “corruptly” should be presented. During the interviewing stage of this study, most interviewees concurred with the judgment of the Appeal court. Nonetheless, this ruling has a bearing on the overall definition of money laundering as shown in Chapter 5 below.

196 Ibid.
3.5 Forfeiture of the proceeds of crime

Search, seizure and forfeiture under the Namibian law happen under various statutes and is obviously done under the dictates of the Constitution. This is a very delicate part of the law because in all the processes involved, when a search, a seizure or forfeiture happens, some rights of the affected person can easily be violated as already noted in various sections above.

One notable Act which targets search and seizure in respect of money launderers is the Inspections of Financial Instructions Act.\textsuperscript{197} This Act is administered by the Namibia Financial Institutions Regulatory Authority (NAMFISA). Under this Act, the NAMFISA inspectors are authorized officers who have the power to enter into, search and seize documents and gather any evidence that is relevant to any financial issues.

Further, under this Act, NAMFISA is able to foster a stable and safe financial system contributing to the economic development of Namibia. It should be noted that NAMFISA is an independent institution established by and under the Namibia Financial Institutions Supervisory Authority Act, 2001.\textsuperscript{198} Its aim is to regulate and supervise the non-banking financial sector in Namibia. This relates, \textit{inter alia}, to the business of the Namibian Stock Exchange; Long-term and Short-term Insurance; Asset Management; Unit Trusts (Collective Investment Schemes); Pension Funds; Medical Aid Funds; Public Accountants and Auditors; Exchanges, Stock Brokers; Brokers and Agents of Insurance companies and Money Lenders.

\textsuperscript{197} Act No. 38 of 1984.
\textsuperscript{198} Act No. 3 of 2001.
It may be stated that the right to privacy is indeed of the utmost importance when it comes to inspections, search and seizure.\textsuperscript{199} However, the NAMFISA Act is aimed primarily at regulating commerce, the nature and extent of the invasion of the privacy is thus circumscribed and the powers of the inspectors have limits. It should be understood in this context that the primary purpose of the Act is to provide a mechanism for the enforcement of regulatory control in the financial services industry, with the result that it serves an important function in the public domain.\textsuperscript{200} Further, however, it is understandable and justifiable to reason that the extent of the limitation of privacy was proportional to the manner in which the envisaged purposes are advanced.

It has been noted above that the Criminal Procedure Act, 1977 (CPA), as amended, lays down the procedure with regard to searching and seizure. It characterizes the general provisions regarding searching. It is submitted that there are numerous other acts that authorize searching. It is for this reason that section 19 of the Act declares that it does not seek to derogate from any power deliberated by any other Act. This means that the Act respects what is provided for in the Constitution and other Acts affecting or touching on this subject.

It should be noted however that the right to privacy is not inviolable, and in appropriate circumstances, must yield to other considerations of public policy and interests of justice such as; where there is reasonable suspicion that a person is committing money laundering.

\textsuperscript{199} Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others 2001 (1) SA 545 (CC) (2000 (2) SACR 349; 2000 (10) BCLR 1079) in para [18].

\textsuperscript{200} Mistry v Interim Medical and Dental Council of South Africa and Others 1998 (4) SA.
The CPA also allows the forfeiture and seizure of proceeds of crime. However, the Act does not allow the State to forfeit the proceeds of crime to the State; a prosecutor should thus know which Act allows that. A wrong procedural move by the State might prove devastating and this is shown by what happened in the case of *S v Roux*.\(^{201}\) In this case, the accused had been convicted of a charge of attempting to defeat or obstruct the course of justice on the basis that he had given N$6000 to each of the five complainants, with the aim of persuading them not to report him to the authorities about the sexual acts that he had caused them to commit with him. In doing so, his intention was to defeat or obstruct the course of justice. During the course of the investigation the police had seized various amounts in cash found in some of the complainants' possession.

All the charges against the accused were committed in relation to street children who lived in poverty, and who normally would not have had the occasion to possess such large sums of money. Some of the complainants spent some of the money on *inter alia*; clothes, shoes and bicycles, and these items were also seized by the police. The State applied for the forfeiture of the money seized and the articles bought with the money given by the accused, and relied on the provisions of s 34(1)(c) and section 35(1)(a) of the CPA.

The court held that the N$100 notes and the one R100 note, which had been given to the complainants by the accused, with the aim of persuading them not to report him to the authorities, should be declared forfeit in terms of section 34(1)(c). These notes were clearly concerned in the commission of the offence of attempting to defeat or obstruct the course of justice within the meaning of s 20(a) of the Act. The notes were also seized on the basis that

---

\(^{201}\) 2014 (3) NR 816 (HC)
they might afford evidence of the commission of the offence within the meaning of s 20(c), which they did.202

The Court further held that the complainants, who, after having threatened to expose the accused, accepted the money in return for an undertaking not to report the crimes, were parties to an illegal transaction. As such, they would not be legally entitled to claim back the money. Therefore, the said notes should be forfeited to the state in terms of s 34(1) (c).203

More importantly, it was noted that the items purchased by the complainants with part of the money given to them by the accused, or anything purchased with the proceeds of crime cannot be forfeited under the Criminal Procedure Act.204 In the consequence, the conclusion was that the items which the complainants had bought with the money given to them by the accused should be returned to them.205 This case might have huge implications for the jurisprudence on money laundering in Namibia. Further reflections on similar shortcomings are contained in Chapter 5 below.

3.6 The Police Act 1990 (Act, No. 19 of 1990)

The Police Act 1990 legislation which cannot be ignored in any criminal matter in the country. It is relevant to money laundering as it gives the police the powers to investigate any crime, including money laundering, and it gives powers to arrest, should they find a reason for that. In this context, the Act provides for, and regulates the powers and duties of the Force, and prescribes the procedures in order to secure the internal security of Namibia and to maintain law and order.206 In order to achieve these, every member of the force is

---

202 S v Roux, ibid, paragraph 12 at 822I – 823A.
203 Ibid paragraph 12 at 823A – B.
204 Ibid, paragraph 14 at 823C.
205 Paragraph 19 at 824B.
206 In terms of section 1 “member” means an officer and non-officer of the Namibian Police appointed as such under section 4(1) and includes, except for the purposes of any provision of this Act in respect of which the
empowered to serve or execute any summons, warrant or other process authorized by law to apprehend any money launderer.

During the interviewing stage, it came to light that the Namibian Police Service has a Money Laundering Unit that is responsible, amongst others, to investigate cases referred to it by the Financial Intelligence Centre of Namibia.

Further and more importantly, section 14(4) (a) states that notwithstanding anything to the contrary in any other law contained, a member of the police force may, where it is reasonably necessary for a purpose referred to in section 13207, without warrant, search any person, premises, place, vehicle, vessel or aircraft or any receptacle, if the delay in obtaining a warrant would defeat the object of the search, providing-

(i) such search is not excessively intrusive in the light of the threat or offence; and

(ii) the person concerned, if he or she is present, is informed of the object of the search.

Subsequent to the search, the member of the police force may, under the Act, seize anything found in the possession of such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle, which in his or her opinion has a bearing on the purpose of the search.208 In terms of section 14(4)(c) the provisions of section 30 of the

---

207 Section 13 deals with the functions of the police force being:

(a) the preservation of the internal security of Namibia;
(b) the maintenance of law and order;
(c) the investigation of any offence or alleged offence;
(d) the prevention of crime; and
(e) the protection of life and property. One case decided under this provision was Dresselhaus Transport cc v Government of the Republic of Namibia 2003 NR 54 (HC).

208 Para 14 (4) (a) substituted by sec 7 (b) of Act 3 of 1999.
Criminal Procedure Act, shall *mutatis mutandis* apply in respect of anything seized under paragraph 14(4)(a).

As per the constitutional right to dignity and privacy as expounded on above, section 14(4)(b) goes on to stipulate that if a woman is searched under paragraph (a), the search shall be made by a woman only, with strict regard to decency, and if there is no woman who is a member available for such search, the search may be made by any woman specially designated for such purpose by a member.

As explained above, a search intrudes into the privacy of individuals and such intrusion has to be justified. Thus, the Act in section 14(4)(d) provides that to the extent that the provisions of section 14 which authorize entry search and seizure by the police, thus authorizing the interference with the privacy of a person’s correspondence or home by conducting any search under those provisions, such interference shall be authorized only on the grounds of public safety, the prevention of disorder or crime and for the protection of the rights or freedom of others as contemplated in Article 13(1) of the Namibian Constitution.209

Section (5) (a) then provides that, notwithstanding anything to the contrary in any other law contained, but subject to the provisions of subsection (4), any member may, in the performance of the functions referred to in section 13, search without warrant any vehicle on any public road or railway in Namibia, or any vessel or aircraft in Namibia, or any receptacle of whatever nature in, on or attached to the vehicle, and seize any article referred to in section 20 of the Criminal Procedure Act, found in, on or attached to the vehicle, vessel or aircraft, or in the receptacle.

---

For the purposes of exercising the powers conferred by paragraph 5(a), a member may, by means of an appropriate indication or direction, or in any other manner, order the driver of a vehicle on a public road or railway to bring that vehicle to a stop and may, notwithstanding anything to the contrary in any law contained, display, set up or erect on or next to the road or railway such sign, barrier or object as is reasonably necessary to bring the order to the attention of the driver and to ensure that the vehicle will come to a stop. Further, the provisions of the Criminal Procedure Act, with regard to the disposal of an article referred to in section 30 of that Act and seized under the provisions of that Act, shall mutatis mutandis apply in respect of an article seized under paragraph 5(a).

Again in recognition of the right to privacy, the freedom of movement and other related rights and freedoms, the Police Act goes on to say that to the extent that the provisions of subsection 5(a) authorize any limitation on a person's right to move freely throughout Namibia in that a member may order any driver of a vehicle on a public road or railway to bring that vehicle to a stop and to set up or erect any barrier or object for that purpose under those provisions, such limitation shall be authorized only on the grounds of national security, public order or the incitement to an offence.

3.7 Summary

This chapter has found that money laundering laws have to be read in conjunction with other applicable laws in order to effectively combat this type of crime. There also are numerous laws, both at national and international levels, regarding money laundering. International laws and national laws of Namibia on money laundering do not precisely define this concept, and this was demonstrated in this chapter. Moreover, Namibian money laundering
laws seem not to have many flaws. The researcher of this study shares the same sentiments, save for the definition of money laundering within international and Namibian legal framework respectively. However, the true test for Namibia remains to be seen because currently, only two unreported criminal cases have been prosecuted in Namibia at the lower courts (Windhoek and Rundu magistrate courts respectively).

Media Statement https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/49/497497a3-5d18-4b11-b9b6-f9f9bb54bac8.pdf last accessed on August 8, 2016: Namibia was removed from the international targeted review process of countries with shortcomings in their National Anti-Money Laundering and Combatting the Financing of Terrorism regulatory environment; Criminalization of Proliferation and the financing thereof, also put Namibia amongst the first countries in the world who effectively contribute to international peace, democracy, security and stability in this regard; Namibia is the first African Nation and one of only few jurisdictions in the world which successfully conducted a National Money Laundering and Terrorism Financing Risk and Threat Assessment in 2012; The FATF, in a public statement issued on Namibia on 27 February 2015 stated: “The FATF welcomes Namibia’s significant progress in improving its AML/CFT regime and notes that Namibia has established the legal and regulatory framework to meet its commitments in its action plan regarding the strategic deficiencies that the FATF had identified in June 2011. Namibia is therefore no longer subject to the FATF’s monitoring process under its ongoing global AML/CFT compliance process. Namibia will work with ESAAMLG (Eastern and Southern Africa Anti-Money Laundering Group) as it continues to address the full range of AML/CFT issues identified in its mutual evaluation report.

This came to the researcher of this study’s knowledge during the quantitative study, however these cases were not provided to this author due to bureaucratic delays.
CHAPTER 4

COMPARATIVE EVALUATION OF MONEY LAUNDERING JURISPRUDENCE

4.1 Introduction

Money laundering provides the link from the underworld to the legal economy of a country. That is, persons involved in this practice accumulate money by engaging in activities criminalised by legislation in the legal economy. This happens across the borders and within an economy.\(^\text{212}\) It is clear that large sums of illegally obtained money are then filtered back into the legal system via a legal activity. The most convenient businesses targeted for laundering or legitimizing criminal proceeds are financial institutions such as banks, for obvious reasons. Banks are interconnected, therefore allowing persons involved in money laundering to move their funds from place to place for purposes of laundering it. This criminal act also usually involves huge sums of money and Namibia is no exception to this rule.\(^\text{213}\)

Worldwide, countries have come up with anti-money laundering laws and law enforcement mechanisms. Major financial centers across the globe have experienced a rise in anti-money laundering rules and regulations. Initially, anti-money laundering laws were used as a weapon in the war on drugs, whilst more recently they have been deployed in the ongoing fight against terrorism. There is indeed a clear intention on the part of the perpetrators to conceal the origin of illegally obtained capital by creating the impression that it was derived from an allegedly legitimate transaction. Conversely, in the case of terrorist financing, the


\(^{213}\) New African (May 2016) “Cumulative illicit financial flows from Africa 2004-2013” p. 23, it is indicated that US$13.92 billion (about N$200 billion) of money was laundered through Namibia.
fraud is motivated by the need to conceal the destination of the capital by legitimising the beneficiary.\textsuperscript{214}

Below is an illustration of the laws of various countries in the world regarding money laundering. This description will enhance a comparative analysis of various money laundering laws. The four countries chosen are Singapore, South Africa, the United Kingdom and the United States of America. The focus will concentrate more on the definitional aspects of the laws involved. Furthermore, their legal and criminal justice aspects, their respective anti-money laundering regimes, and certain relevant issues like international cooperation. The approach is to concentrate on one major statute for each country and have some general picture of the other statutes. In countries such as the United States, there are various overlapping statutes and not a single major one. In such situations, considerable detail will be given to each of the statutes. There is also considerable detail provided on the cases decided in these various countries.\textsuperscript{215}

Each jurisdiction that is analysed in this study will be incorporated for a particular reason. In chapter 2 (literature review) of this study it was found that the United States of America is leading in the Anti-Money laundering regime therefore, it is imperative to include it. The United Kingdom has a broad definition of money laundering in comparison to other considered\textsuperscript{216} jurisdictions'. It is thus, important to determine whether Namibia should adopt such definitions or not. South Africa is incorporated due to the close legal ties it shares with Namibia. For this reason, it is included to determine whether this is the case as far as money


\textsuperscript{216} United States of America, South Africa, Singapore and Namibia.
laundering goes. Last but not least, Singapore is included in this study in order to have an Anti-Money laundering approach from the Asian Pacific Region.

This comparative analysis will enable one to have a broader view of the laws across the globe. This will also enhance an objective conclusion and recommendations on Namibia’s legislation as one learns from international jurisprudence and global best practices on this topic.

4.2 Singapore

4.2.1 General

Despite the fact that Singapore has a highly developed and successful free-market economy, money laundering remains a significant issue which the country has always worked on. It is rather amazing how such a country, which enjoys a remarkably open and corruption-free environment, stable prices, and a per capita Gross Domestic Product (GDP) equal to that of several West European countries, can be one of the major global centers suffering from money laundering. It is understood that money laundering is not a problem for Singapore alone. It emerges as a big problem because Singapore is an important international financial and investment center, and, in particular, a major offshore financial one. Bank secrecy laws and the lack of routine currency reporting requirements make Singapore an attractive destination for drug traffickers, criminals, terrorist organizations, and their supporters seeking to launder money. Money laundering occurs mainly in the offshore sector, but may also occur in the non-bank financial system, which includes large numbers of moneychangers and remittance agencies.217

---

4.2.2 The Corruption Drug Trafficking and other Serious Crimes (Confiscation of benefits (Act of 1999 (CDSA))

In Singapore, there is no specific legislation prohibiting money laundering as such. There is however, one that prohibits the laundering of benefits derived from drug trafficking, namely the Corruption Drug Trafficking and other Serious Crimes (Confiscation of benefits (Act of 1999 (CDSA). This statute criminalizes the laundering of proceeds from narcotics and other categories of serious offences, including those committed overseas, which would be considered serious if they had been committed in Singapore.

A person will be liable for a criminal offence under section 41(1) of the Act if he knowingly assists another in retaining or concealing the benefits of the latter’s drug trafficking. ‘Knowingely assists’ essentially means that entering into an arrangement with a person whom you know carries out or has carried out drug trafficking activities, or has benefited from such. Further, one enters into the arrangement knowing that:

- it has the effect of aiding the retention or control of the benefits of the drug trafficking, whether by concealment, removal from Singapore, transfer to nominees or by some other means;\(^\text{218}\) or
- by that arrangement, the benefits of the drug trafficking are used as security to obtain funds, or used to acquire property by way of investment.\(^\text{219}\)

Apart from the defence of absence of knowledge, it is also a defence if the person concerned reported his suspicions or belief that the funds or investments are derived from drug trafficking, at the first available opportunity to an authorised officer. An authorised officer is defined in the Act as an officer of the Central Narcotics Bureau or any police officer.

Currently, the \textit{mens rea} under both the above offences is ‘knowledge’. It is not clear whether ‘knowledge’ is restricted to actual knowledge or includes a wider test founded on

\(^{218}\) Section 41(1)(a) of the Act.
\(^{219}\) Section 41(1)(b) of the Act.
the concept of ‘wilful blindness’ as favoured by a line of English cases such as *James & Son Ltd v Smee* and *Westminster City Council v Croyalgrange Ltd & Anor.*

### 4.2.3 Other legislation

The Parliament of Singapore passed the Terrorism (Suppression of Financing) Act, 2000. This Act criminalises the financing of terrorism, and placing an obligation on bank employees to immediately report to the police, any activity related to this crime. In 2007, the Monetary Authority of Singapore, which regulates banking and other financial services, issued a notice entitled Prevention of Money Laundering and Countering the Financing of Terrorism to banks, addressing the need for enhanced Customer Due Diligence (CDD) measures in all financial transactions, to prevent criminal behavior. The Monetary Authority of Singapore’s Notice to Banks requires the institutions to institute a training program to teach employees how to maintain appropriate records and identify, detect and report suspicious transactions in order to prevent money laundering.

Just like for any country, laws have their strengths and weaknesses and these may depend on how one analyses them. In regard to Singapore, in April 2004, the International Monetary Fund (‘IMF’) issued the FSSA Report on Singapore, which includes the measures to prevent money laundering (‘ML’) and financing of terrorism (‘FT’). The FSSA Report includes both ‘bouquets’ and ‘criticisms’ on the measures taken by Singapore. Firstly on the bouquets (strengths of CFT laws) according to IMF:

---

221 [1986] 2 All ER 353.
Singapore has in place a sound and comprehensive legal, institutional, policy and supervisory framework for AML/CFT. The legal system is well regarded, with low crime rate, intolerance for corruption, and an efficient judiciary.\(^{224}\)

Singapore AML/CFT laws and associated regulations, as well as its institutional arrangements, provide a strong framework in terms of the FATF 40+8 Recommendations\(^{225}\) for the prevention and detection of ML/FT. There is a long established culture of compliance, and implementation measures as well as monitored and generally effective.\(^{226}\)

In other words, Singapore has complied in substance (though not necessarily in form) with the FATF’s Special Recommendation II on CFT laws. On the confiscation of proceeds, IMF has this to say:

> Confiscation and provisional measures provisions are quite comprehensive. Except for terrorism financing, generally a conviction must be obtained in order for confiscation to occur. Adequate powers exist to restrain and freeze assets. Specific provisions addressing identification and tracing are needed. Laws generally provide for the protection of third party rights, but minor changes are recommended to ensure all necessary protection.\(^{227}\)

It is observable that MACMA also has a wide range of mandatory and discretionary bases for refusing assistance which may limit the effectiveness of the Act in supporting international requests, and a narrowing thereof should be considered.\(^{228}\) It was thus recommended that Singapore should ‘designate’ FT Convention parties to ensure that timely response to mutual assistance requests are always possible’\(^{229}\) and ‘Singapore should act to make extradition possible with a wide range of countries’\(^{230}\)

\(^{224}\) Para 220, see also Liang, TS. 2005, supra.

\(^{225}\) The ‘FATF 40+8 Recommendations’ refer to the FATF’s Revised 40 Recommendations (on AML) and its ‘8 Special Recommendations on Terrorist Financing’ (on CFT).

\(^{226}\) Para 222.

\(^{227}\)Para 226.

\(^{228}\)Para 233.

\(^{229}\)Para 234.

\(^{230}\)Para 235.
Singapore does not have a definition for money laundering. Moreover, from the afore-mentioned analysis, one could not establish any benefit of not having one.

4.3 South Africa

4.3.1 General

South Africa’s legislation updates the Namibian law in many aspects for obvious historical connections between the countries which share one legal regime at some point in time. The laws aimed at combating money laundering are very similar to those of Namibia and for obvious historical reasons. The major laws dealing with money laundering in South Africa are the following:

(I) Prevention of Organized Crime Act, No. 121 of 1998 (POCA);

(II) The Proceeds of Crime Act 76 of 1996;

(III) Drug Trafficking Act, No. 140 of 1992 and

(IV) Financial Intelligence Centre Act, No. 38 of 2001 (FICA).

4.3.2 The Prevention of Organized Crime Act, No. 121 of 1998 (POCA).

This is the major piece of legislation which deals with money laundering in South Africa. The purpose of POCA is chiefly designed to combat the spiralling wave of organized crime and to provide legislative mechanisms of depriving criminals in general, of the proceeds of unlawful activity. The mechanisms for such deprivation of the benefits of criminal activities is either through chapter 5, which is dependent on, arguably a protracted and difficult process of a successful prosecution and conviction of the offender, when only then, the proceeds of unlawful activity can be declared forfeited to the State. Or, through chapter 6,

111
which is not conviction-based but may be invoked even when there is no prosecution; *vide National Director of Public Prosecutions v Mohamed NO.*

Chapter 5 is titled 'Proceeds of unlawful activities', which significantly is defined in section 1 to apply to the whole of the POCA. ‘(P)roceeds of unlawful activities’ means:

(A)ny property or any service advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived.

'Unlawful activity' is defined in section 1 to mean:

(C)onduct which constitutes a crime or which contravenes any law whether such occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere.

The definition of money laundering is contained in section 4 of the Act which reads as follows:

‘4 Money laundering

Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and-

(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or

(b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect-

(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or

---

231 2002 (4) SA 843 (CC) at 850E-851D.
(ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere-

(aa) to avoid prosecution; or

(bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, shall be guilty of an offence.232

The following case illustrates how one may assist another party in committing the crime of money laundering as per South Africa’s legislation.

In *Imador v S*,233

The appellant was convicted in a regional magistrates' court on money-laundering, for contravening section 4 of the Prevention of Organised Crime Act 121 of 1998, and sentenced to five years' imprisonment. It appeared from the evidence that the appellant had approached a bank teller to use his bank account to receive a sum of R789 000 and in return, he would give the bank teller a reward of R100 000. The transaction took place and the bank teller subsequently withdrew various amounts for the appellant and was ultimately rewarded with the sum of R180 000. The court questioned on an appeal against the conviction and sentence whether it was obligatory upon the state to identify and prove the exact nature of the alleged unlawful activity, which had given rise to the proceeds of crime in the present case.

The court held that there were two ways in which the state could prove that the moneys derived from crime, namely; by showing that they derived from the conduct of a specific kind and that conduct of that kind was unlawful, or by evidence of the circumstances in which the moneys were handled, which were such as to give rise to the irresistible inference that they could only be derived from crime. The evidence of the circumstances in this case, including the accused's mendacity, was such as to give rise to the irresistible inference that the appellant knew that the moneys in question had been derived from an unlawful activity.234

---

232 Emphases added.
233 2014 (2) SACR 411 (WCC).
The afore-mentioned case illustrates that, if a person handles money in such a manner that inference illustrates that the way it is done is highly suspicious; such a person could be charged of the crime of money laundering.

4.3.3 Other Legislation

The Proceeds of Crime Act\textsuperscript{235} broadened the scope of the statutory laundering provisions to all types of offences. However, in 1999, the Proceeds of Crime Act, as well as the laundering provisions of the Drugs and Drug Trafficking Act, were repealed when POCA came into effect and it criminalized money laundering in general, and also creates a number of serious offences in respect of laundering and racketeering.\textsuperscript{236}

The Preamble to the Proceeds Act briefly summarises the purpose of the Act as being “[t]o provide for the recovery of the proceeds of crime; for the prohibition of money laundering; and for an obligation to report certain information; and to provide for matters connected therewith.” This is subject to s 9(2), which relates to property that can be left out of account in assessing the value of the proceeds of crime.

Section 3 should be read with section 2, which relates to persons who have benefited from crime. It reads:

For the purposes of this Act, a person has benefited from crimes if he or she has at any time, whether before or after the commencement of this Act, received any payment or other reward in connection with any criminal activity carried on by him or her or by any other person.

\textsuperscript{235} No. 76 of 1996.
\textsuperscript{236} Louis De Koker (2003: 33-34), Money Laundering Trends in South Africa, Money laundering control volume. 6. p. 3.
In *S v Dustigar*:\(^{237}\)

 Nineteen persons were convicted for their involvement in the biggest armed robbery in South Africa’s history. Seven of the accused were convicted as accessories, after the fact on the strength of their involvement in the laundering of the proceeds, and an eighth accused was convicted on a count of statutory laundering under the Proceeds of Crime Act.\(^{238}\) Many of the accused were family members or third parties who allowed the abuse of their bank accounts to launder the money. In some cases, they also allowed new accounts to be opened and fixed deposits to be made in their names to launder the money.\(^{239}\)

This case illustrates that one may be found guilty of money laundering in South Africa through POCA. However, South Africa’s law does not appropriately define the concept. This also applies to other instances whereby other concepts have not been appropriately defined.

The concept of ‘proceeds’ is defined somewhat vaguely in s 1 of the Act in relation to the commission of an offence. It would suggest any property (or part thereof) derived, directly or indirectly, from the commission of an offence in the Republic, or from an act or omission occurring outside the Republic, but which would have constituted an offence if it had occurred in the Republic. It includes any property representing that which was derived in this way.\(^{240}\)

---

\(^{237}\) Case no CC6/2000 (Durban and Coast Local Division) unreported.

\(^{238}\) 76 of 1996.


\(^{240}\) See *Director of Public Prosecutions: Cape of Good Hope v Bathgate* 2000 (1) SACR 105 (C).
The Drugs and Drug Trafficking Act,\textsuperscript{241} was the first Act of Parliament in SA to criminalize the crime of money laundering. This Act criminalized, \textit{inter alia}, the laundering of the proceeds of specific drug-related offences and required the reporting of suspicious transactions involving the proceeds of drug-related offences. Section 39 of the Act stipulates that, “any payment or other reward received by a defendant at any time, whether before or after the commencement of this Act, in connection with drug trafficking carried on by him or any other person, shall be his proceeds of drug trafficking.”

The FICA, on the other hand, define money laundering as an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence in terms of Section 64 of that Act, conducting transactions to avoid reporting duties under the Act or under section 4, section 5, assisting another to benefit from the proceeds of crime or section 6 dealing with acquisition, possession or use of proceeds of unlawful activities of the POCA. The FICA creates an additional offence, namely; conducting transactions to avoid being reported.

The case below illustrates how the crime of money laundering occurs practically in the South African context. In \textit{S v Van Zyl},\textsuperscript{242}

The accused pleaded guilty to a charge of negligent laundering under section 28 of the Proceeds of Crime Act. Van Zyl’s sister-in-law stole R8, 9 million from her employer. Van Zyl allowed her to make 79 transfers of money totaling R7, 6 million from the account of her employer into his personal bank account. Money was channeled, on instructions by his sister-in-law to her by means of cheques made out either to her or to people nominated by her. Some withdrawals were also made at ATMs. According to the accused, he was led to believe that the money was the result of successful business ventures of, and investments by, his sister-in-law. He acknowledged that his beliefs were

\textsuperscript{241} No. 140 of 1992

\textsuperscript{242} Case no 27/180/98 – Regional Court, Cape Town
unreasonable. He was sentenced to a fine of R10 000 and to imprisonment for ten years, suspended for five.\textsuperscript{243}

The definition of money laundering in South Africa is substantially similar to that of Namibia. Therefore, South Africa’s, as per its laws, has minimum value to add to Namibia’s existing definition on money laundering.

4.4 United Kingdom (UK)

4.4.1 General

The UK has been identified and chosen to form part of this comparative study because it has a broad definition of money laundering. In the UK, there are several laws in place that combat the crime of money laundering. However, the UK legislation does not, per say, define the concept of money laundering.

Therefore, legislation in the UK merely outlines offences that amount to the crime of money laundering, and how it should be addressed. It may thus, be stated that, the acts or activities that amount to the crime, are the aspects that have been codified in the UK legislation. The UK Common Law defines the concept of “money laundering” as follows:

\begin{quote}
  taking any action with property of any form which is either wholly or in part the proceeds of a crime that will disguise the fact that the property is the proceeds of a crime or obscure the beneficial ownership of said property\textsuperscript{244}
\end{quote}

\textsuperscript{243} De Koker, supra note 238, pp.17-18.
\textsuperscript{244} \url{http://www.Billy Steel laundryman.u-net.com/page2_wisml.html} last accessed in November 03, 2010.
Of the preceding jurisdictions that have been analysed in this study, the UK Common Law definition of money laundering is the most appropriate. However, it falls short of one equally important aspect, that being, it does not cater for legal money destined for illegal activities.\textsuperscript{245}

Prohibited acts under sections 327 to 329 of POCA, bear little relation to this formation of money laundering. Simply put, money laundering offences in the UK are broad and fully cover the elements of the Vienna and Palermo Conventions.\textsuperscript{246} Therefore, what is codified are the offences leading to money laundering.

The major pieces of legislation dealing with money laundering in the UK are the following:

(I) The Proceeds of Crime Act 2002;

(II) The Terrorism Act 2000;

(III) The Anti-Terrorist Crime & Security Act 2001;

(IV) Serious Organized Crime and Police Act 2005; and


4.4.2 The Proceeds of Crime Act 2002 (POCA)

The POCA is the major piece of legislation dealing with money laundering in the UK.

Section 340(11) of this Act defines money laundering as an act which:

(a) constitutes an offence under section 327, 328 or 329,

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

\textsuperscript{245} Chapter 4 and 5 of this study will illustrate this in detail.

\textsuperscript{246} International Monetary Fund 2011. IMF country report No. 11/231, p.7.
It can be appreciated that the POCA merely outlines offences leading to the crime of money laundering but does not, per say, define the concept of money laundering itself.

Section 327 creates offences of 'concealing, disguising, converting, transferring or removing criminal property from the jurisdiction'. Section 328 creates an offence of entering into, or becoming concerned in an arrangement which the defendant knows or suspects facilitates, by whatever means the acquisition, retention, use or control of criminal property by or on behalf of another person. Section 329 creates an offence of 'acquiring, using or possessing criminal property'. Together, these three are known as the principal money laundering offences.

As was expounded in section 340(11) of the POCA, the afore-mentioned does not define money laundering but, it however indicates what amounts to the crime.

In the case of Shah & Anor v HSBC Private Bank (UK) Ltd:247

It was held that a person does not commit any offence under the principal money laundering offences if he has made a disclosure to the relevant authorities under Section 338, and has appropriate consent.

Therefore, disclosure is essential in determining the offence in the UK jurisdiction. Moreover, sections 330 and 331 create two offences that apply to persons employed in “the regulated sector” (which includes banking). Section 330 applies to all bank employees. If a banker “knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering,” where such knowledge came to him in the course of his business, he then commits an offence if he does not make the required disclosure. The required disclosure is either made to the bank's own nominated officer, or to SOCA. Section 331 applies to nominated officers only. If, in consequence of a disclosure made to him under section 330, (i.e. by a bank employee) a nominated officer knows or

---

suspects, or has reasonable grounds to suspect that another person is engaged in money laundering, he commits an offence if he does not make the required disclosure to SOCA. As Lewison LJ observed:

It is plain therefore that POCA envisages that bank employees will report their suspicions internally to the nominated officer; and that, based on what he has been told, the nominated officer may or may not form his own suspicion. If he does, it is he who will disclose his suspicion to SOCA. 248

The POCA, in Part 7, creates three, widely drawn, substantive money laundering offences, with severe maximum penalties. 249 As was rightly put in an English case of *Bowman v Fels*, 250 Parliament has given a much wider meaning to the phrases “criminal conduct” and “criminal property” than what is required by the Relevant Money laundering Directive.

There are specific requirements for conduct to be punishable as laundering. In order to be "unlawful", conduct must either be that which was criminal in the part of the United Kingdom where it occurred 251 or, where it occurred outside the United Kingdom, conduct which (1) was unlawful under the criminal law of the country (or territory) where it occurred and (2) would have been unlawful had it occurred in the United Kingdom. 252 Thus, in the case of conduct outside the United Kingdom, POCA imposes a test of “dual criminality” as was held in the case of *Director of Assets Recovery Agency v Virtosu*. 253

248 Para 6.
250 [2005] EWCA Civ 222.
251 section 241(1).
252 section 241(2).
Inferences may be drawn in order to establish whether any property is the proceeds of crime. The drawing of inferences may be particularly relevant when the unlawful conduct relied on consists of money laundering. The position was summarised by Hamblen J in *Serious Organised Crime Agency v. Pelekanos* 254 and noted that, in order to demonstrate that property derives from crime for the purposes of proving money laundering, it is legitimate to rely upon inferences drawn from the way in which the money was handled. In *ARA v Olupitan* 255 Langley J summarized the position as follows: 256

A substantive offence of money laundering can be proved by inference from the way in which cash is dealt with and it is not necessary to prove the underlying offence which generated the cash: *R v El Kurd* [2001] Crim. L.R. 234; and *R v L,G,Q and M* [2004] EWCA Crim 1579. As Mr Eadie submitted, if money is handled in a manner consistent only with money laundering, “the inference is that it must be criminal property because no one launders clean money”. Mr Krolick submitted that it was a condition precedent to any allegation of money laundering that the property should be the proceeds of a criminal offence. 257

This approach is also applicable in the jurisdiction of South Africa, where inference may also be used to prove an offence of money laundering. 258

---

254 [2009] EWHC 2307 (QB) at [34] to [37].
256 at paragraphs 65- 66.
257 See also *R v Montila* [2005] 1 Cr App R 26.
258 *Imador v S* 2014 (2) SACR 411 (WCC).
4.4.3 Other legislation

The Money Laundering Regulations 1993 (S.I. 1993/1933), (“the 1993 Regulations”), provide detailed requirements for giving effect to the Act. As amended, for the purposes of section 168(4)(b) of the Financial Services and Markets Act 2000. The effect of this is that the Financial Services Authority may, under section 168(5) of the Act, appoint a competent person to conduct an investigation on its behalf, where it appears to it that a person may be guilty of an offence under the 1993 Regulations. The 1993 Regulations are also prescribed for the purposes of section 402(1)(b) of the Act. This enables the Financial Services Authority (except in Scotland) to institute proceedings for any offence under the 1993 Regulations.

These regulations also include specific provision for the internal system of regulation of transactions by those who, in the course of relevant financial business, form a business relationship or carry out a one-off transaction, including the maintenance of internal reporting procedures.259 The JMLSG Money Laundering Guidance Notes 1997, while generally explaining the effect of the 1988 Act, contain specific recommendations as to compliance.

Therefore, it is clear as it was held in Bowman v Fels260 that the United Kingdom legislation defines money laundering to include property known or suspected, to constitute or represent a benefit from criminal activity, and, following the 1991 Directive, the United Kingdom's money laundering regime was applied both to drug-related crime (the 1994 Act) and to other

Following the 2001 Directive, it now applies to the benefits of any type of criminal conduct.\textsuperscript{262}

The extended definition of money laundering in the United Kingdom legislation (to embrace circumstances of suspicion) involved abandoning the distinction drawn in the directives between the concept and the requirement \textsuperscript{263} as set out in article 7 that the institutions and persons subject to the directives should “refrain from carrying out transactions which they know or suspect to be related to money laundering.”

In summary, it can be noted that under the United Kingdom legislation, the distinction between money launderers and other institutions, and persons whose conduct is regulated by the legislative regime, is preserved in relation to sections 330-1, which applies only to the regulated sector. But sections 327-9\textsuperscript{264} contain both the provisions by which the United Kingdom fulfilled its obligation to prohibit money laundering and provisions regarding disclosure to the authorities which derive inspiration from article 7 of the directives. Section 328, in particular, is thus applicable to any person, although otherwise close in subject matter and spirit to article 7 of the 2001 Directive.

The inclusion in sections 327 and 329 of provisions qualifying their prohibitions on money laundering, by reference to provisions relating to disclosure, may at first sight seem odd, but can be rationalised on the basis that, if such disclosure is made, the situation ceases in substance to involve money laundering.

\textsuperscript{261} Part VI of the 1988 Act, as amended.
\textsuperscript{262} s 340(3) of the 2002 Act.
\textsuperscript{263} articles 1 and 2.
\textsuperscript{264} in common with the predecessor sections 93A, B and C of the 1988 Act.
Therefore, it may be said that the UK’s definition of money laundering is very broad. However, it fails to incorporate the element of laundering of lawful money that is aimed for illegal activities. In other words, a definition of money laundering that is as wide as the UK’s, may lead prosecutors in prosecuting trivial cases in an attempt to fulfil the relevant laws. Likewise, a wide definition will give money laundering regulators a headache in trying to make sense as to what is, and not money laundering. Therefore, this definition should not be adopted in the Namibian jurisdiction.

4.5 United States of America (USA)

4.5.1 General

The United States of America (USA) has been an activist in the formulation and advancement of laws on money laundering. Moreover, The USA has numerous legal instruments governing money laundering dating back from the 1970s\(^\text{265}\). From these legal instruments one will be discussed for the purposes of the comparative study of the definition.

4.5.2 Money Laundering Control Act of 1986

This Act defines money laundering as follows:\(^\text{266}\)

\[(a) (1) \text{Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity: (A) (i) with the intent to promote the carrying on of specified unlawful activity; or (ii) with intent to engage}\]


\(^{266}\text{Section 1956, Title 18, Part I, Chapter 95 of the Money Laundering Control Act, of 1986.}\)
in conduct constituting a violation of section 7201\textsuperscript{267} or 7206\textsuperscript{268} of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part: (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful an activity; or (ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States:

(A) with the intent to promote the carrying on of specified unlawful activity; or

\textsuperscript{267} Any person who wilfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

\textsuperscript{268} Any person who: (1) Declaration under penalties of perjury Wilfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or (2) Aid or assistance Wilfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or (3) Fraudulent bonds, permits, and entries Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or (4) Removal or concealment with intent to defraud Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or (5) Compromises and closing agreements In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, wilfully— (A) Concealment of property Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or (B) Withholding, falsifying, and destroying records Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax; shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.
(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part:(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law, shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant’s knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant’s subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent:

(A) to promote the carrying on of specified unlawful activity; (B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or (C) to avoid a transaction reporting requirement under State or Federal law, conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both.

It would appear that subpart (a) (1) addresses the basic laundering transactions, subpart (a)(2) addresses international transactions and subpart (a)(3), the “sting operations”. Furthermore, this definition of money laundering is comprehensive and very precise. This can be established from the fact that when one reads their Money Laundering Control Act, it can be seen that legislator tries to cover all possible scenarios that could arise during the crime of money laundering.

---

The Money Laundering Control Act of 1986 contains language suggesting that section 1957 would only apply to monetary transactions occurring after the completion of the underlying criminal activity. This was the position held in the United States v. Edgmon, and in the United States v. Lovett. Both dealt with double jeopardy challenges to convictions under the Money Laundering Control Act.

In each of these cases it may be concluded that Congress intended to impose separate punishments for the money-laundering transactions and for the underlying criminal activity. In Edgmon, which dealt with 18 U.S.C. sections 1956, the court emphasized that the money-laundering statute was intended to be a separate crime, distinct from the underlying offence that generated the money.

With respect to section 1956, the court concluded that ‘Congress aimed the crime of money laundering at conduct that follows in time, the underlying crime rather than to afford an alternative means of punishing the prior 'specified unlawful activity.' The court reached the same conclusion with respect to section 1957. Edgmon and Lovett both suggest that Congress intended the money-laundering statutes to apply to transactions occurring after the completion of the underlying criminal activity.

---

272 1992 USCA 10 545, 964 F 2d 1029 (10th Cir.1992).
273 Edgmon, 952 F.2d at 1213.
274 Id. at 1214. In United States v. Lovett, supra.
Most importantly, the Money Laundering Control Act of 1986 is designed to prevent a variety of criminals, not just drug dealers, from enjoying the profits of their illicit activities. Section 1956 applies to profits from, among other things, illegal gambling, prostitution, murder-for-hire, loan-sharking, embezzlement, bribery, and extortion.\textsuperscript{275} Offences related to money laundering will be discussed in detail in the succeeding chapter.

\textbf{4.5.3 Other Legislation}

The Bank Secrecy Act, enacted in 1970, was part of the Bank Records and Foreign Transaction Act. The unequivocal concern of this complex legislation was to prohibit the use of foreign banks to ‘launder’ the proceeds of illegal activity or evade federal income taxes.\textsuperscript{276} It became apparent, however, that these enactments had little impact on large-scale money laundering related to illegal drug transactions, and that illicit funds were flowing in ever-increasing amounts into financial institutions in the United States.\textsuperscript{277}

As a result, Congress enacted the Anti-Drug Abuse Act of 1986,\textsuperscript{278} Title I, subtitle H of which was the Money Laundering Control Act of 1986. This subtitle included an anti-structuring provision.\textsuperscript{279} One thing clearly emerges from the legislative history of this statute: Congress wished to attack money laundering associated with organized crime or related criminal activity, particularly the illicit drug trade.\textsuperscript{280} A casual review of the Senate Report accompanying this Act reveals that the term “money laundering,” or its equivalent, is used more than 100 times, and that it refers to organized crime and criminal activity on no less than 53 occasions.\textsuperscript{281} The House Report displays a similar preoccupation.\textsuperscript{282} The first major

\textsuperscript{278} Pub.L. No. 99-570, 100 Stat. 3207.
\textsuperscript{281} \textit{Ibid} at p. 16.
heading of this report is ‘Drug Trafficking and Money Laundering.’ The report refers to ‘money laundering’ approximately 73 times, and to organized crime and illegal drug trafficking, 53 times.

Given the congressional preoccupation with money laundering, it is surprising that neither the term, nor the new crime created by the Money Laundering Control Act, “structuring,” are defined by the statute. Nevertheless, the House Report states the following:

Money Laundering Defined. -The President's Commission on Organized Crime has defined money laundering as the "process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate." In other words, laundering involves the hiding of the paper trail that connects income or money with a person in order for such person to evade the payment of taxes, avoid prosecution, or obviate any forfeiture of his illegal drug income or assets.

In arriving at the appropriate meaning of money laundering, the court, in United States v F Aversa, derived guidance from the Senate Report that discusses what later became 18 U.S.C. section 1956(a)(1), which is entitled ‘Laundering of Monetary Instruments.’ That section, which in effect defines “laundering,” provides:

Whoever knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--(B) knowing that the transaction is designed in whole or in part--(i) to conceal or disguise the nature, the location, the source, the ownership, or the

---

283 Ibid. at p. 16.
284 Ibid. at 16 (emphasis supplied).
285 [1993] USCA1 15; 984 F.2d 493; 61 USLW 2471 (13 January 1993) guidance
control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting
requirement under State or Federal law.... [will be liable for conviction under this section].287

money laundering and related financial crimes as either: (1) the movement of illicit cash or
cash equivalent proceeds into, out of, or through the United States or through certain U.S.
financial institutions; or (2) the meaning given under state and local criminal statutes
pertaining to the movement of illicit cash or cash equivalent proceeds.

4.5.4 Summary

It can be appreciated that the USA has numerous laws aimed at combating the crime of
money laundering. Furthermore, this chapter has illustrated that of all the countries
analysed, the USA has the most laws aimed at combating this crime. Nevertheless, whether,
having more or less laws on money laundering is a good or bad idea, is debatable. However,
this study is of the view that it matters not how many laws are in place, but how effective
these laws are, is what matters the most.

This chapter has found that the USA laws, together with preceding jurisdictions that were
considered in this study, have ill-defined the concepts of money laundering, even though
these countries seems to have more advanced laws as far as money laundering and Anti-
money laundering Agencies are concerned.

The conclusion of this chapter, in regards to the appropriate definition of money laundering,
is the one developed and advanced by this study in Chapter 3:

Money laundering is the process of placing illegitimate or legitimate money or property into the financial system and advancing such for illegitimate or legitimate purposes.

Therefore Namibia should not blindly adopt laws of any jurisdiction because the situation in other countries may not necessarily be comparable to that of Namibia, or any other jurisdiction for that matter. In other words, Namibia should incorporate the afore-mentioned complete definition, as proposed by this study, in its money laundering laws in order to effectively combat the crime of money laundering.
CHAPTER 5
MONEY LAUNDERING AND ASSOCIATED OR PREDICATE OFFENCES

5.1 Introduction

The primary focus of this chapter is money laundering and its related or predicate offences. The first part identifies some of the offences that are related to the crime of money laundering. Afterwards, the study discusses in detail what those offences entail and how they are related to the crime of money laundering. In other words, this chapter points out and analyses the different offences that exist alongside the crime of money laundering. The chapter concludes by indicating how and why money laundering cannot possibly exist without its related offences.

Money laundering may be said to be a financial crime because persons or entities that commit this crime do so with the primary goal of making a financial profit or moving money around. This is illustrated in the last part of chapter 2 of this study. Therefore, it is no coincidence that the word ‘money’ exists in the wording of this crime. Be that as it may, the study lists some of those offences that are related to this crime. The word *some* is used because it will be impractical to list all the crimes that are related to money laundering and moreover, new crimes that are related to it might be created over time. However, the study gives a general overview that there is not one, but numerous offences related to money laundering, and also illustrates how one may be able detect a crime related to it.
5.2 Deducing associated and predicate offences from the preamble of POCA

In order for one to understand money laundering and associated offences, it is necessary to start from the broader perspective to the narrower. In essence, this means starting from groups or patterns of crimes to crimes in a syndicate, until one deals with individual offences associated with the crime of money laundering.

It must further be noted that in today's global economy, international trade is an important source of income for many nations and their economies, however, there are numerous forms of trade, others legal and some illegal. This study focuses on the illegal forms of trade and shows their linkage to the crime.

Therefore, this chapter starts with racketeering or patterns of, down to the ingredient or predicate offences. One has to note further that the patterns of racketeering and the process of money laundering can involve almost all kinds of crimes known to humanity. In this context, not all the offences are included herein but selected ones, which feature most in litigation involving money laundering.

The preamble to POCA is a useful guide to what crimes are associated to money laundering in the country’s laws. Instead of repeating the preamble, one can easily see that the following six topics arise out of POCA, on what the part of the associated offences is to money laundering.

1. organised crime: this is put in broad terms and includes a lot, which is unpacked below.

2. criminal gang activities: these are also broad and are a basket of any crime that might be found in Schedule 1 of POCA which offences can also be associated in themselves
3. **an obligation to report certain information:** reporting, on its own, is not an offence but failure to do so. This therefore means an offence by omission, meaning, failure to follow the statutory obligation to report.

4. **activities associated with gangs:** The Act repeats gangs but uses “associated with” thus the offences do not necessarily have to be gang activities but ‘associated with’ the said.

5. **proceeds of unlawful activity:** this relates to several activities in the commission of a crime which brings some fruits - profit. This includes money gotten out of any activity which may be listed in Schedule 1, thus money laundered is proceed of a crime. The interesting part of this last point is the financing of terrorism which can be done with proceeds of a crime. Therefore these proceeds can cause one to commit a crime by financing the commission of another.

6. **Prohibiting the smuggling of migrants and trafficking in persons:** This relates to human trafficking, which normally happens across the borders. It is an international organized crime, done covertly with profit in it. This relates to the internationality of crimes or commonly called transnational organized crimes,\(^288\) (TOC) associated with money laundering, hence the mentioning of the International Co-operation in Criminal Matters Act, 2000 (Act 9 of 2000) in the Preamble of the Act. This again connects to the issue of international terrorism which has become a global issue,

---

\(^{288}\) The transnationality of organized crime and the prosecution of associated offences in Namibia has been evidenced by the cases of *Prosecutor-General v Uuyuni* 2015 (3) NR 886 (SC), *Shali v Attorney-General and Another* 2013 (3) NR 613 (HC), *Lameck and Another v President of the Republic of Namibia and Others* 2012 (1) NR 255 (HC) and *Prosecutor-General v Lameck and Others* 2010 (1) NR 156 (HC). It must also be noted that “Transnational” relates to relations and processes among non-state actors and has a global perspective in terms of geographical scope and ambition. Taking a look at the specific situation of organized crime, it thus becomes clear that today, all organised is transnational in nature and hence can be denoted “Transnational Organised Crime” (TOC) see Pankratz, T and Matiasek, H. 2012. Understanding Transnational Organised Crime. A constructivist approach towards a growing phenomenon SIAK-Journal – Journal for Police Science and Practice (Vol. 2), 41-50. See also Calcagni, M. (2010). A historical perspective – The conceptualisation of transnational organised crime, SIAK-Journal (2), 72–80.
especially after the September 11 attacks on the US\textsuperscript{289} and the ongoing periodic attacks across the world.

Money laundering is a huge problem to many governments. This is so because it has numerous webs (associated offences). Therefore, its definition should be understood well alongside its associated offences. The purpose of this study is to discuss the concept of money laundering along-side its associated offences and to illustrate how such occurs.

5.3 Patterns of racketeering activities

The definitions of the concept of “pattern of racketeering activity” and “enterprise” are very broad from the definitions found in section 1 of POCA. In terms of section 1, “pattern of racketeering activity” means the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1, and includes at least two offences referred to in the same Schedule, of which one of the offences occurred after the commencement of the Act, and the last occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1.

\textsuperscript{289} On September 11, 2001, 19 al-Qaeda-trained terrorists hijacked four U.S. commercial airliners. The hijackers crashed two of the jets into the World Trade Center towers in New York City and crashed the third jet into the Pentagon outside Washington, D.C. Passengers and crew battled the hijackers for control of the fourth jet, and it crashed into a field near Shanksville, Pennsylvania, short of reaching the hijackers’ intended target in Washington, D.C. The attacks caused the subsequent collapse of the World Trade Center twin towers, damaged the Pentagon, and killed approximately 3,000 people. Included in the death toll were hundreds of firefighters and rescue personnel who responded to the crashes at the World Trade Center site and who were in the process of rescuing those inside when the buildings collapsed. Al-Qaeda (also known as al-Qaida), and its leader, Osama bin Laden (also spelled Usama Bin Ladin or Osama bin Ladin), subsequently claimed responsibility for the attacks. Al-Qaeda—operating out of Afghanistan under the protection of the fundamentalist Taliban regime—and allied Islamic extremist groups had publicly vowed a terrorist war against the U.S. and Western interests in an effort to establish pro-Islamist governments and fundamentalist Islamist social order throughout the world. Al-Qaeda also directed the 2000 attack on the USS Cole near the port of Aden, Yemen, and claimed responsibility for the bombings of U.S. embassies in Africa. The September 11, 2001 attacks were the most deadly international terrorist attack in history and the largest attack on United States territory since the Japanese attack on Pearl Harbor on December 7, 1941. http://www.encyclopedia.com/doc/1G2-3403300685.html.
It is clear from the list in the Schedule that almost every crime under the criminal laws of Namibia is prohibited under POCA alone, provided that it is prosecuted under that statute, and it is proved that the accused committed that as part of the pattern of racketeering or organized criminal enterprise. The next point therefore would be to look at what a ‘pattern’ and ‘enterprise’ is, so that the crime becomes associated with money laundering.

The term ‘pattern’ is not entirely a legal concept but is found in important statutes where its definition is now legally questioned for precision. In the case of *H.J Inc. v North-western Bell Tel Co.*, Justice Scalia noted in his concurrence that courts have been unable to define “pattern” with any meaningful degree of clarity, leading to speculations that the American counterpart of POCA, the Racketeer Influenced and Corrupt Organizations Act (RICO), would be vulnerable to a vagueness challenge. It is also the submission of the applicants that the provisions of POCA, relating to racketeering, are similarly vague and unconstitutional, and in violation of the rule of law, in that they depend on a definition of “pattern of racketeering activity,” which is vague.

The definition of a “pattern of racketeering activity” is one of the most important concepts under POCA because it defines a key element of each substantive racketeering offence. However, statutory definitions in the POCA and the corresponding American Legislation Racketeer Corrupt Organizations Act (RICO) of 1970 are not precisely the same. Section 1961(5) of RICO provides that a pattern of racketeering activity:

> requires at least two acts of racketeering activity, one of which occurred after the effective date of this Chapter [October 15, 1970] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering

---

291 As was shown in the previous chapter RICO was enacted by section 901(a) of the Organised Crime Control Act of 1970 enacted October 15, 1970), and is codified at 18 U.S.C. chapter 96 as 18 U.S.C. section 1961 - 1968.
292 See also *Cianci v Superior Court* 710P.2d 375, 376-77(Cal. 1985).
Section 1 of POCA provides that ‘enterprise’, “includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity.” Section 1961(4) of RICO uses the same language as POCA for the definition of “enterprise”. The Shorter Oxford English Dictionary defines the word “include” to mean that it contains, comprises, embraces: a. as a member of an aggregate, or a constituent part of a whole. Further this is as a subordinate element, corollary, or secondary feature.

Pursuant to United States case law in definitional provisions of statutes and other writings, the word “include” is frequently, if not generally, used as a word of extension or enlargement rather than as one of limitation or enumeration. In South Africa, where the definitions are exactly the same as in the USA and Namibia, it was held in Savoi and Others v National Director of Public Prosecutions and Another, that POCA is read as whole. It is apparent that the verb “includes” should be interpreted in that manner and the list that follows should be treated as illustrative, rather than exclusive.

The “enterprise” is not the “pattern of racketeering activity”, but an entity separate and apart from the pattern of activity in which it engages. An enterprise is chiefly distinguished from the pattern of racketeering activity by the fact that it possesses some goal or purpose more pervasive and more enduring than usual gratification that can accrue from the successful completion of each particular criminal act. In the contention of the applicants, a “pattern of racketeering activity,” as defined in section 1 of POCA is unintelligible, vague and meaningless. It is unclear at what point it can be said that there is a “pattern of racketeering and the definition is vague; it is unclear who may be charged with racketeering under

293 (Volume1) at P 1046 (1972).
295 [2013] 3 All SA 548.
POCA, and it is not objectively ascertainable at what point a racketeering offence is committed. In support of their contention, the applicants rely on the judgment of Justice Scalia in the case of *H J Inc. v North Western Bell Telephone Co.*,\(^{296}\) where the learned Judge indicated strongly in his concurring judgment that the definition of “pattern of racketeering activity” in RICO was illusive and uninformative. He also had similar difficulties with the element of “continuity”, which the state must prove under the “pattern of racketeering activity” definition.

Therefore “pattern of racketeering activity” requires at least two acts of racketeering activity (any of the offences referred to in Schedule 1), of which one occurred after the effective date of POCA and the last offence within ten (10) years (excluding any period of imprisonment) after the commission of a prior such offence referred to in Schedule 1. The statutory definition of a “pattern” has thereby set forth two technical requirements regarding the time when the predicate acts were committed. The last act must have been committed within ten years of the prior act, excluding any period of imprisonment. This means that the last racketeering act must have occurred within ten years after the commission of a prior racketeering act and that is essential to establish the requisite two acts.\(^{297}\)

The Namibian POCA is a *replica* of the South African one. Chapters 5 and 6 of POCA South Africa are identical to the same chapters of the Namibian POCA. The South African POCA is a *replica* of the USA’s RICO, as shown in the previous chapter. South African and American jurisprudence, on this aspect, is thus very informative to scholarship and persuasive to the courts.

\(^{296}\) 492 U.S 229.

\(^{297}\) See *United States v Pungitore*, 910 F. 2d 1084, 1129 and n 63 (3d Cir. 1990).
In this context, it was explained in *Savoi and Others v National Director of Public Prosecutions and Another* that POCA (RSA same as Namibia) is of general application in that everyone who has engaged in the prohibited act, involving one of the offences referred to in Schedule 1 of the Act before the effective date of the legislation, is on prior notice that only one more act may trigger an offence of racketeering, which carries a severe penalty.

Therefore, an accused is given a fair warning that the subsequent act will combine with the prior racketeering activity, which involves money laundering and its associated offences, to produce the racketeering pattern activity against which the definition section of money laundering is directed. The second act creates a separate offence based on the commission of the predicate act itself apart from handling the proceeds of an illegal activity. In the premises, upon proper construction, the definition of “pattern of racketeering activity” in section 1 of POCA is not vague, but clear and precise, instead. This is well explained in the *Savoi* case cited above.

In this sense, section 1 adequately warns an accused that an on-going and continuous, or repeated commission of more than one associated criminal act listed in Schedule 1, will expose him or her to conviction on a charge of a more serious offence of racketeering. The racketeering processes listed in Schedule 1 involve almost every crime on the statute books. It has been challenged as overbroad in the USA, South Africa and Namibia but the challenge did not succeed.

---

298 [2013] 3 All SA 548.  
299 It must be mentioned that the South African Act has 35 offences listed in Schedule one thus one has to be careful about which associated or predicate offence is being considered.  
300 See *American Surety Co. v Marotta*, 287 US 513, 517 (1983); *United States v New York Tel. Co.* 434 U.S. 159, 69 (1977), *Savoi and others v National Director of Public Prosecutions and Another*, supra. Over breadth refers to a principle that “governmental purpose to control or prevent activities constitutionally subject to State regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of constitutionally protected freedom”. Over breadth requires that the means used to achieve a State object is too
It is noted that organized crime is a continuing criminal enterprise that rationally works to profit from illicit activities\textsuperscript{301} that are often in great public demand. Its continuing existence is maintained through the use of force, threats, monopoly control and/or the corruption of public officials.\textsuperscript{302}

Even on an international level, the United Nations Convention Against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 of 15 November 2000, which is the main international instrument in the fight against transnational organized crime, does not contain a precise definition of transnational organized crime, nor does it list the kind of crimes that might constitute it. This lack of definition was intended to allow for a broader applicability of the Organized Crime Convention to new types of crimes that emerge constantly as global, regional and local conditions change over time. Be that as it may, the above given definition of organized crime\textsuperscript{303} implies illegal profit making business activities. This means that it’s a method that criminals use in order to make their illicit business more profitable.

Therefore, whenever money is being generated through illicit means (organized crime), immediately money laundering would follow suit to conceal the illegitimacy of these illegally obtained funds, for obvious reasons of hiding from the relevant authorities. Organized crime may seem to be identical with the crime of money laundering. However, the two crimes are very different from one another. Thus, it is important to understand the differences in order for the relevant authorities to combat both crimes effectively.

\textsuperscript{301}Emphases added.

\textsuperscript{302}(2004), Organized Crime in our Times fourth edition, LexisNexis, Virginia Commonwealth University, p.4.

\textsuperscript{303}\textit{Ibid}, at 118.
Transnational organized crime manifests itself in many forms, including trafficking in drugs, firearms and even persons. At the same time, organized crime groups exploit human mobility to smuggle migrants and undermine financial systems through money laundering. In this context, money laundering and organized crime operate hand in hand. This is the case because criminals use organized crime to generate money on one hand, and on the other, employ money laundering to conceal such funds they have generated through illegal means.

It should be noted that laundering of illicit funds occurs in many forms. This is made clear by Jay S. Albanese when he states that organized crime generally occurs during the course of otherwise legitimate business or governmental affairs. This does not mean that legitimate businesses alone can amount to organized crime. To the contrary, what is meant here is that people involved in organized crime have legitimate businesses alongside illegitimate ones, in order to conceal their illegal proceeds through the process of money laundering. Hence, the relationship between money laundering and organized crime comes into effect. Moreover, organized crime may exist before, after or during the commission of the crime of money laundering, depending on a particular crime involved under organized crime.

Therefore, money laundering and organized crime are inter-connected. This is the case because organized crime generates illegal money on the one hand. On the other, money laundering is used to move around money that has been derived thorough organized crime. This is necessary in order to make money derived from organized crime appear legal and makes organized crime one of the offences related to the crime of money laundering.

305 *Ibid*, at 119, p.5.
306 Almost all of the offences related to the crime of money laundering have an element of organized crime.
Furthermore, it should be noted that most crimes related to money laundering are organized crimes in nature. For instance, it was seen in Chapter 4 of this study that this criminal activity may involve huge sums of money up to millions (N$) and even billions (N$). In order for such amounts of money to be made and/or laundered, one needs a number of people in an organized group to facilitate the huge transactions. Therefore, it may be said that, in most instances where money laundering is involved, huge sums of money are likely to be present. Similarly, organized crime is the generating of profit from illegal activities whereas money laundering is how such money is disguised or made to look legitimate. Organized crime may exist before, during and after the three stages of money laundering, as it involves an organized way of how criminals conduct their business affairs.

### 5.4 Terrorism and terrorism financing as an associated crime

There exists a fine line between terrorism and terrorism financing. In order to fully understand the difference and how they both relate to money laundering, there is a need to look at their respective definitions. Terrorism involves crimes designed to intimidate or coerce civilians or a government in order to achieve political or social objectives.

Examples of terrorist activities would include hostage taking in order to secure freedom for those seen as imprisoned unjustly, or acts of violence done in retribution for perceived past injustices. In every case, an act of terrorism has a political objective, unlike the profit motive that lies behind organized crime.\(^{307}\)

---

Globally, research into the financing of terrorism and its link to money laundering is developing but still very underdeveloped. More generally, there is limited academic literature on combating the financing of terrorism.\textsuperscript{308} In the context of Namibia, \textit{terrorist activity} means

(a) any act committed by a person with the intention of instilling terror and which is a violation of the criminal laws of Namibia and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, or group of persons or which causes or may cause damage to public or private property, natural resources, the environment or cultural heritage and is calculated or intended to –(i) intimidate, instil fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; (iii) create general insurrection in a State; or

(b) any act which constitutes an offence within the scope of, and as defined in one of these treaties.\textsuperscript{309}


(c) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) or (b); (d) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act; or (e) the payment of ransom to designated persons or organisations, except where such payment is approved or authorised by any government to secure the safety of a national of that country;\textsuperscript{310}

Under the definition within the Namibian legislation it can be seen that the definition is broad, as it takes into account international laws that Namibia is a signatory to, and also includes those persons that may financially assist a terrorist. The Namibian Financial Intelligence Act (FICA) primarily aims at ensuring transparency and regulatory compliance in the financial system for the purpose of combating money-laundering and preventing the financing of terrorist activities.

Namibia came up with this Act because it is bound to do so by virtue of the fact that it became a signatory and party to the United Nations Universal Conventions.\textsuperscript{311}

\textsuperscript{310} Section 1 of Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act, No. 04 of 2014) of Namibia.

After the Twin Towers bombing in New York on 11 September 2001, the Security Council of the United Nations passed Resolution 1373/2001 on 28 September 2001. Resolution 1373/2001 reaffirmed that any act of international terrorism constituted a threat to international peace and security, and called upon states to work together to prevent and suppress terrorist acts, through increased cooperation and full implementation of the relevant international conventions relating to terrorism.

Moreover, terrorism activity includes both terrorism and its funding. Furthermore, it can be seen from both definitions that terrorism is the actual conduct that amounts to coercion of a certain view, usually towards a government in place, institution and people respectively.

The Prevention and Combating of Terrorist and Proliferation Activities Act, 2014\(^ {312} \) lists numerous treaties in its definition. This means that any and all the offences within the scope of, and as defined in the afore-mentioned treaties, amounts to terrorist activity in the context of the said Act. To give an example, the United Nations International Convention for the Suppression of the Financing of Terrorism of 1999 defines Terrorism financing under its Article 2 as:

Any person who commits an offence within the meaning of this Convention, if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used, or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of, and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

\(^{312}\)Act, No. 04 of 2014.
Moreover, Namibia’s Prevention and Combating of Terrorist and Proliferation Activities Act, 2014, defines funding of terrorism as: the provision of funds, assets or financial services which are used, in whole or in part, for a terrorist activity as contemplated in section 2 which says that a person who, in or outside Namibia, directly or indirectly, engages in any terrorist activity commits the offence of terrorism and is liable to life imprisonment. Section (2) states that, a person who, by any means, in or outside Namibia, directly or indirectly, provides, solicits or collects funds intending, knowing or having reasonable grounds to believe that such is to be used, in whole or part, to carry out any terrorist activity regardless of whether such funds or part thereof were actually used to commit a terrorist activity, commits an offence and is liable to a fine not exceeding N$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Therefore, terrorism financing or funding is more concerned with assisting a terrorist with funds to carry out the terrorist activities. Terrorist financing is very different from money laundering and the difference makes it harder to detect. Money laundering is essentially about the cleaning of dirty money, turning the proceeds of crime into apparently legitimate money and assets which can be freely used and traded in the normal way. Terrorist offences, however, are not crimes committed for the purpose of financial gain and the motivation of terrorists, ideological rather than material is very different from that of drug dealers and fraudsters.
Terrorist financing is about the misuse of either clean or dirty money for terrorist purposes.\textsuperscript{313} Basically, people involved in terrorism financing or funding will employ money laundering in order to conceal their identities. After all, if one is found guilty of assisting a terrorist, the punishment is severe. For instance, in Namibia, one may be looking at a fine of N$100 million or life imprisonment or both.

Thus, no one would publicly fund terrorist activities and this is where money laundering is used, to fund such activities. That is where the relationship between money laundering and terrorism financing comes into effect. In this instance it can be said that the person funding terrorism could be running a legitimate business but, funding unlawful activities (terrorism activities). That is the reason it is argued in this study that money laundering is not limited to making illegally obtained funds look legitimate but, it is also about concealing the end results which may at time be illegitimate (terrorism financing/funding of terrorism).

Hence this study proposed a definition regarding money laundering (the definition is illustrated in chapter three and four of this study) to cater for instances of terrorism financing. In other words, not all money used to finance terrorism will be dirty because clean money may as well be used to do so.

\textsuperscript{313}\textit{Money Laundering Law and Regulation a Practical Guide.}
5.5 Corruption

Combating corruption is such a difficult undertaking where there are no simple solutions and making progress requires action on many fronts. Corruption must be attacked from both the demand and the supply sides by private-sector initiatives such as, corporate codes of conduct; by public-sector reforms, such as more transparent procurement rules, deregulation, and privatization; by better enforcement of existing laws prohibiting bribery of domestic officials and by defining clearer conflict of-interest and ethics rules.

Corruption is an international problem that affects all countries of the world, with some being hit the worst. It affects the public and private sectors and bribery is inherently part and parcel thereof. Although Namibia is not within the top ten (10) most corrupt countries in the world, this does not necessarily mean there is no corruption prevalent therein. According to the corruption survey by Ernst and Young (EY) Namibia in 2014, it was found that the most prevalent corruption schemes in Namibia are asset misappropriation, procurement and

314 In 2003 I attended training in Kenya-Nairobi for a week. The training was based on public procurement. During the training it transpired that poorly drafted tender laws may lead to corruption. The Director of the training alleged at the time that it is a matter of time before Namibia adopts a better law to regulate public procurement, as the current law (Tender Board Act, No. 16 of 1996) might be prone to corruption. Three years later, the Public Procurement Act, No. 15 of 2015 was passed by the Namibian Parliament and it repealed the Tender Board of Namibia Act, 1996. The major differences between the two Acts is as follows: The Tender Board of Namibia Act was focused on regulating the procurement of goods and services for, the letting or hiring of anything or the acquisition or granting of rights for or on behalf of, and the disposal of property of, the Government; to establish the Tender Board of Namibia and to define its functions; and to provide for incidental matters. Whereas, the Public Procurement Act, 2015 will regulate the procurement of goods, works and services, the letting or hiring of anything or the acquisition or granting of rights for or on behalf of, and the disposal of assets of, public entities; to establish the Procurement Policy Unit and the Central Procurement Board of Namibia and provide for their powers and functions; to provide for the procurement committees and procurement management units and their powers and functions; to provide for the appointment of bid evaluation committees and their functions; to provide for procurement methods; to provide for bidding process, bidding challenge and review; to provide for preferences to categories of persons, goods manufactured, mined, extracted, produced or grown in Namibia, to Namibian registered small and medium enterprises, joint venture businesses, local suppliers, contractors and service providers; and to provide for incidental matters. The purpose of the Public Procurement Act is to ultimately combat corruption within the public procurement of Namibia. On the face of it, it looks like it might achieve its objective however, only time will tell.


tender fraud, as well as bribery. The quotation below illustrates how the Namibian
government loses millions over years due to corruption related schemes:

“Government has been swindled of well over N$200 million in the past five years, allocated to the
Ministry of Education in the national budget for capital projects due to gross incompetency,
corruption and poor close evaluation and monitoring of the ministry’s capital projects by senior
management in the ministry, Confident has learnt”.

This means that corruption is a reality within the borders of Namibia. Nevertheless, the next
question is: What exactly does the phenomenon, corruption entail?

Section 32 of the Anti-Corruption Act, 2003 (Act No. 8 of 2003), defines “corruptly” as to
mean, in contravention of or against the spirit of any law, provision, rule, procedure,
process, system, policy, practice, directive, order or any other term or condition pertaining to
- (a) any employment relationship; (b) any agreement; or (c) the performance of any
function in whatever capacity. This definition is discussed in the case of *Lameck and
Another v President of the Republic of Namibia And Others*:

The applicants and six respondents were facing charges under POCA and the Anti-Corruption Act,
2003 (ACA). In the present application, they challenged the constitutional validity of the
appointment of the Attorney-General, who is also the Minister of Justice. They also challenged the
constitutionality of certain provisions of POCA and ACA. The grounds upon which provisions of
POCA were challenged were inter alia: that they violated the fundamental principle in Article 12(3) of
the Constitution by retrospectively criminalising and imposing penalties for conduct which was lawful
when it was committed, and also by contravening art 21(1)(j) and other Articles reinforcing those
provisions such as articles 7, 8, 11 and 16 of the Namibian Constitution. They sought to have the
definitions of ‘unlawful activity’ and ‘proceeds of unlawful activities’ set aside. These provisions
related to money laundering offences and asset forfeiture. The definition of ‘unlawful activity’ and

---

318 2012 (1) NR 255 (HC).
319 Act 8 of 2003.
'proceeds of unlawful activities' includes reference to conduct 'before or after' the commencement of POCA.

The constitutional challenge to ACA, related to the definitions of 'corruptly' and 'gratification' which allegedly violated the constitution, because they were too broad and vague and did not adhere to the principle of legality which was entrenched in the constitution. The court held that, what were criminalised were the current possession, acquisition and use of the proceeds of unlawful activities and not the original conduct which rendered those proceeds as unlawful. It further held that, conduct could have occurred before POCA came into force, but it was the subsequent possession, use or acquisition after POCA came into force, which was criminalised by the Prevention of Organised Crime Act, 2004 (Act, 29 of 2004). The offences did not operate retrospectively and thus did not contravene Article 12(3) of the Namibian Constitution.

Furthermore the court held that the definition of “corruptly” was vague and thus unconstitutional, and accordingly, was struck down. However, on appeal, the Supreme Court of Namibia held that “corruptly” is not vague and should remain intact and be given its ordinary meaning.  

As per the afore-mentioned judgment by the Supreme Court, this study looks at the definition of corruption in its ordinary sense. Nonetheless, other definitions are used in order to illustrate the relationship to the crime of money laundering.

Namibia is a State Party to the United Nations Convention against Corruption of 2005 (UNCAC). This is the major international treaty in the combating of corruption. However, the UNCAC does not define the word “corruption”, but merely outlines measures on how to combat it amongst other crimes. Nevertheless, under the South African jurisdiction, the concept is defined within their Prevention and Combating of Corrupt Activities Act, 2004.  

Section 3 of the said Act defines corruption as follows:

---

320 Judgment delivered on February 20, 2012.
321 As for example money laundering, embezzlement and bribery amongst others.
322 Act No. 12 of 2004.
Any person who directly or indirectly—

a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner—

i) that amounts to the—

aa) illegal, dishonest, unauthorised, incomplete, or biased; or

bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; or

ii) that amounts to—

aa) the abuse of a position of authority; or

bb) a breach of trust; or

cc) the violation of a legal duty or a set of rules; or

iii) designed to achieve an unjustified result; or

iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption.

South Africa’s definition of corruption is broad but clear. Since Namibia’s definition has been declared unconstitutional\(^323\), it could consider borrowing South Africa’s conceptual framework of corruption. From the South African definition of corruption, it can be appreciated that the person involved in the act is likely to receive some kind of reward or pass on some to a second person either in money, property or simply advance his interest or interest of another person, using the power he is entrusted with by authorities.

Money and property derived through corruption will always have a link with money laundering, because it is simply hiding the origin of the illegal funds or the identity of the persons embezzling money or property that is not theirs. This definition is expounded in Chapter four of this study.

\(^{323}\) *Lameck and Another v President of The Republic of Namibia and Others* 2012 (1) NR 255 (HC).
In other words, when there is a flow of money or property through corruption that is whereby the relationship between money laundering and corruption comes about.

5.6 Cyber-crimes associated with money laundering

Cyber-crime is a complex crime that may be defined as one in which a computer is the object of the crime (hacking, phishing, spamming) or is used as a tool to commit an offence (child pornography, hate crimes). Cyber criminals may use computer technology to access personal information, business trade secrets, or use the internet for exploitive or malicious purposes. Criminals can also use computers for communication and document or data storage. Criminals who perform these illegal activities are often referred to as hackers. Cybercrime may also be referred to as computer crime.324

Similarly, computer crime has been broadly defined as any illegal act that involves a computer, its systems, or applications. It is any intentional act associated in any way with computers, where a victim suffered or could have suffered a loss, and a perpetrator made or could have made a gain.325 Additionally, it may be said that, internet crime is related to computer crime, but more specifically it relates to those illegal acts specifically made possible by the emergence of the internet.326

Put differently, from the afore-mentioned definitions, it may be said that cyber-crime, computer crime and/or internet crime is any that one commits through a computer, or is advanced through a computer.

---

326 Ibid, p. 408.
It should be emphasized that theft and fraud, amongst other crimes, may be committed without using a computer. However, from the instance a computer is used, the facilitation of a crime will be through its use. This means that whenever a computer is used to commit an offence, be it deliberately overloading a nuclear reactor that kills many people as a result, and or simply stealing money, all this amounts to cyber, computer and/or internet. The following South African and Namibian scenarios illustrate how cyber-crimes work:

Esmare Weideman, former editor-in-chief of YOU magazine and now chief executive of media24, was robbed in this way. About R1, 5 million was transferred from her home loan account to her cheque account without her knowledge. About R360 000 of this was paid in smaller amounts into a fake beneficiary’s account before Absa could freeze her account.327

In January 2016, The Namibian newspaper reported that a Standard Bank Namibia client, John, was robbed of N$450, 090 on 6 February when the money was transferred from his business account while he was in South Africa for a weekend. This was done when a con-artist went to Mobile Telecommunication (MTC) to replace his SIM card, claiming he had lost his phone and called Standard Bank, claiming that he had forgotten his password for online banking. An amount of N$400, 000 was transferred from John's business account to a South African one, and another N$50, 000 was transferred into a Namibian account. He told the “Namibian” at the time that even though the N$50 000 transferred to a Namibian account had been moved already to another , Standard Bank Namibia managed to block its withdrawal through Standard Bank South Africa, as the money takes three days to be cleared.328

In these scenarios it can be seen that these crimes, fraud and/or theft, were facilitated through the use of a computer, from the persons indicated in the scenarios.

It can also be said that, organized crime has not changed much since the days of Al Capone. Criminals still commit the same crimes, but gangsters and armed robbers have transformed into cyber criminals using the internet to generate illicit funds.\textsuperscript{329} This emphasizes the point that cyber-crime is any crime committed through the assistance of a computer. Case in point, when money is stolen using a computer, the culprit will not wire such money direct to his/her account, but will launder it so as to hide the paper trail, hence the relationship between money laundering and cyber-crime come into existence.

The following American case involves identity theft\textsuperscript{330}, fraud, forgery and theft. However these crimes were made possible in this instance through the use of a computer and the case illustrates the effects that may be caused through cyber-crimes. This case is illustrative of cyber-crime during the period of 1995 to 1997.


\textsuperscript{330} The illegal use of someone else's personal identifying information (such as a Social Security number) in order to get money or credit accessible at \url{http://www.merriam-webster.com/dictionary/identity%20theft} last accessed on March 08, 03.216. Identity theft is one of the major crimes in cyber-crimes. Identity theft criminals come in all shapes and sizes these days. If you're ever unlucky enough to be a victim of identity theft, the culprit is far more likely to be a local Methamphetamine user than a professional hacker. That said, most organized crimes gangs around the world are becoming much more involved in computer hacking. Computer identity theft can happen in a number of ways. Criminal organizations can use their own hackers, hire college students, or simply buy large amounts of stolen information from professional hackers. And the result is a spike in the number and size of reported data breaches by hackers. Much of the data stolen through computer hacking — including stolen credit card numbers and Social Security Numbers — will end up on a network of illegal trading sites where hackers and criminals from around the world will openly buy and sell large amounts of personal data for profit. Another source of computer identity theft involves former employees hacking into the networks and computers of their old job, using either insider knowledge or password accounts that were never cancelled. For example, the thief who stole 30,000 credit records from his employer in New York committed the crime over a two-year period after he left the company. The cost of his crime was estimated at more than $100 million. How Computer Hacking Happens. Hacking attacks can be launched in a number of ways: Attacking computers that don't have firewalls installed. Installing keystroke loggers or other malicious code by hiding it in email attachments. Exploiting browser vulnerabilities that have not been properly patched. Exploiting weak or poorly protected passwords. Hiding malicious code in downloads or free software. Hiding malicious code in images on websites and waiting for unsuspecting users to click on them. Employees or other trusted users simply accessing an unprotected computer. Exploiting poorly installed networks, and especially wireless home networks, accessed at \url{http://www.privacymatters.com/identity-theft-information/identity-theft-computer-hacking.aspx} last accessed on February 01, 2016.
The United States of America, *Appellee, v Julianne K. Sample*,\(^{331}\)

Sample engaged in an elaborate financial fraud and identity theft scheme in the greater Kansas City. Sample perpetrated her scheme by procuring personal information about her roommates. Once Sample purloined this information from her unsuspecting victims, she began the process of stealing their identities. Sample then utilized the credit cards to make multiple purchases in her victims’ names.

After some time law enforcement officers eventually discovered Sample's scheme and apprehended her. She pleaded guilty in a Kansas state court to one count of forgery and two of felony theft. While incarcerated, Sample admitted to an agent of the United States Secret Service that she had orchestrated an extensive identity takeover scheme and stole thousands of dollars from various unsuspecting victims in western Missouri and Kansas.\(^{332}\)

\(^{331}\)213 F. 3D 1029 (8TH CIR. 2000).

\(^{332}\) *Ibid*
From the scenarios that were used to illustrate cyber-crime, it was seen that unknown persons, until some were caught, stole money from bank clients through the means of computers. Emphasis is on unknown persons because when they committed the thefts, they hid their identities by pretending to be the rightful owners of the identities in question, and moved the money around in order to avoid being caught by the authorities. This is a typical trait of money laundering, the difference being that the perpetrators use computers in order to successfully carry out their criminal activities.

Computer crimes may just be high-tech variations of conventional ones and consist of traditional crimes committed with the help of computers, such as the distribution of child pornography, that which involves children.

Thus, people involved in such activities would ordinarily have to launder the money derived from such activities to avoid it being traced back to them, and consequently charged for whatever crime that may be attached, it be child pornography, fraud, identity theft and terrorism financing, amongst others. This is made possible through the relationship that exists between cyber-crime and money laundering.

As a result, it may be said that crime, especially “financial,” committed through computers, amount to cyber, computer and/or internet crimes. Furthermore, when criminals want to enjoy their financial gains from cybercrimes, they would likely employ money laundering in order to evade the authorities. Not employing money laundering in this regard would certainly connect the culprit to the crime that is generating the illegal money in question. Hence, the relationship between money laundering and cyber-crimes comes into existence.

---

334 Ferrera et al supra note 327 pp. 407-408.
335 Ibid, p. 416.
5.7 Drugs and illegal trade in substances and services

In order to understand what illegal trade in substances and services entail, and how the two relate to money laundering, there is a need to first understand what the respective terms entail. The word ‘service’ may be defined as the action or process of serving. On the other hand, the term “substance” can be defined to mean a particular kind of matter with uniform properties. Thus, it may be said that a service is something which is intangible whereas, a substance is something that is tangible, in nature.

The discussion first looks at illegal trade in substances and how it relates to money laundering before proceeding to illegal trade in services, respectively.

5.8 Illegal trade in substances

From the afore-mentioned definition of “substances”, it is seen that it encompasses all things that are tangible. Therefore, when one talks about illegal trade in substances, it will mean all types of substances that one is able to touch and which are in turn illegally traded. That said, this study only looks at two types of substances that may be illegally traded, depending on the usage namely, drug and arms trade.

The United Nations drug control conventions do not recognize a distinction between licit and illicit drug, as they describe only the use thereof to be licit or illicit. Here, the term illicit drug is used to describe drugs which are under international control (and which may or may not have licit medical purposes) but are produced, trafficked and/or consumed illicitly.

---

This is important because not all drugs are necessarily illegal, but their usage may be. Take for instance, medication prescribed by a registered physician, may not necessarily be illegal however, if a physician starts to overprescribe than which is allowed within the medical limitation, it then becomes illegal trade by the prescriber and illegal usage by the patient, if he/she knows and is working together with the physician to evade the authorities.

Article 1 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances Vienna, 20 December 1988, stipulates that a “narcotic drug” is any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961. This definition indicates that there are a lot of narcotic drugs out there that may be illegally traded. Nevertheless, this study focuses on one of them for practicality reasons, namely cocaine.

The study focuses on drugs that are inherently illegal under any given circumstance, namely cocaine, a powerfully addictive stimulant drug made from the leaves of the coca plant, native to South America. It produces short-term euphoria, energy, and talkativeness in addition to potentially dangerous physical effects like raising heart rate and blood pressure.339

In the true story of Pablo Escobar shown in a documentary:

Pablo Emilio Escobar Gaviria was probably one of the extremely rich criminals in the world in his time. With an estimated net worth of well above $30 billion, Pablo Escobar was described as a wealthy narco-terrorist, drug lord and cocaine trafficker. His criminal mind was reported to have started during his teenage years. At such a young age, Escobar already had his ambition to become a millionaire when he reached twenty two. Escobar was born on December 1, 1949 in Rionegro, Antioquia, Colombia. He died on December 2, 1993 at age 44 in Medellín, Colombia, after he was shot as he tried to escape from an operation by the Colombian National Police, the USA Special field force and a group of ordinary citizens jointly working together for over 15 years, before they could bring him down. Pablo Escobar’s main source of income was cocaine and it made him the most powerful gang lord of his time. He was even more powerful than his own government. He had his own private police and army and he lived by the simple rule of silver or lead. Most governmental officials were on his pay roll in order for him to remain powerful. All this was made possible by the billions of dollars he made annually in trading in illegal substances, namely cocaine.

This documentary indicates that illegal trade in substances has the capacity of bringing a lot of money to the traders, together with high crime rates and corruption in a given society. In the said documentary, money wise, Pablo Escobar was worth $30 billion that translates to over N$500 billion Namibian dollars. In other words, Pablo Escobar was worth 10 times more than Namibia’s budget of 2015 (N$ 52.12 billion). Namibia as a country is not spared from the drug trade. Police destroyed illicit drugs with a street value of N$ 2, 2 million at the Bergvlag research farm just outside Windhoek.

341 Meaning bribe (silver) or bullet (lead).
342 Nomhle Kangootui, Police burn drugs worth N$2m, The Namibian newspaper, April 12, 2016, p. 3.
Another example of illegal trade in substances that is worth mentioning is the illegal trade in weapons. All over the world are numerous terrorist groups and it is highly unlikely that the terrorists themselves manufacture all of their weapons. Some terrorist groups are more feared or more dangerous than others but they all require weapons and ammunitions to carry out their causes.

Additionally, in Africa and elsewhere, the illicit trade in small arms and light weapons is dense, amorphous and dynamic. It is also a global enterprise with illicit weapons across Africa coming from virtually every major arms producing country in the world. Small Arms Survey puts the dollar value of the illicit small arms trade at US$1 billion, or 10-20% of the global trade. The clandestine nature of this trade makes it impossible to confirm these estimates, but what is obvious is that, in Africa the illicit trade in small arms is counter-developmental on many levels.343

On the other hand, it matters not what part of the world terrorists operate from, what is critical is that they require weapons, ammunitions and ultimately funding in order to carry out their causes accordingly. Therefore, in fighting terrorism, it is vital to make sure that such groups do not have access to such weapons by cutting off their funders in order for such groups not to buy these weapons and ammunitions.344 In other words, only by understanding the relationship between illegal trade in substances (weapons and ammunitions) and money laundering, will authorities be in a better position to combat both crimes, amongst others. Illegal trade in substances brings in a lot of money, be it drugs, precious minerals (diamonds, platinum, gold, copper and uranium amongst others),345 black

344This view was also expressed at a seminar headed by the British High Commissioner in Windhoek that the author of this study was party to, on security affairs, July 2016.
gold (oil), poaching and guns, etc. In order for people involved in the illegal trade of substances to fully enjoy their money, they have to launder it into the financial system. For instance, it would have been impractical for Pablo Escobar to keep $30 billion in his home as this would be equivalent to keeping over NS$500 billion Namibian dollars in one’s home. Although some drug lords may choose to put their money in their homes, they would inevitably have a tough time on how to use it, as most large transactions in today’s world require electronic payments. Hence the relationship between illegal trade in substances and money laundering come into effect. Conversely, illegal drug lords or gun dealers would need to launder their millions into the financial system in order to use it easily and conveniently.

The afore-mentioned has illustrated that trade in services may involve huge sums of money. Therefore, as with the other related offences that have been analysed beforehand, money laundering is imperative for the criminals to clean their money or hide their identities. Understanding this relationship will assist policy makers in better understanding how the two offences work together, thus, putting them in a better position to combat money laundering and illegal trade in substances.

---

347 Mike Knight, Record 1300 rhinos poached in Africa in 2015, The Namibian newspaper, March 11, 2016, p. 8 – More than 1300 rhinos were poached in Africa last year, The slaughter has been driven by demand for their horn in countries such as China and Vietnam, where they are prized for their purported medicinal properties. They are sold for about US$60 000 a kilo on the black market, making it more expensive than cocaine. Similarly, in the Namibian newspaper – Tuts, rhino horns’ stockpile worth billions (April 12, 2016) by ChamweKaira, Namibias elephant tusks and rhinos’ stockpile is worth billions of dollars.
348 Chapter 3 of this study proposes a complete definition on money laundering on how criminals launder money or hide their identities.
5.9 Tax evasion

The major law dealing with taxation in Namibia is the Value Added Tax Act, No.10 of 2000. Income Tax Act, 1981\textsuperscript{349} is the principal legislation in Namibia as far as tax collection of income is concerned, be it individuals or juristic persons. The Value Added Tax Act, No.10 of 2000, collects tax on goods sold in Namibia by registered vendors or services. Be that as it may, providing a comprehensive definition of taxation is challenging. It can best be described as a monetary-based contribution payable by the public as a whole or a substantial sector thereof to a government (at a national or sub-national level). Its primary purpose is to defray government expenditures; it can also serve as an instrument to attain socio-economic and political objectives.\textsuperscript{350}

Therefore, it can be appreciated that tax is very important source of income for a government running the country. However, some people within societies have found ways to contribute money to their respective governments in order to escape paying tax which they are obliged by law to do so. This process is known as Tax evasion, a way of using illegal means to avoid paying taxes. Typically, tax evasion schemes involve an individual or corporation misrepresenting their income to the Internal Revenue Service. Misrepresentation may take the form either of underreporting income, inflating deductions, or hiding money and its interest altogether in offshore accounts.\textsuperscript{351}

Therefore, it may be stated that tax evasion involves the withholding of funds that should be paid to legitimate authorities in a country. Put differently, in order to hide or withhold these monies, tax evaders will employ money laundering in order to avoid detection. This is how the relationship is born between money laundering and tax evasion.

\textsuperscript{349}No.24 of 1981.
\textsuperscript{350}Oguttu A et al. (2003). Tax Law An Introduction, Juta and CO. LTD, Cape Town, p.5.
\textsuperscript{351}https://www.law.cornell.edu/wex/tax_evasion last accessed on March 23, 2016.
There are substantial similarities between the techniques used to launder the proceeds of crime and to commit tax crimes.\textsuperscript{352} Both crimes are financial in nature. Money laundering primarily hides the identity of the culprit and or the source of the ill-gotten funds. Tax evasion on the other hand, predominantly, involves the hiding of money whether ill or lawfully gotten. Therefore, it may be said that the link between tax evasion and money laundering is that people who commit tax evasion will inevitably use the channels of money laundering in order to hide their money from tax authorities. In other words, whenever a person commits the crime of tax evasion, the likelihood that such a person will also be found guilty of the crime of money laundering are staggering.

In the United States of America case of CPA Hedge Fund Manager Sentenced for Role in $40 Million Ponzi scheme,\textsuperscript{353} on Jan. 15, 2015, in Charlotte, North Carolina. Jonathan D. Davey, of Newark, Ohio, was sentenced to 252 months in prison, three years of supervised release and ordered to pay $21,815,407 in restitution. In February 2013, a federal jury convicted Davey of securities fraud conspiracy, wire fraud conspiracy, money laundering conspiracy and tax evasion.\textsuperscript{354} According to court documents and today’s sentencing hearing, Davey, a certified public accountant and registered investment advisor, served as the “Administrator” for numerous hedge funds for the Black Diamond Ponzi Scheme, an investment fraud scheme that deprived 400 victims of more than $40 million. Davey collected over $11 million from victims with his own hedge fund, “Divine Circulation Services,” by falsely stating that he had done proper due diligence on Black Diamond and that he was operating a legitimate hedge fund with significant safeguards, when, in reality, neither claim was true. As the Black Diamond scheme began to collapse, Davey and his co-

\textsuperscript{354} Emphasis added.
conspirators collected over $5 million from new victim investors for the cash account and used this money to make payments to old investors and to themselves.

Davey controlled most funds and wires, and published a website for victims that reflected fake high returns. By the end of the scheme, the website falsely reflected over $120 million in supposed value for victim-accounts, when in reality the funds were less than $1 million.

Davey also used an elaborate network of shell companies\textsuperscript{355} to evade taxes and commit money laundering with the proceeds of the Ponzi scheme. Ten other defendants have been sentenced in this case to terms ranging from 40 years to six months in prison. In addition, in April 2011, a criminal bill of information and a Deferred Prosecution Agreement were filed against Community ONE Bank, N.A., related to its failure to file a suspicious activity report about the black diamond scheme and failing to maintain an effective anti-money laundering program. The bank agreed to pay $400,000 toward restitution to victims of the Ponzi scheme that operated through accounts maintained at the bank.

Similarly, recently in Namibia,\textsuperscript{356} media reports are also replete with issues of tax evasion. One paper reported that tax investigations by the Ministry of Finance recently led to the arrest of at least 25 individuals who have been charged with forgery, fraud, money laundering and tax evasion.\textsuperscript{357} The acting commissioner in the department of Inland Revenue, is reported to have said that of the 25 cases, there were incidents where some of the taxpayers did not fully comply with their tax obligations, either by under declaration of taxable income, failing to deduct tax from employees’ remuneration or understatement of value of supplies for value added tax (VAT) purpose. The Ministry of Finance stated that it is not possible to give a rough estimate of revenue lost through tax evasion, a cause for

\textsuperscript{355}Shinovene Immanuel, Millionaire receptionist, The Namibian newspaper, April 15, 2016, p. 1 and 6 – Shell companies may be used to facilitate money laundering, corruption, bribery, evasion of tax.

\textsuperscript{356}25 arrested over tax fraud, July 23, 2015.

\textsuperscript{357}Emphasis added.
concern in Namibia. The Ministry of Finance is currently engaged in tax review to try and close the loopholes that give rise to this type of crime. We need to tighten the legal framework in order to tackle the problem. Reports suggest that tax evasion in Namibia is not a myth, after overwhelming and concrete evidence gathered in the past incriminated big companies, amongst others, in all sectors, a situation that is bad for the country and its economy.

Therefore, it can be said that tax evasion and money laundering are a serious concern for Namibia, and whenever tax evasion is committed, money laundering is highly likely to take place in order to facilitate the crime. Thus, tax regulators in particular need to understand this relationship in order to tackle tax evasion and similarly money laundering regulators need to understand this relationship in order to successfully combat money laundering.

5.10 Fraud

Fraud is a general term for deliberate misrepresentation, and may include money laundering. However, the telling of a deliberate lie is an obvious example of fraud. In *Derry v Peek 14 AC 337* it was held that…fraud is proved when it is shown that a false representation has been made (1) knowingly or (2) without belief in its truth, or (3) recklessly, careless whether it is true or false.

Thus, it can be seen that fraud only exists if the person committing the crime is aware of the false representation. Therefore it may be said that, a person would ordinarily commit the crime of fraud to get some form of benefit. There is a need to clarify that fraud in its simplest form amounts to a lie/deception.

---

It must be made clear that perhaps not all cases of fraud may involve financial gain. This study focuses on fraud that involves some form of financial gain, for the reason that money laundering is only relevant when money is involved.

In the United States of America case of *R v Brandford*, the accused agreed with the complainants that in the event of ticket 74 being drawn in the lottery, he would deliver the prize, a horse named *Shah* to them. The number was drawn, but the accused falsely represented to the complainants that another number had been drawn and therefore did not deliver the horse. He was convicted of fraud and this strengthens the argument raised, that the telling of a deliberate lie amounts to fraud.

Another case of fraud involving money can be seen in a report by the Namibian newspaper in which two accounting officers, at the Ministry of Health and Social Services, Otjozondjupa regional directorate, allegedly defrauded the ministry of over N$7 million. This case illustrates that fraud may involve huge sums of money and in order for the fraudsters to reap the benefits of this kind of ill-gotten money; they would have to launder it successfully in order to avoid it being traced to them. This is how the relationship of fraud and money laundering comes about.

Fraud takes many shapes, it can occur internally or externally. The criminal activity at the heart of the financial crisis is subprime loan frauds, mortgage fraud, corporate fraud and investment fraud (Ponzi schemes). Other significant financial frauds include insider trading, bankruptcy fraud, credit card fraud, embezzlement, cheque fraud, loan fraud, and identity theft and fraud. The success of these schemes usually hinges on the ability to safely launder the proceeds of the illicit acts. Accordingly, there is an important nexus between fraud and

---

360 (1889) 7 SC 169.
361 Theresia Tjihenuma, *Health ministry defrauded of N$7m, in The Namibian Newspaper*, May 21, 2014, p. 3
362 *Ibid*, p. 3.
money laundering. Any discussion regarding fraud should include money laundering. To succeed, fraudsters must have a mechanism to legitimize their ill-gotten gains. Laundering the proceeds of fraud provides an air of authenticity and more importantly, immediate access to the funds.\textsuperscript{363}

The media in Namibia also reported that three people were in court over what is called the B1 City Fraud case.\textsuperscript{364} The Prosecutor-General has decided to indict Nghixulifwa, Imbili, Nginamwaami and Anna Ndoroma, and two companies connected to the four accused in the Windhoek High Court on a total of eight main charges, including corruption, fraud and money laundering. In the case of \textit{State v Homses},\textsuperscript{365} the accused was convicted on 12 counts of fraud occasioning Santam Namibia a total loss of N$465 243.51. The crimes were committed by paying company monies into other people’s accounts to avoid detection. Some of the account holders were paid N$500 for agreeing to avail their bank accounts.

The above mentioned cases illustrate the relationship that exists between money laundering and the crime of fraud. In \textit{State v Homses}\textsuperscript{366} the accused was convicted of fraud but not money laundering per se. However, when one analyses the case, it can be seen that the accused laundered money by paying company monies into other people’s accounts to avoid detection. In other words, the accused laundered money as well, but the prosecution seemed to have over-looked this, hence she was only charged and convicted for fraud to the exclusion of money laundering.


\textsuperscript{364} Werner Mengers, Three in court over B1 City Fraud, in the Namibian newspaper, February 17, 2014, p. 1-2.

\textsuperscript{365}\textit{(CC 41/2009) [2013] NAHCMD 15 (28 January 2013).}

\textsuperscript{366} \textit{Ibid.}
This reinforces the study’s argument that the relationship between money laundering with other offences may be misunderstood by some regulators and law enforcement agents.

In the case of *United States of America v Michael Eugene Savage*, Defendant-appellant, advances the argument of this study that, money laundering is a distinct crime but that it works hand in hand with other offences. In this case, Michael Savage appealed his judgment of conviction and sentence following a jury trial. Savage defrauded people of over $6 million by claiming that if they sent him $5000, he could obtain foreign loans and eventually pay each investor $10 million. He was convicted of mail and wires fraud, international money laundering, transferring criminally derived proceeds, and several other counts not at issue on appeal. His appeal focuses solely on his convictions and sentence under 18 U.S.C. RICO sections 1956, international money laundering, and 18 U.S.C. RICO section 1957, transfer of criminally derived proceeds.

From mid-1986 through mid-1991, Michael Savage defrauded investors by offering them the opportunity to participate in the "Savage Program," an investment program that promised a return of $10 million for a $5000 fee. In the "funding agreement," He provided the following explanation of the program. For each $5000 "unit" that an investor purchased, Savage would negotiate an $80 million loan from unidentified foreign "principals" who wished to invest their vast wealth in the United States and Europe. He would invest $70 million of each loan in U.S. and European securities and "currency arbitrages," and the profits from these investments would pay off the entire $80 million loan, with interest. He would transfer the $10 million remaining from the original loan, called "funding," back to the investor along with a refund of the $5000 investment. Investors who wanted to leave the program could obtain a refund of their $5000 investment at any time. In a series of

---

367 F.3d 1435 (9th Cir. 1995).
“solicitation drives,” he collected over $6 million through this scheme, and he and the people working with him spent virtually the entire amount.

As time passed, Savage sent investors frequent newsletters to explain why they had not yet received their "funding," and to discuss the necessity of bringing additional people into the program. The newsletters contained numerous false representations about the delays in "funding," typically relating unanticipated problems with the principals or banks. He also had contact with the “Task Force,” a group of investors that was initially formed to obtain information about why the program had not been funded. Savage was vague about the details of the program and cautioned individual investors and Task Force members not to discuss it with unauthorized persons.

Over the years, several other people helped Savage raise money, transfer, and launder it. These people always worked under his directions. In early 1987, he began working with Marlin Harris. First, Harris opened accounts at F & M bank in Kansas and investors sent over $1 million to an account at this bank. He transferred the money to another account in the bank, and thereafter to accounts at the Royal Trust Bank in Vienna, Austria. The money in Austria was sent back to Savage's personal accounts in the United States, or was used directly to pay his bills. Dave Buck became involved in the Savage Program in late 1987 and also received over $2.5 million from investors, which he deposited into the Wealth Information Network ("WIN") bank account at First Interstate Bank in Walnut Creek, California. Buck transferred this money to Austria or used it to pay Savage's expenses. Jim Peterson collected nearly $1 million of investors' money at his Aguilar bank account and also sent that money to Austria or to Savage's personal accounts, beginning in late 1989. Pat Garner collected and transferred Savage Program investments through the "P & M trust" at Spring National Bank in Texas, beginning in late 1990. Most of these funds were sent to the
account of an attorney who paid Savage's personal expenses. Savage was arrested on July 26, 1991.

On May 24, 1993, the jury found him guilty of the following: (1) mail fraud, money laundering by transferring funds to foreign bank accounts and engaging in monetary transactions. On October 8, 1993, Savage was sentenced to a 210-month prison term, five years of supervised release, and a $50 special assessment on each of the eighty-nine counts of conviction. Savage appealed to the district court's judgment of conviction under RICO, and the sentence imposed on that portion of the conviction. He argued that his convictions on the Section 1956 counts, 70, 72-74, and 76-79, for international money laundering should be reversed because each of these counts was duplicitous, i.e. each contained two distinct offences.

The court held that, the legislative history indicates that Congress passed the money laundering statutes to criminalize the means criminals use to cleanse their ill-gotten gains. The court further held that "proceeds" are funds obtained from prior, separate criminal activity and that "Congress appears to have intended the money laundering statute to be a separate crime distinct from the underlying offence that generated the money to be laundered.

The gist of the afore-mentioned discussion is that, when one evades tax, such money has to be hidden from the tax agencies. The process of hiding such money will in turn involve money laundering, hence the relationship between money laundering and tax evasion.
5.11 Summary

This chapter has tried to discuss as much as possible the offences that are related to money laundering. However, it would be impractical to discuss all the offences within the study boundaries. Furthermore, criminals keep coming up with new ways of committing crimes. For instance, 60 years ago, money laundering was not a crime and/or before the invention of computers, cyber-crime was also not known. Be that as it may, the study has illustrated numerous offences and how they relate to money laundering and in so doing, its regulators and other law enforcement agents will be assisted to better combat this crime.

Counterfeiting, theft, robbery, insider trading, amongst others, are more of the associated crimes to money laundering. Furthermore, the discussion in this chapter has illustrated that all crimes that involve a financial gain in one way or the other, or a crime whereby a person hides his/her identity in order to facilitate financial transactions, will inevitably involve money laundering.
CHAPTER 6
A CRITICAL ASSESSMENT OF THE NAMIBIAN LEGAL FRAMEWORK ON
MONEY LAUNDERING

6.1 Introduction

Previous chapters have shown that money laundering is defined in various ways and indeed under legislation such as POCA and FIA, it has various predicate or associated/related offences. It is also clear that money laundering is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have been derived from a legitimate source. The processes by which criminally derived property may be laundered are extensive.

The definition of money laundering therefore has been problematic as it tends to be very broad, and even though it is broad, it does not capture everything that is involved in the process of the crime, both nationally and transnationally. In certain instances, it has created confusion, especially on how the two above-mentioned statutes are read, together with other criminal laws, or whether the local legislation applies to acts committed extra-territorially.\(^{368}\)

In this context this chapter seeks to critically analyse the offence, the processes involved and the definitional discrepancies in general.

6.2. Problematising the definition

6.2.1 General

The money laundering business is gasping, and its members are always on the lookout for new avenues through which to legitimise their gloomy and murky products. The provisions of POCA cover money laundering but that does not seem to be enough, even though this law is supported by other pieces of legislation as noted in Chapter 3 of this study. The Statute's

\(^{368}\) See Shalli v Attorney-General and Another 2013 (3) NR 613 (HC). In South Africa see for example S v Boekhoud (2011 (2) SACR 124 (SCA)) S v Dos Santos 2010 (2) SACR 382 (SCA).
The overall purpose can be gathered from its long title and preamble and summarised as follows:

The rapid growth of organised crime, money laundering, criminal gang activities and racketeering, threatens the rights of all in the Republic, presents a danger to public order, safety and stability, and threatens economic stability.

Money laundering is also a serious international problem and has been identified as an international security threat. The failure of the Bank of Credit and Commerce International (BCCI) is a case in point. The BCCI was a bank that laundered money for both terrorists and 20 intelligence agencies. More than one million US dollars were transferred by the BCCI from Libyan companies incorporated in the United States. Subsequent investigations revealed that massive fraud and reports about money laundering, which led to a run on bank deposits, largely contributed to the demise of the bank. In its wake followed unprecedented activity aimed at combating criminal activities and money laundering within the banking industry. In essence, the BCCI’s failure emphasises both the vulnerability of banks to criminal infiltration and the need for stringent measures to combat money laundering.369

The BCCI was a joint venture between the Bank of America and a Pakistani banker, Aga Hassan Abedi.370 It was incorporated in both Luxemburg and the Cayman Islands to prevent nationalisation. Since its main office was situated in London, the bank was regulated nowhere and was a fraud from the beginning because it did not have legitimate capital.371

---


173
With its corporate structures created to evade banking laws, the BCCI was used to fund, inter alia; the transfer of military nuclear technologies from Europe to Third World leaders.\footnote{Van Jaarsveld, supra note 440, p6.} It also became a vehicle for about one billion US dollars of Islamic deposits which were employed for commodity investments. Services provided by the bank included dishonest auditing for illegal businesses (i.e. fraud), money laundering and secret transfers for terrorist organisations.\footnote{Ehrenfeld, R. (1983). Evil Money - Encounters Along the Money Trail. p.183.} Documents were falsified and shell company transactions created to manipulate officials in different countries. By the time the BCCI was shut down in 1991, it had 430 branches in 73 countries.\footnote{Van Jaasveld, supra note 440, p6.}

The common and statutory laws fail to deal adequately with this problem because of its rapid escalation, and because it is often impossible to bring the leaders of organised crime to book, in view of the fact that they invariably ensure that they are far removed from the obvious criminal activity involved. In the case of \textit{Shalli v Attorney-General and Another},\footnote{2013 (3) NR 613 (HC).} the High Court noted that the law had also failed to keep pace with international measures aimed at dealing effectively with organised crime, money laundering and criminal gang activities, hence the need for the measures embodied in the Act.

The definition of money laundering in the respective laws that were analysed in this study does not cover instances whereby the identity of the launder is hidden. The focus on these laws, in regard to the concept of money laundering, is primarily on disguising the origin of the source about the illegal funds.

\footnotesize{\textsuperscript{372} Van Jaarsveld, supra note 440, p6. \textsuperscript{373} Ehrenfeld, R. (1983). Evil Money - Encounters Along the Money Trail. p.183. \textsuperscript{374} Van Jaasveld, supra note 440, p6. \textsuperscript{375} 2013 (3) NR 613 (HC).}
In the Namibian context, the money laundering offences contained in sections 4 and 6 of POCA renders it an offence to conceal or disguise the proceeds of unlawful activities whilst s.6 makes it an offence to acquire, use, possess, import or export the proceeds of unlawful activities. In other words, it leaves less room for interpretation as most definitions that were discussed in chapter four try to explain all possible scenarios which may possibly occur during the offence of money laundering. The exception to this is found in chapter three, whereby this study contends that clean money is susceptible to money laundering.

Namibia’s definition is similar to that of the South Africa and USA. This is the case as both definitions try to cover possible practical scenarios that may occur with the crime of money laundering.

The definitions have all been cropping up from legislation and complex research pieces which are multi-dimensional and multi-disciplinary. As Durrieu\textsuperscript{376} submits:

\begin{quote}
A range of disciplinary paradigm shifts, policy changes, economic factors, and world political events have combined to shift the phenomenon of ML, not only to the forefront of law but also of international relations, criminology and economics, among other disciplines. As it will be deduced later, money laundering remains too big an idea and phenomenon to be constrained by the disciplinary strictures of law, or indeed any other single discipline. Failure to understand that ML cannot be analyzed within a single and immediate discipline, in detachment from one another, seems to be one of the basic philosophical errors of so many investigations concerning this subject matter.
\end{quote}

Money laundering (ML) thus has to be understood not only from the legal perspective but also from other disciplines such as finance economics, business management, banking and even sociology including criminology. It is in this context that diverse international organizations have thus been tackling this crime from different angles and using both

concealed and unconcealed means. One may also look at money laundering through accounting principle, meaning that money has to come from one place and end up at another. Applying this notion in fighting money laundering may assist its regulators in the fight against the issue.

One of the inadequacies of ML laws in Namibia may be attributed to the voluminous sector that has to be regulated. For instance, Schedules one, two and three of FIA list a number of institutions that all have to ultimately report to the Centre through prescribed channels. These institutions are quite numerous, because each and every practising lawyer, insurance company or car dealership, amongst others, has to be regulated by the Centre, one way or another. Whether the Centre is in the position to oversee all these institutions is highly debatable.

During the course of research, it came to light that numerous cases will eventually come to the Namibian courts in the near future for possible prosecutions. However, it is no secret that Namibia’s judiciary system has a serious backlog of cases. For instance, one institution alleged that, without giving figures, it has possible money laundering cases reaching hundreds in number. Since money laundering laws do not provide for specialized courts, this could be a huge challenge for Namibia, to timely prosecute these cases and meet its international obligations.

In other words, although at the formal level money laundering laws of Namibia have passed the international scrutiny, it might not be the case for purposes of assessing the implementation of these laws and Namibia would have to be assessed on this aspect, come 2018.377

---

377 This came to light in the meeting the author of this study attended, first plenary and working group meetings for financial action task force- FATF XXVII held in France-Paris from October 18 to 23, 2015.
Money laundering laws stipulate that a person should be investigated only if a transaction is suspicious. This may be problematic as the illustration below will show:

Suppose Mr. X is known to be a millionaire, it means that his deposits or withdrawals will go unchecked as he is known to have a lot of money. However, his legal money may be for illegal purposes, or he could just be evading tax or mixing up his legal funds with illegal ones, whichever the case may be. Applying the afore-mentioned suspicion test strictly will mean Mr. X will escape prosecution.

Therefore, periodic investigation and/or audits need to be carried out on people, especially those perceived to be already wealthy by the banks, in order to determine whether their funds are not used for illegitimate means.

Furthermore, money laundering laws do not provide for how investigations would proceed in instances whereby a suspicious transaction involves the employees of the Financial Intelligence Centre or its head. In other words, on the face of it, FIA that is, seems to imply that the employees of the Centre are above the law.

International definitions also differ but remain similar. The European Communities (EC) Convention on Laundering, Search Seizure and Confiscation of Proceeds from crime defines money laundering as

The conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights

---

378 This is reflected in the Preamble, Sections 33 and 41 of FIA 2012 of Namibia and South Africa’s FICA of 2013 section 29 and 52 amongst other laws.
with respect to, or ownership of property, knowing that such property is derived from serious crime.”

The UN defines it as:

Money laundering is a process which disguises illegal profits without compromising the criminals who wish to benefit from the proceeds. It is a dynamic three-stage process that requires: first, moving the funds from direct association with the crime; second, disguising the trail to foil pursuit; and third, making the money available to the criminal once again with the occupational and geographic origins hidden from view.

Countries have legislated, as chapter three has shown, and have signed international instruments to combat this crime. It has been shown that Namibia’s definition is closer to that of the USA, which also informed the South African one. Therefore, one may assume that Namibia could have success stories in fighting money laundering at an international scale, although a good definition alone is not enough to successfully combat the crime. The Government of Namibia has to put proper structures in place to successfully fight the crime of money laundering.

6.2.2 Interrogating the link between money laundering and its associated offences

It has been illustrated in chapter five of this study that money laundering cannot exist without its associated offences. In other words, whenever, a person is charged with the crime, there has to be at least the commission of one of the associated offences. This is essential because money has to come from some place and go to another destination. Put differently, where money is heading or coming from will inevitably be one of the associated offences to the crime of money laundering. Meaning that, in order to prove the crime of

---

379 Article 1.
money laundering, one has to also prove the existence of one or more of the crimes
associated to money laundering.

This study also indicated that there are numerous crimes associated with money laundering.
Moreover, these crimes tend to be financial, in one way or the other.

6.3 Namibian legislation in the international setting

The Namibian law on money laundering has an international taste for the obvious reason, it
is an international crime in many aspects. Thus so much was copied from other countries
and adapted into the Namibian system.

It has to be appreciated that criminals continually come up with ingenious ways to hide
their illegal money or identities. In other ways money laundering is continually evolving
therefore, policy makers and money laundering regulators need to continually find updated
ways to combat the crime, and this is reinforced by Davis when he states that:

“It is clear that [n]o country can ever say that it is free from money laundering or that opportunities
for terrorist financing have been eradicated. We are shooting at a moving target with new methods,
techniques and vehicles for money laundering ... being identified every day. That is why we need to
remain vigilant ... I would like to remind everyone about what is at stake. Financial crime may appear
to be discreet and non-violent, but appearances are often deceptive. Money laundering ... [is] a direct
threat to the values which ... [we] defend - democracy, human rights and the rule of law.”

Namibia started off very badly on combating money laundering on a global scale. It
however signed a lot of international instruments legislated locally and rose up the ranks of
some of the countries which are bent on cracking down on money laundering. Thus, in 2015
Namibia was removed from the International Targeted Review process of countries with

381 Speech by Terry Davis, Secretary General of the Council of the European Union, at the Joint Plenary of
MONEYVAL and with the Financial Action Task Force (FATF)' (21 February 2007) referred to as Davis
shortcomings in their National Anti-money laundering and combating the Financing of Terrorism regulatory environment. This means that its money laundering and Terrorism laws are acceptable, according to the Financial Action Task Force (FATF).

It has been reported that Namibia has been listed as a high risk and non-cooperative jurisdiction amongst other failed states such as Sudan, Afghanistan and Zimbabwe, by a reputable anti-money laundering and terrorism financing global watchdog. Although Namibia made a high-level political commitment to work with the Financial Action Task Force (FATF) to address its strategic Anti-Money Laundering/Counter Terrorist Financing (AML/CFT) deficiencies in June 2011, this show that the country’s system is still plagued with flaws affecting its integral financial regime. Thus, it is further reported that there are some weaknesses that were found including, the lack of autonomy in the system and necessary legal framework. This is because the country’s financial system is on the right course to combat money laundering and financial terrorism. FATF urged Namibia to implement its action plan to address these deficiencies by, adequately criminalising terrorist financing, establishing and implementing adequate procedures to identify and freeze terrorist assets and implementing an adequate Anti-Money Laundering (AML)/ Countering the Financing of Terrorism (CFT) supervisory programme with sufficient enforcement powers. It also urged the Namibian authorities to ensure a fully operational and effective functioning of its Financial Intelligence Unit (FIU), “in particular, addressing the operational autonomy of the FIU. FATF noted that Namibia ought to implement effective, proportionate and dissuasive sanctions in order to deal with non-compliance with the national AML/CFT requirements. It added in a statement that, Namibia must also implement the 1999 International Convention for the Suppression of Financing of Terrorism.

Although FATF has cleared Namibia of money laundering shortcomings, this is limited to the law in place. Namibia is yet to be reviewed on whether the laws in place are giving the desired results. The shortcomings in the definition of money laundering in sections 4, 5 and 6 of POCA are apparent. The Namibian definition of money laundering is interesting in two aspects:

(1) In the definition of money laundering of Namibia, the word “reasonably”\textsuperscript{383} is used. This terminology is used under Namibian laws in regard to money laundering. It would seem that in Namibia the word “reasonably” was included by the legislator to avoid a situation whereby a person commits the crime and claims ignorance of it. One may infer that a test in determining whether a person reasonably knew or ought to have known that he was committing the crime of money laundering is an objective one. Thus in the case of banks which receive illegal money, Van Jaarsveld further contends:

“But the concept of knowledge poses difficulty in as far as establishing liability on the side of a bank that received the benefits of fraud or theft because it implies an awareness of relevant facts. Since the legal definition of knowledge differs from the concept’s general meaning, it poses a threefold problem for a victim who attempts to hold a bank liable for paying the benefits of fraud or theft to the fraudster or thief who was not entitled to receive payment. First, it is difficult to ascertain the degree of knowledge that is required of the bank employee before the bank can be held liable as a constructive trustee. Secondly, whether knowledge should be judged according to an objective standard or subjective standard remains unclear. Thirdly, whether a bank employee must have acted dishonestly before constructive trust liability can be imposed on the bank is also a matter clouded in ambiguity”\textsuperscript{384}

\textsuperscript{383}1. Capable of reasoning; rational; a reasonable person; 2. Governed by or being in accordance with reason or sound thinking; 3. Being within the bounds of common sense (http://www.thefreedictionary.com last accessed on 20.12.2013).

\textsuperscript{384} Van Jaarsveld, supra 440, p. 324.
In South Africa, the concept ‘reasonable belief’ should be defined in section 1 of FICA as follows:

‘reasonable belief’ means what a reasonably diligent and vigilant person might have believed having both the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position, and the general knowledge, skill, training and experience that he in fact has.”

The above stands as one understands that, looking at the prevailing circumstances surrounding that particular case, and reasoning of that particular individual, and perhaps the educational background of the person, could also be assessed in determining whether the person reasonably knew or ought to have known that he was committing or assisting someone with the commission of the crime of money laundering. If the answer is in the affirmative, then that person can be charged with the offence of money laundering. During the interviews for this study, money laundering regulators are very confident in that everyone that needs training in Namibia has been trained to understand his role as far as money laundering is concerned, meaning that no one, according to them, will be able to rely on ignorance. However, receiving training may not necessarily guarantee that one understood his or her role entirely or whether the training was sufficient.

Another interesting aspect in the definition of money laundering in Namibia is the wording “assisting another to benefit from proceeds of unlawful activities.” This implies that in Namibia, when you assist a person in any way to benefit from the offence of money laundering, you as well commit the crime. The phrase “assisting another to benefit from proceeds of unlawful activities” is open ended, meaning that assisting a person in any way to benefit from the crime of money laundering is an offence to commit money laundering.

---

385 section 1(3) of FICA.
Additionally, the aforementioned definition is sufficiently wide that the acquisition, use or possession of illegally acquired money is a money laundering offence. In simple terms, a money laundering offence occurs where a person benefits from a criminal offence. Money laundering occurs through deals and bank transfers until the source of the illegally acquired money has been concealed and the money appears to be legally acquired. The conversion of illegally acquired money into seemingly legally acquired one, can take place through a number of schemes which include the use of banks.

In order to properly and fairly enforce this provision, it is necessary for Namibia as a country to carry out an extensive education and training for the concerned people and the general public, to inform people about what money laundering is, their role in fighting the crime and the consequences of committing or even that of assisting someone to commit the crime.

6.4 Formulation of working definitions

6.4.1 Principles for determining what constitutes the crime of money laundering

This study has illustrated that the definition of money laundering is not always that simple to understand. It is against this background that this study has developed a simple and clear principle to illustrate and clarify to the concerned people what it entails. The discussion will now show the meaning without the legal jargons. In so doing a principle for money laundering may be said to be as follows:386

Crime and money amounts to money laundering

Or

Money and facilitation of a crime with the said money amounts to money laundering

---

386 This study has come up with this principle during the analysis of the definition of money laundering.
In the first principle as indicated above, it means that when a person commits a crime and derives money or property from it, money laundering will take effect.

In the second instance, it is where a person has money legitimately or illegitimately and uses such to further crimes e.g. terrorism and human trafficking, amongst others, as was indicated in chapter five of this study. Thus, the two principles illustrate how to better understand money laundering in a simplified way.

On another note, one of the interviewees asked the following question:

If a person has illegally obtained money and kept at his house does this amount to money laundering? 

The afore-mentioned question may be answered as follows:

Illegally obtained money kept at one’s house is not money laundering because it has not entered the financial system. Money laundering only takes place once the money has entered or passed through the financial system. Put differently, the moment that person puts that money in the financial system (banks, investments or simply buying anything) then that would amount to money laundering. This is the case because the person would now be integrating the ill-gotten money into the financial system.

Furthermore, keeping money at home and not using it is equivalent to not having money at all because the purpose of having money is to eventually use it. Sooner or later the ill-gotten money the culprit keeps at his house will have to be used in one way or another and only then will money laundering take effect.

---

In the case of *Cuellar v United States* 388 Humberto Fidel Regaldo Cuellar was apprehended in 2004 while driving a Volkswagen Beetle, crawling 30 miles below the speed limit on a main artery through Texas to Mexico. When the police pulled him over, they discovered that he had logged about 1,000 miles in the past two days stopping in major cities along the way for just hours each time. When questioned, he acted nervously and later turned over a large roll of cash that smelled like marijuana. When the police examined the car, they found drill marks suggesting tampering with the gas tank, as well as mud splashing and animal hair, typical of efforts to conceal the existence of contraband. The Police also found $83,000 in cash in a secret compartment beneath the floorboard. Cuellar was convicted of money laundering, but the appeals court overturned the conviction. The court ruled that the federal money laundering statute required the government to prove that Cuellar was attempting to portray the money he carried as legitimate wealth, rather than merely showing that he had tried to hide it.

Legal question: Does the federal money laundering statute require the government to prove that the defendant was trying to portray ill-gotten gains as legitimate wealth, or must prosecutors only prove that the defendant was attempting to conceal criminal proceeds?

In a unanimous judgment authored by Justice Clarence Thomas, the court answered this question by taking the middle ground, holding that the statute contains no legitimate wealth requirement but also holding that mere proof that the defendant was attempting to conceal the money is not enough to uphold a conviction. In reversing Cuellar's conviction, the court relied on the language of the statute providing that the transportation's purpose must have been to conceal not just the money itself but its nature, location, source, ownership, or

388 128 S. Ct. 436.
control. The court found that prosecutors had failed to prove any of these elements beyond a reasonable doubt.

This case clearly points out that in order for money laundering to come into question, integration of money into the financial system is essential.

6.5 Consequences of money laundering

Money laundering is an evil with numerous consequences. Therefore, it has to be rooted out of global arena. It affects most people in one way or the other, be it tax evasion, terrorism or any of the associated offences of money laundering as was discussed in chapter five of this study.

To give a clear picture, it was illustrated in chapter four and five of this study that Namibia lost 13.92 billion US dollars over a period of 9 years through tax evasion. This amount is more than twice the annual budget of Namibia. In other words unchecked money laundering can erode the integrity of a nation’s financial institutions. Due to the high integration of capital markets, money laundering can also adversely affect currencies and interest.\(^\text{389}\)

Similarly, the son of the former Mayor of City of Windhoek, Mr. Kafula, was probed by the Namibian Police for selling Namibian passports that were subsequently used to launder N$74 million that is suspected to be linked to a terrorist group, Al-Qaeda.\(^\text{390}\) In other words, money laundering aids terrorism financing and terrorism activities are responsible for many deaths, annually.

---

\(^{389}\) The consequences of money laundering and financial crime, [https://www.hsdl.org/?view&did=3549](https://www.hsdl.org/?view&did=3549) last accessed on October 01, 2017.

Moreover, the integrity of the banking and financial services marketplace depends heavily on the perception that it functions within a framework of high legal, professional and ethical standards. A reputation for integrity is one of the most valuable assets of a financial institution. If funds from criminal activities can be easily processed through a particular institution – either because its employees or directors have been bribed or because the institution turns a blind eye to the criminal nature of such funds – the institution could be drawn into active complicity with criminals and become part of the criminal network itself. Evidence of such complicity will have a damaging effect on the attitudes of other financial intermediaries and of regulatory authorities, as well as ordinary customers.\textsuperscript{391}

It can be seen that money laundering erodes the financial system and promotes criminal activities in any society and Namibia is no exception to this crime and its negative consequences. The following are some of the effects of money laundering on the banks and the financial system amongst others; it damages the financial-sector institutions that are critical to economic growth (internal corruption & reputational damage); reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption, which slow economic growth; distorts the economy's external sector international trade and capital flows (reputational damage & market distortion) to the detriment of long-term economic development.\textsuperscript{392}

Hence, the effects of money laundering may also compromise the integrity of the financial sector, which will indirectly mean that financial institutions are supporting criminal activities.

Furthermore, money laundering rewards criminals, increases crime rates, compromises the economy and damages legitimate businesses.\textsuperscript{393} Therefore, it is important to fully understand the concept so as to be able to combat it appropriately.

6.6 Summary

Although there has been a significant improvement in Namibia and elsewhere in combating money laundering, the current Namibian legislation tackles it inadequately. It is clear that its functional definition explains the crime in terms of its main objective; namely, removing the criminal \textit{nexus} from the benefits of crime so that the money’s origin remains concealed. At times, divergent, functional definitions exist to define money laundering. It was suggested that these definitions have as a common denominator, three specific elements; namely, money that is acquired through illegal means, a clear \textit{nexus} between the money and crime and conduct aimed at removing this nexus. In combination these elements signify money laundering.

In contrast to other crimes, money laundering is known for the diversity of its forms, participants and settings. The money laundering process poses a particular problem for criminals because new techniques are a necessity to stay one step ahead of the authorities. It is this chase in techniques and technologies which necessitates revisions of definitions and other terminologies so that the criminal activities involved in a complex crime such as money laundering are adequately covered and in order to move with the pace of time.

\textsuperscript{393} \textit{Ibid}, pp. 155-177.
CHAPTER 7
CONCLUSIONS AND RECOMMENDATIONS

7.1 Introduction

This chapter draws all the preceding ones together and sums up the major conclusions in the context of the research questions set out in Chapter 1. Several bodies, institutions and authors have defined money laundering but the definitions seem to differ depending on several factors such as the discipline of the author, the elements they are trying to cover and the region where the definer is based. This concluding chapter makes a summary of the findings in the previous ones and revisits the research questions. It is on the basis of these findings, together with details in the preceding chapters, that recommendations are made.

7.2 General observations from the preceding chapters

This study has critically analysed the concept of money laundering, how it occurs, the stages involved in the crime, and how it can occur without all of its three stages having being met. In the investigation of the study, it came to light that this type of crime cannot exist without any of its associated offences.

Chapter 1 gave a general background to the study, its orientation and the statement of the problem being addressed. The statement led to the research questions which specifically are:

(1) is the concept of money laundering properly defined by respective authors, national and international laws?

(2) can money laundering exist in isolation from other offences?

(3) is Namibia’s legal framework effective in the combating of money laundering and offences associated to the crime of money laundering?

These questions formed the foundation of the subsequent analysis made in this study.
Chapter 2 reviewed existing legislation as well as studies done by other authors on the crime of money laundering. It also showed the global best practices which are ideal for combating the crime. It concluded that the relationship between money laundering and associated offences is ill-defined. In addition, it is not satisfactorily worded nor does it cover all the aspects of this seemingly complex crime, whose elements are constantly re-defined as they are as dynamic as the criminal activity itself.

The literature studied in Chapter 3 showed that the term “money laundering,” under the Namibian law, refers to a number of different offences that can be committed in terms of the Prevention of Organised Crime Act (POCA). This again is reflected in the findings in Chapter 5 which shows that the concept also overlaps with certain common law (for instance fraud, forgery and uttering) and statutory offences such as corruption. The associated and predicate offences are listed in Schedule 1 to POCA.

Chapter 3 indicates that diverse legislation in force has attempted to structure offences to give some guidance as to the seriousness of the conduct by reference to the applicable maximum penalty for each offence. The pattern is that, the greater the sum of money involved, the more serious the offence. But the legislation also takes into account the mental state of the offender, so that an offence involving intentional dealing with proceeds of crime or its instruments is more serious than one where the state of mind is recklessness as to the criminal nature of the money being laundered.

Chapter 4 deals with some comparative analysis of some chosen jurisdictions across the world. This was done so that the crime of money laundering is well understood and also to show its nature as a transnational crime. Four countries are thus chosen, namely:
(1) Singapore;
(2) South Africa;
(3) United Kingdom; and
(4) United States of America.

The focus of this chapter is on the definitional characteristics of money laundering laws as regards the afore-mentioned jurisdictions discussed. Furthermore, it analysed their legal and criminal justice systems and their respective anti-money laundering regimes in place. There is also considerable detail provided on the cases decided in these various countries. This comparative analysis has enabled one to have a broader view of the laws across the globe. And this will enhance an objective conclusion and recommendations on Namibia’s legislation as one learns from international jurisprudence and global best practices on this subject.

In this context, the chapter notes that worldwide, various countries have come up with anti-money laundering laws and law enforcement mechanisms. Major financial centers across the globe have experienced a rise in anti-money laundering rules and regulations. Initially, the laws were used as a weapon in the war on drugs, whilst more recently they have been deployed in the ongoing fight against terrorism.

It is thus concluded that the definition of money laundering in all jurisdictions discussed in this study, Namibia included, are not comprehensive enough to cover all features of the crime. As a result, this study formulated an appropriate and more comprehensive definition of the crime of money laundering.
Chapter 5 deals with money laundering and associated offences and it makes the case that money laundering cannot exist in isolation from its associated offences. This directly answers research question 2. The answers are illustrated by the fact that there are several offences associated with money laundering. The general offences are committed when certain acts are performed in respect of the proceeds of unlawful activities. This may include any property or service, advantage, benefit or reward which was derived, received or retained in connection with or as a result of any unlawful activity carried on by any person. In addition, the definition makes it clear that the proceeds could have been derived, directly or indirectly, in Namibia or elsewhere, at any time before or after the commencement of POCA.

It was further showed that it would be impractical to list all the offences related to money laundering within the scope of this study. It would appear from all the offences listed in Schedule 1 of POCA that virtually every crime in the country is listed. Perhaps even potentially new crimes will be covered as well. However, it should be borne in mind that criminals keep coming up with new ways of committing crimes. For instance, 60 years ago money laundering was not a crime and before the invention of computers, cyber-crime was also unknown. Be that as it may, the study has discussed numerous offences and how they relate to money laundering and in so doing, it is to be hoped that it will assist the regulators to better combat the crime and its associated offences.

Chapter 6 critically analysed all the preceding chapters. It showed that the provisions of the POCA cover money laundering but that does not seem to be enough even though this main law is supported by other pieces of legislation as noted in Chapter 3 of this study.
Furthermore, it is clear that the definition of money laundering in the respective laws is not adequate. Chapter 4 thus answers research question 1 in the negative. This arises as one notes that, the common and statutory laws fail to deal adequately with this problem because of its rapid escalation and, because it is often impossible to bring the perpetrators of organised crime to book in view of the fact that they invariably ensure that they are far removed from the obvious criminal activity involved, hence the need for the measures embodied in the Act.

### 7.3 Three major points of consideration in line with research questions

#### 7.3.1 The inadequacy of definitions

The research question stated in Chapter 1 is whether the concept of money laundering is properly defined by existing researchers and national or international laws. The answer is no because it was shown that in the Namibian context, it is detailed but does not cover every aspect or element of the offence. Money laundering offences contained in sections 4 and 6 of POCA render it an offence to conceal or disguise the proceeds of unlawful activities whilst s. 6 makes it an offence to acquire, use, possess, import or export the proceeds.

It must also be mentioned that the POCA does not define “racketeering” but provides a definition of a “pattern of racketeering activity.” This phrase refers to the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 of the POCA. Schedule 1 contains a list of offences such as murder, rape, corruption, fraud, perjury, theft and robbery, as well as any that is punishable by imprisonment of more than one year without the option of a fine.
The definition of money laundering may not cover certain new technologies in the financial sector. For example, nowadays there exist Automatic Teller Machines (ATM) that offer the depositing of funds at ATMs, the facility to generate bank cheques, and these have featured in particular laundering schemes. Bearer documents such as Negotiable Certificates of Deposit have also been employed in sophisticated schemes.

The FIA enforces the requirements of Recommendation 20 of the Forty Recommendations of the Financial Action Task Force in all, but two respects: It does not explicitly require an accounting institution to have adequate screening procedures to ensure high standards when hiring employees, and does not require the institution to have an audit function to test its compliance system. However, in practice, the majority of financial institutions maintain comprehensive management systems that provide for the screening of employees as well as internal audit and compliance systems that will audit the effectiveness of their money laundering control systems.

On a similar note, although the reach of the FIA appears clear at first glance, it may prove quite difficult to ascertain whether a particular person or business qualifies as an accounting institution and, if so, the extent to which the institution or an individual should comply with the Act. Furthermore, the Legal Practitioners Act, 1995 (Act, No. 15 of 1995) as amended in its section 1 defines a legal practitioner as a person who, in terms of this Act, has been admitted and authorised to practise as one or is deemed to have been so admitted and authorized.
It is not so clear where the deeming ends or how wide it is. In any case, if one is admitted, he or she is already under the definition of an accounting institution. To this end, it appears as a result that, legal practitioners who are admitted but not currently practising, which are academics or legal advisers, are also brought within the ambit of the FIA. They are therefore burdened with the onerous compliance obligations that are created by the FIA, such as the appointment of a compliance officer and the drafting of internal compliance rules. The definition also fails to make adequate provision for attorneys who practise in firms or in companies. Such compliance obligations should attach to the firm or company rather than to every attorney, individually, in that firm or company.

This is not only a problem in Namibia but it is also a problem in South Africa, with respect to the accountability of attorneys under the FICA (RSA). It is improbable that such unfortunate consequences as those outlined above were intended by the legislature. They will hopefully be addressed by means of amendments or softened by means of exceptions and/or the regulations under the FIA.394

7.3.2 Money laundering as having many predicate and associated offenses

Another research question considered in this study was whether money laundering can exist in isolation from other offences? The answer is no because it was shown in Chapter 5 that the crime has a lot of predicate and associated offences. Money laundering as an organized crime can be committed in the same process with the crimes included in the pattern of racketeering. Some of these offences are actually its predicates. Schedule 1395 of the POCA

395 1. murder; 2. rape, including rape as contemplated in the Combating of Rape Act, 2000 (Act 8 of 2000); 3. kidnapping; 4. arson; 5. public violence; 6. robbery; 7. assault with intent to do grievous bodily harm; 8. indecent assault; 9. the statutory offence of—(a) unlawful carnal intercourse with a child under a specified age; (b) committing an immoral or indecent act with a child under a specified age; (c) soliciting or enticing such child to the commission of an immoral or indecent act; 10. any offence under any legislation dealing with gambling, gaming or lotteries; 11. extortion; 12. child stealing; 13. breaking or entering any premises whether under the common law or a statutory provision, with intent to commit an offence; 14. malicious injury to property; 15. theft, whether under the common law or a statutory provision; 16. fraud; 17. forgery or uttering
contains a long list of offences which are necessary to reproduce here because they immediately show what this chapter is all about – showing some crimes which may be associated to money laundering.

The offences listed in Schedule 1 of the POCA and those discussed in chapter 5 of this study are some of the many crimes associated to money laundering.

7.3.3 The ineffectiveness of the Namibian legal system in combating money laundering

Similarly another research question considered under this study was whether Namibia’s legal framework is effective in the combating of money laundering and offences related to it. The answer is to a great extent yes, and it leaves room for explanation. It must be noted that the current legislation in general does create institutions and systems which can arrest a number of money launderers. The Namibian legal system however, has some imperfections which still allow certain criminals to get away with the crime. This may be attributed to the fact that currently, only two criminal cases of money laundering have been prosecuted whereas, there are numerous reports indicating that it is on the rise in Namibia.
Many laundering schemes are too complicated to be planned and executed by the criminals themselves. There is clear evidence that knowledgeable persons do assist criminals to launder money. These persons often have legal, banking or tax expertise or general business acumen. For example, in *S v Dustigar*, in which a conviction was handed down for statutory money laundering, an attorney and a police officer played key-roles in planning and operating different laundering schemes.

7.4 Recommendations

It has been noted in the previous chapters that money laundering is a threat to the social, economic and financial systems of all the five jurisdictions that were discussed in this study. Firstly, on the enforcement level, money laundering increases the threat posed by serious crimes, such as drug trafficking, racketeering, and smuggling, by facilitating the underlying crime and providing funds for reinvestment that allow the criminal enterprise to continue its operations. Secondly, it poses a threat from an economic perspective by reducing tax revenues and establishing substantial underground economies, which often stifle legitimate businesses and destabilize financial sectors and institutions. Finally, money laundering undermines democratic institutions and threatens good governance by promoting public corruption through kickbacks, bribery, illegal campaign contributions, collection of referral fees, and misappropriation of corporate taxes and license fees.

---

396 *Supra.*


In addition, and as the previous chapters have shown, the increase of organized crimes in domestic and international level and the necessity of confronting them, have made necessary the criminalization of money laundering phenomenon. The diverse effects it has on both individual and global welfare are not to be underestimated. It is clear that the Namibian legal system still has some deficiencies in dealing with the crime and it is on this backdrop that the following recommendations are made.

7.4.1 Expanding the definitions

The definition of money laundering and the list in Schedule 1 of POCA need to be changed to meet the challenges of the day and also to link it to other crimes which do not feature on the list in the schedule. An amendment is needed on the Namibian legislation on money laundering in order to properly define it within the Namibian jurisprudence and possibly at an international level as well, as was indicated in this study. This is imperative so that money laundering is addressed holistically. The definition contained in the FIA is recommended to be changed and should read as follows:

“money laundering” or “money laundering activity” means -

(a) the act of a person who -

(i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;

(ii) acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or

(iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity;

where -
(aa) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or

(bb) in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity;

(b) any activity which constitutes an offence as defined in sections 4, 5 or 6 of the Prevention of Organised Crime Act; and

(c) Money laundering is a process of placing illegitimate or legitimate money/property into the financial system and advancing such for illegitimate or legitimate purposes.\(^{399}\)

Furthermore, corruption has always been linked with money laundering worldwide. The definitions in the FIA and the POCA do not include this definition so clearly. The associated offences listed in Schedule 1 of the POCA are not adequate enough. Therefore, there is a need to incorporate by direct incorporation the definition of the Anti-Corruption Act, 2003 into the FIA and or the POCA.

The direct incorporation is essential as one shows that money laundering schemes make it possible to conceal the unlawful origin of assets. Corruption is a source of money laundering as it generates large amounts of proceeds to be laundered. It may also enable the commission of a money laundering offence and hinder its detection, since it can obstruct the effective implementation of a country’s judicial, law enforcement and legislative frameworks.

\(^{399}\) Underlined are the proposed new insertions: It has to be noted that one may launder legitimate money or property if it is destined for illegal purposes.
When countries establish corruption as a predicate offense to a money laundering charge, money laundering, arising as a corrupt activity can be more effectively addressed. When authorities are empowered to investigate and prosecute corruption-related money laundering activities, they can trace, seize and confiscate property that is the proceeds of corruption and engage in related international cooperation. When corruption is a predicate offence for money laundering, anti-money laundering preventive measures can also be more effectively leveraged to combat corruption.

7.4.2 Reforming the Financial Intelligence Centre (FIC) administration and mandate

The FIC is a supervisory body to a considerable number of institutions throughout the entire Namibia. Therefore, it also has to have enough capital and expertise in order to be in a better position to supervise all relevant institutions and this is important so that quality supervision is not compromised. In other words, the Centre should be funded more and it should also employ more personnel who will be able to properly supervise all the institutions accordingly.

Prior to 2007, the FIC was functionally and administratively part and parcel of the Bank of Namibia. After 2012 the FIC is now only administratively liable to the Bank of Namibia, but functionally reports to the Anti-Money Laundering and Combating Financing of Terrorism Council. The recommendation of this study is that the Centre should stand alone administratively and only report to the Bank of Namibia functionally, so that there is less interference in carrying out its objectives.

Borrowing from the Egmont Group of Financial Intelligence Units, Namibia, in considering the above recommendation, should consider the model which suits its context. There are four models of FIUs: judicial, law enforcement, Administrative, and hybrid:
1. The Judicial Model is established within the judicial branch of government wherein “disclosures” of suspicious financial activity are received by the investigative agencies of a country from its financial sector such that the judiciary’s powers can be brought into play e.g. seizing funds, freezing accounts, conducting interrogations, detaining people, conducting searches, etc.

2. The Law Enforcement Model implements anti-money laundering measures alongside already existing law enforcement systems, supporting the efforts of multiple law enforcement or judicial authorities with concurrent or sometimes competing jurisdictional authority to investigate money laundering.

3. The Administrative Model is a centralized, independent, administrative authority, which receives and processes information from the financial sector and transmits disclosures to judicial or law enforcement authorities for prosecution. It functions as a “buffer” between the financial and the law enforcement communities.

4. The Hybrid Model serves as a disclosure intermediary and a link to both judicial and law enforcement authorities. It combines elements of at least two of the FIU models.

Some interviewees are of the view that the Centre should have its own investigation officers to investigate money laundering and arrest suspects thereof. This study is of the view that this is impractical because money laundering is associated with so many other crimes and if this is to occur, it might render the police redundant or lead to confusion between agencies investigating money laundering. Hence the better approach is to rather empower the police or in essence, simply follow the Administrative model as shown above.

7.4.3 Empowering the law enforcement, security investigative agencies

Money laundering exists wherever there is a commercial crime. The police are responsible for investigating all types of crimes, including commercial ones. Therefore, the police must be empowered with the necessary training and resources in order to fully combat money laundering together with its associated offences.
The Anti-Corruption Commission should consider creating a unit dedicated to specifically investigating corruption in relation to money laundering. In the High Court a similar unit, which is responsible for prosecuting money laundering and corruption, exists. This is logical because Namibia has numerous cases of corruption and this study has indicated that wherever corruption exists, so is money laundering hence such a unit under the ACC is imperative to combat it and corruption.

Informed by the foregoing, one would note and submit that money laundering does not exist in isolation from other crimes therefore, in fighting it, different professions need to work together as well. Put differently, the crime is complex and cuts across different disciplines therefore, a money laundering unit/department/organization/office should comprise of compliance officers, forensic auditors, accountants, investigation officers and attorneys amongst others working together simultaneously in order to fight it and its associated offences.

7.4.4 Empowering the Judiciary system

The biggest challenges with Namibia’s court system are backlogs which are at times caused by few personnel doing voluminous work. In order to assist with the backlog of cases and to deter money launderers, justice has to be seen to be done. However, in Namibia only two unreported money laundering criminal cases have so far been prosecuted. This shows that a lot needs to be done to reverse this trend. In order to resolve this predicament, more personnel have to be recruited in the judicial system of Namibia. Furthermore, the judiciary should consider creating specialized courts, corruption and money laundering courts, amongst other specialized ones. These will be in a better position to adjudicate money laundering cases at a quicker pace.

202
Therefore, this recommendation, read together with the above-mentioned, would mean that there is need to enhance cooperation among law enforcement, financial institutions and the judiciary. This coordinated response involving the financial industry, the judiciary, and law enforcement is needed in order to address the issues negatively affecting counter-laundering measures.

The judicial system is often constrained with restrictive laws. Some of such are bank secrecy laws. The judiciary, through the legislature, needs to relax or repeal such laws. Those that unduly restrict the flow of information between financial institutions and law enforcement should be repealed, and specific protections afforded those appropriately disclosing information to the authorities.

7.5 Recommendations for further research

Concern has been expressed in the literature review of this study about the lack of research into money laundering and the informal sector. It has been submitted that multi-disciplinary research, in respect of all aspects of the crime, is urgently required in South Africa,\textsuperscript{400} to assist the development of effective money laundering laws and this is equally true in in Namibia. Little is known about the extent of the problem and about the main methods in Namibia. Therefore, research is, for instance, required into the phenomenon of money employed by money launderers. The information that is available is mainly circumstantial.\textsuperscript{401} It seems the informal business sector is maybe abused through money laundering. If substantial money laundering occurs in the informal sector, research will be required on the most effective methods of regulation of that sector.

\textsuperscript{400} This is also applicable in Namibia as the following paragraph will illustrate.
\textsuperscript{401} De Koker, (1998). “Preface” in De Koker and Henning Money laundering control in South Africa 20 Tran CBL.
In addition, research on the possible impact of general money laundering legislation on the Namibian economy is also required. There is probably a substantial pool of criminal funds in the informal Namibian economy. Money laundering legislation exclusively focusing on the formal business sector may induce money launderers to divert criminal profits from the regulated formal business sector to the less-regulated informal one. Therefore, further research is imperative with regard to the regulation of money laundering and the informal sector through appropriate legislation. In the absence of this, regulators may celebrate that there are less cases involving money laundering in Namibia whereas in actual fact people may be using the informal economy to disguise their ill-gotten money.

Hence the question remains, is money laundering a minor concern for Namibia, or is the Namibian Government looking for money laundering in the wrong places?
8. LIST OF REFERENCES

8.1 Books


Barlett, B.L. (2002). *The negative effects of money laundering on economic development*, International economic group Dewey Ballantine LLP.


Dyson, WE. (2005). *Terrorism an investigator’s handbook Second edition*, LexisNexis,


Reid, M. P. (1996). “*Money Laundering- An Irish Perspective*


8.2 Articles and Reports

American University International Law Review, vol 17.


Blackman, Jooste & Everingham Commentary on the Companies Act vol 1.


Kazondunge, K. 2011. The impact of the implementation of legislation combating transnational organized crime on the deterrence of money laundering in Namibia, University of Namibia


Lormel DM. Fraud and Money Laundering: Can you think like a bad guy? World compliance, also available at www.worldcompliance.com

Levitt, M 2003. 'Iraq, U.S. and the War on Terror: Stemming the Flow of Terrorist Financing: Practical and Conceptual Challenges


McSkimming, S. 2010. Trade-Based Money Laundering: Responding to an Emerging Threat” Deakin Law Review. 2010


Nsundano, PM. 2007. A comparative legal analysis of the contemporary treatment of money laundering under the jurisdiction of Namibia and South Africa, University of Namibia


Shivute, S, 2010. The effectiveness of the Bank of Namibia’ legal powers in the Namibian banking industry, University of Namibia

Prevention of Money Laundering, A Guideline issued by the monetary Authority under section 7(3) of the Banking Ordinance, Hong Kong Monetary Authority.


The National Gambling Impact Study Commission Final Report, p. 5-6 (June 1999).

Republic of Namibia, National Strategy on Anti-Money Laundering and Combating the Financing of Terrorism


8.3 Newspaper Articles and Periodicals

Australia in the ‘Issues Paper 1, Financial Services Sector on the Anti-Money Laundering Reform

Aamera Jiwaji, Kenya hotbed for cybercriminals, in the African Banker, 1st quarter 2015, Issue an IC Publication


Augetto Graig, Namibia is money-secure, in The Informante newspaper, March 19, 2015


Chamwe Kaira, Majority of businesses view corruption as a risk, in The Namibian newspaper, April 23, 2014

Chamwe Kaire, Tusks, rhino horns’ stockpile worth billions, The Namibian newspaper, April 12, 2016

Confidente Reporter, Five subpoenaed to court as GIPF N$600 million ghost refuses to rest in peace, in Confidente newspaper, May 08-13, 2015

Confidente Reporter, 25 arrested over tax fraud, in Confidente newspaper, July 23, 2015

Confidente Reporter, Govt loses N$200m to corrupt education officials of Education Minister disbands tender committee, in Confidente newspaper, August 06 – 12, 2015
Dever Isaacs, Financial Fraudsters Heel the Heat- as intelligence agency uncovers more fraud in 2013. In The Namibian Sun newspaper, March 31, 2014

Eveline de Klerk, No bail for N$4.3 million theft duo, in The Namibian newspaper, January 17, 2014

Eveline de Klerk, Strategies needed to combat human trafficking-PM, in New Era, August 27, 2015

Edgar Brandt, White-Collar crime widespread, increasing, in New Era newspaper, January 22, 2013


Honorine Kaze, Fraud, corruption cases surge- EY, The Villager newspaper, April 22-27, 2014

Luqman Cloete, Finance minister demands integrity, in The Namibian newspaper, February 5, 2014

Lucy Clarke-Billings, Panama Papers who are the Real Victims of Tax Avoidance and Evasion? The Namibian newspaper, April 08, 2016

Max Hamata, Kafula’ son in N$74 million laundering- passport scam investigation, in Confidente newspaper, November 20, 2014
Mike Knight, Record 1300 rhinos poached in Africa in 2015, in The Namibian newspaper, March 11, 2016.

Muranda V, Phishing Schemes..as MTC and local commercial banks, in The Villager, April 14, 2014, Windhoek

Namibia Financial Authorities Supervisory Authority, 2016. What is money laundering?
Public notice, Namfisa

Nampa-AP, Money laundering investigation stymied by China, Italy in The Namibian newspaper, June 08, 2015


Nampa-Reuters, Corruption costs European economy 120 bln euros a year, in the Namibian newspaper

Namibia gets serious on money laundering, in Insight magazine, September 2009, Windhoek

News24, Malema corruption case thrown out, in The Sun newspaper, August 6, 2015

Nomhle Kangootui, Police burn drugs worth N$2m, The Namibian newspaper, April 12, 2016

Staff reporter, Namibia declared clean on money laundering, in The Namibian newspaper, March 17, 2015

Staff Reporter, Why the Financial Intelligence Act was enacted, New Era, August 19, 2013
Shinovene Immanuel, NamPort in Offshore Panama papers, The Namibian newspaper, April 04, 2016

Shinovene Immanuel, Millionaire receptionist, The Namibian newspaper, April 15, 2016


Roland Routh, ACC pounces on suspects, in The Namibian newspaper, January 31, 2014

Patience Nyangove, Brukaros accused of N$5m tax fraud…PG declines to prosecute, in Confidente newspaper, May 15-21, 2014

Philip N. Shiimi, Public notice- Money laundering in The Namibian newspaper, March 02, 2015

Theresia Tjihenuna, Health ministry defrauded of N$7m, in The Namibian newspaper, May 21, 2014

Rensburg RV and Vlok PA, Online Onslaught, in the YOU magazine, May 06, 2013, South Africa

Werner Manges, Criminal assets worth millions seized, in New Era newspaper, March 21, 2013

Werner Menges, Court freezes child’s account- money believed to be part of N$1.5m defence fraud in The Namibian newspaper, October 13, 2014

Werner Menges, Three in court over B1 City fraud..PG indicts ex-RCC chief and co, in The Namibian newspaper
8.4 Acts of Parliament and Regulations

Annunzio-Wylie Anti-Money Laundering Act of 1992

Anti-Drugs Abuse Act of 1988

Anti-Corruption Act, 2003 Act, No. 8 of 2003)

Bank Secrecy Act of 1970


Companies Act, 1973 (Act, No. 61 of 1973)

Crime Control Act of 1990

Criminal Procedure Act, 1977 (Act, No. 51 of 1977)

Customs and Excise Act, 1998 (Act, No. 20 of 1998)

Corruption Drug Trafficking and other Serious Crimes Act of 1999

Drug Trafficking Act, No. 140 of 1992

Financial Intelligence Act, No. 13 of 2012

Financial Services and Markets Act 2000

Income Tax Act, No.24 of 1981

Intelligence Reform and Terrorism Prevention Act of 2004


Money Laundering Control Act of 1986

Money Laundering Suppression Act of 1994

Money Laundering and Financial Crimes strategy Act of 1998

Namibia Financial Institutions Supervisory Authority Act No.3 of 2001

Serious Organized Crime and Police Act 2005

Secondary regulation is provided by the Money Laundering Regulations 2003

The Constitution of the Republic of Namibia

The Financial Intelligence Centre Act, No. 38 of 2001 (FICA)

The Prevention of Organized Crime Act, No. 121 of 1998 (POCA)

The Terrorism Act 2000

The Proceeds of Crime and Anti-Money Laundering Act, No. 09 of 2009

The Anti-Terrorist Crime & Security Act 2001

Terrorism (Suppression of Financing) Act, 2000

Trust Property Control Act, 1988

The Proceeds of Crime Act 2002

The Money Laundering Regulations 1993 (S.I. 1993/1933)

Police Act, 1990 (Act No. 19 of 1990)

Prevention of Organized Crime Act, No.29 of 2004 (as amended)
Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act, No. 4 of 2014)

U.S.A PATRIOT Act of 2001

Value Added Tax Act, No.10 of 2000
8.5 List of International Instruments


Convention for the Suppression of Unlawful Seizure of Aircraft (1970)

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973)


Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (01/09/1993)


Global Programme against money laundering; The Counter terrorism Committee; The Financial Action Task Force on Money Laundering 1989

International Convention for the Suppression of the Financing of Terrorism; Security Council Resolution 1373


International Convention against the Taking of Hostages (1979)

United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances Vienna, 20 December 1988


Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005);

8.6 Judiciary Decisions/Cases


ARA v Olupitan [2007] EWHC 162 (QB)

Assets Recovery Agency (Ex-parte) (Jamaica) [2015] UKPC 1 (19 January 2015)

Attorney-General of Trinidad and Tobago v Ramesh Dipraj Kumar Mootoo (1976) 28 WIR 304

American Surety Co. v Marotta, 287 US 513, 517 (1983);

Bowman v Fels (2005) EWCA Civ

CPA Hedge Fund Manager Sentenced for Role in $40 Million Ponzi scheme (June 16, 2015)

Cuellar v. United States 2008

Columbus Joint Venture v ABSA Bank Ltd 2002 1 SA 90 (SCA).

Cianci v Superior Court 710P.2d 375, 376-77(Cal. 1985).

Derry v Peek 14 AC 337


Director of Public Prosecutions: Cape of Good Hope v Bathgate 2000 (1) SACR 105 (C)

Director of Public Prosecutions of Mauritius v Bholah  [2011] UKPC

Ex Parte: Attorney-General In Re: Constitutional Relationship between Attorney-General and the Prosecutor-General (SA 7/93) [1995]
Energy Measurements (Pty) Ltd v First National Bank of South Africa Ltd 2001 (3) SA 132 (W)

Ebrahim v Airport Cold Storage (Pty) Ltd 2008 (6).

General v Uuyuni 2015 (3) NR 886 (SC)


Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others 2001 (1) SA 545

Imador v S (A167/2013) [2014] ZAWCHC 66 (3 April 2014)

James & Son Ltd v Smee [1955] 1 QB 78

Hailulu v The Director of the Anti-Corruption Commission and Others (A 383/2008) [2013] NAHCMD 205

Kockjeu Kockjeu v National Director of Public Prosecutions 2013 (1) SACR 170 (ECG)

KwaMashu Bakery Ltd v Standard Bank of South Africa Ltd 1995 1 SA 377 (D)

Lameck and Another v President of The Republic of Namibia and Others 2012 (1) NR 255 (HC).

Launder v United Kingdom [1997] ECHR 106

Martin Frankel case (June 25, 1999)

Milne v R [2012]

Mistry v Interim Medical and Dental Council of South Africa and Others 1998 (4) SA
Mazibuko and another v National Director of Public Prosecutions 2009 (2) SACR 368 (SCA)

National Director of Public Prosecutions v Mohamed NO and Others 2002(4) SA 843 (CC)

National Director of Public Prosecutions v Mtungwa 2006 (1) SACR 122 (N).

National Director of Public Prosecutions v Van Staden and Others 2007 (1) SACR 338 (SCA)

National Director of Public Prosecutions v R 0 Cook Properties (Pty) Ltd 2004 (2) SACR 208 (SCA)

National Director of Public Prosecutions v Rautenbach and Others 2005 (4) SA 603 (SCA)

National Director of Public Prosecutions v Ramlutchman 2016 (1) SACR 362 (KZP)

National Director of Public Prosecutions v Gillespie Street Durban (Pty) Ltd and Another (2004) (8) BCLR 844


Ntsoko v National Director of Public Prosecutions 2016 (1) SACR 103 (GP)


R v Li. 204 [40];

R v Nguyen, 256 [58]

RP v DP And Others 2014 (6) SA 243 (ECP)

R v Anwoir [2008] EWCA

Ritz Hotel Ltd v Charles of the Ritz Ltd and Another 1988 (3) SA 290 (A).
ReitzerPharmaticals (Pty) Ltd v Registrar of Medicines 1998(4) SA 660(T)


S L Wines Ltd v Revenue & Customs (Money Laundering Regulations 2007) [2015]

State v Malumo (CC 32/2001) [2015] NAHCMD 213 (September 7-14, 2015)


State v Tcoeib (SA 4/93) [1996] NASC 1; 1996 (1) SACC 390 (NmS) (6 February 1996)

S v Nel 2015 (4) NR 1057 (HC)

S v Weinberg 1979 (3) SA 89 (A)

S v Roux 2014 (3) NR 816 (HC)

S v Dustigar Case no CC6/2000 (Durban and Coast Local Division) unreported

S v Boekhoud (2011 (2) SACR 124 (SCA)

S v Dos Santos 2010 (2) SACR 382 (SCA)

S v Mbatha 2012 (2) SACR 551 (KZP).

S v Van der Merwe 1974 (4) SA 310 (E)

S v Van Zyl Case no 27/180/98 – Regional Court, Cape Town.


Shalli v Attorney-General and Another 2013 (3) NR 613 (HC)
Savoi and Others v National Director of Public Prosecutions and Another [2013] 3 All SA 548

Powell v ABSA Bank Ltd (t/a Volkskas Bank) 1998 2 SA 807 (SEC)

Prosecutor-General v Uuyuni 2015 (3) NR 886 (SC)

The Shipping Corporation of India Ltd v Evdomon Corporation and Another 686/91) [1993] ZASCA

The Serious Organised Crime Agency v Namli & Ors [2013] EWHC 1200 (QB)

Transnamib Holdings Ltd v Engelbrecht 2005 NR 372 (SC)

Two Rhode Island Men Sentenced for Food Stamp Fraud (21 September 2014)

Teckla Nandjila Lameck Another v President of the Republic of Namibia and others (Unreported)

Tulip Diamonds Fze v Minister of Justice and Constitutional Development and Others 2013 (1) SACR 323 (SCA)

Tayeb v HSBC Bank Plc & Anor [2004] EWHC

R v Brandford (1889) 7 SC 169


Plevin v Paragon Personal Finance Ltd and another 2014 UKSC 61


Trandy v R [2009] VSCA

United States of America, Plaintiff-appellee, v. Michael Eugene Savage, Defendant-appellant, 67 F.3d 1435 (9th Cir. 1995)

United States v. Antar, April 12, 1995

United States v. Edgmon 1991 USCA 10 1347


United States v. Lovett 1992 USCA 10 545, 964 F 2d 1029 (10th Cir.1992)

United States v. Sewell, 2001 USCA 2 231; 252 F. 3d 647, 650 (2d Cir.2001)


United States v. Lopez [1997] USCA9 83, 104 F 3d 1149 (9th Cir. 1997) (per curiam)


United States v. Lindberg, 220 F. 3d 1120, 1122 n. 2 (9th Cir.2000)


United States v. Lindberg, 220 F. 3d 1120, 1122 n. 2 (9th Cir.2000)

United States v Pungitore , 910 F,2d 1084,1129


United States v Oreto 37 F 3d 739 (1994) US
See United States v Biasucci 786 F 2d 504 (1986) (US Court of Appeals, Second Circuit)

United States v Boylan 620 F 2d 359 (1980) (US Court of Appeals, Second Circuit)

United States v Scotto 641 F 2d 47 D (1980) (US Court of Appeals, Second Circuit)

United States v F Aversa [1993] USCA1 15; 984 F.2d 493; 61 USLW 2471 (13 January 1993)

Van Zyl and Another NNO v Kaye NO and Others 2014 (4) SA 452 (WCC)

Simon Nama Goabab v The Government of the Republic of Namibia Case No: SA 45/2010

Sedima, SPRL v Imrex Co 473 US 479 (1985) at 497 – 498

Westminster City Council v Croyalgrange Ltd & Anor [1986] 2 All ER 353
8.7 Internet Sources

A list of all members and observers can be found on the FATF website at www.fatf-gafi.org, last accessed on June 15, 2016.


last accessed June 18, 2015.

http://www.specialmetalsforum.com/rare-metals/5-most-expensive-metals-in-the-world/
last accessed on March 13, 2016.


The negative effects of money laundering on economic development,


Exploiting poorly installed networks, and especially wireless home networks, accessed at


The consequences of money laundering and financial crime,
https://www.hsdl.org/?view&did=3549  last accessed on October 01, 2017.

The illegal use of someone else's personal identifying information (such as a Social Security number) in order to get money or credit accessible at http://www.merriam-webster.com/dictionary/identity%20theft last accessed on March 08, 03.216.


Money Laundering in South Africa at Http:kms1.isn.ethz.ch/serviceengine/files/ISN/111885/…/en/chap4.pd

Media Statement

Namibia Corruption Report, “highest corruption are found in the Public Procurement” accessible at http://www.business-anti-corruption.com/country-profiles/namibia last accessed on August 18, 2017


The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.” Available at http://www.fatf-gafi.org/about/ last accessed May 14, 2016.

Stages of Money Laundering.


What is money laundering?


What is Money Laundering? The Three Stages of Money Laundering

8.8 Meetings and Conferences attended on money laundering and related offences

First plenary and working group meetings for financial action task force- FATF XXVII held in France-Paris from October 18 to 23, 2015

Regional Public Procurement and Disposal Process, the Law and Professional Workshop at Nairobi Safari Club in Kenya from June 24 to 28, 2013

Technical members under the Anti-Money Laundering and Combating Financing of Terrorism Council of Namibia, representing the Attorney-General of the Republic of Namibia
8.9 Television Documentaries

Our World, Kidnapped in Mexico by Vladimir Hernandez, BBC News, March 12, 2016 at 14:00 PM- 15:00 PM.