

CHAPTER 5

MONEY LAUNDERING PATTERNS IN KENYA

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Introduction and methodology

This chapter is based on research on the nature and extent of money laundering in Kenya, which the author conducted in July and August 2002. The research took the form of interviews with selected key persons who were involved in issues relating to money laundering. As far as possible, the sources of the information in this paper are disclosed and constitute the persons who were interviewed for purposes of this research.

What is money laundering?

For the purposes of this discussion a broad working definition has been adopted, as follows:

Money laundering consists of the concealment of assets generated by crime or to be used in committing or facilitating the commission of crime.

In a slightly more comprehensive form, this same working definition would read as follows:

All activities to disguise or conceal the nature, source of, or entitlement to money or property, or rights to either, when the money or property or rights are acquired from serious crime, as well as all activities to disguise or conceal money or property that is intended to be used in committing or facilitating the commission of serious crime.

Factors relevant to the money laundering situation in Kenya

The poor record of law enforcement in Kenya and the poor keeping of public records on registered businesses registered land, make it difficult to detect instances of money laundering, and also reduce the need to launder money in Kenya as will be shown below.

Corruption and the record of law enforcement

The Corruption Perception Index published by Transparency International in 1996 ranked Kenya third from the bottom in the (ascending) list of the most corrupt countries in the world. Only Pakistan and Nigeria were perceived to be more corrupt than Kenya. In 1998 Kenya ranked 78th out of the 85 countries surveyed; in 1999, it was 90th out of 99; in 2000, it was 82nd out of 90; and in 2001, out of 91 countries, Kenya ranked 84th.¹

Both the judiciary and the police in Kenya are perceived as corrupt and weak. A local survey conducted in early 2002 to determine public perceptions of corruption in public institutions in Kenya showed that the police are perceived as the most corrupt public institution in Kenya. The judiciary was sixth on the list.² In May 2001, three judges of the Court of Appeal, Kenya's highest court, publicly accused one another of corruption. The fallout from this incredible incident was massive. The three judges later publicly apologised for any embarrassment they may have caused the public and the matter ended there. In May 2002, a panel of judges from Tanzania, Uganda, South Africa and Canada was invited to review the state of the administration of justice and advise on how to bolster public confidence in the institutions responsible for justice. After interviewing several people, including members of the judiciary, the judges declared that they were amazed at the depths to which the standards in Kenya's judiciary had fallen. In their view, Kenya's judiciary was in need of "a short sharp shock".³

The Goldenberg scandal, discussed below, inevitably led to a complex series of court cases. Like the government, which was responsible for creating the scandal, the judiciary was also sucked in, with several claims, some of which were substantiated, that judges had received large amounts of money as bribes in connection with the cases.

'Land grabbing', the presidential patronage system that rewards political loyalty with parcels of land, has greatly benefited the judiciary. Efforts to establish an independent anti-corruption authority have been stalled by the judiciary, which has evolved a jurisprudence that is hostile to anti-corruption measures. For example, in December 2001, the judiciary discharged a cabinet minister, charged with offences of corruption, by introducing the previously unknown principle of limitation of time into criminal law.⁴ Earlier, in December 2000, the judiciary had proscribed Kenya's independent anti-corruption authority on grounds that seemed legally spurious.⁵

Professor Yash Ghai, head of the Constitution of Kenya Review Commission, is said to have described Kenya's judiciary as incompetent and lethargic, noting that it has never delivered a landmark decision.⁶

In response to the drastic proposals on judicial reforms made by the Commission, in October 2002 two judges filed a suit in the High Court of Kenya seeking to prohibit the discussion of judicial reforms as part of the wider constitutional reforms. Public outrage followed the suit, with local lawyers boycotting courts for a day in protest against it.⁷

For their part, the police in Kenya are often accused of active involvement in crime. Instances of policemen being arrested in the process of committing violent robberies are on the increase. It is claimed that the police often hire out their guns to violent criminals. The conditions of service for the police are squalid. They are the lowest-paid public servants and morale among them is low. The police force is highly politicised and has been an active participant in quelling legitimate political opposition. It is believed that high-ranking police officers have become rich by engaging in crime or corruption.

The level of crime in Kenya is high. The police can scarcely cope and serious crime often goes uninvestigated. The police routinely conduct extra-judicial executions of suspects.⁸

As several examples below will show, the Kenyan state is perceived as an active participant in criminal activities that generate money that may need to be laundered. It is, therefore, not expected that the state would be effective in fighting crime or in carrying out anti-money laundering measures. There is, however, no strong motive to launder money in Kenya, because law enforcement is very weak.

The nature of public records in Kenya

The quality and nature of public record keeping concerning the registration of business entities has direct implications for money laundering. In Kenya, there are two types of records that are relevant to this discussion. These are: first, records concerning companies and other business entities registered in Kenya; and, second, records concerning registered land.

Company records

Five types of business entities are required to be registered under Kenyan law: limited liability companies, trusts, non-governmental organisations (NGOs), societies and business names. The registration of business entities is handled by the Registrar-General, an officer who is administratively responsible to the Attorney General.

There is one central registry for all business entities registered in Kenya, which is maintained in Nairobi and is called the Companies Registry.⁹ It holds records for the more than 300,000 business entities registered since the establishment of the Kenyan state. To ease the record keeping process, a decision was made to computerise these records, using funds provided by the World Bank. After an elaborate process, a private company was contracted to undertake the data-entry process. This necessitated the removal of the files from the cabinets where they were kept under the manual system. However, the data-entry process was not completed and the contracted company abandoned work midstream. The attempted computerisation disorganised the manual record-keeping system to the extent that the records can never be restored to their original status. On the other hand, the computerisation process, left incomplete, cannot deliver any of its promised advantages.

It is impossible to retrieve or to file information in the registry in its current state. The registration system has, quite simply, collapsed.

Coupled with this is the problem of deliberate concealment of official records by registry staff. For example, in 1998, it came to light that a large portion of Karura Forest, a large natural forest on the outskirts of Nairobi, had been corruptly alienated in favour of private individuals. There followed a public outcry, including street demonstrations in Nairobi, against the allocation. There were even attempts forcibly to remove the beacons demarcating the parcels of land. Police thwarted these attempts. When pressure groups involved in environmental conservation attempted to obtain information on the allottees, they found that the forest had been allocated to limited companies. However, a search at the Companies Registry showed that, although these companies were all registered, their registration files, which the registry should maintain, contained none of the usual documents on the companies.

It emerged that the allocation of Karura Forest was a well-orchestrated act of fraud and corruption. All the 36 companies were incorporated on the same day by one law firm. Given the difficulty of registering business entities in

Kenya, a process that usually takes several days, it seemed odd that all these companies had managed to obtain registration on a single day.¹⁰

Corrupt officials who desire to escape responsibility for their conduct often act under the cover of a limited liability company. The company is incorporated and the official is be given the original file containing the constitutive documents for the company, which should be kept at the registry. The public can never have redress against the company, since important particulars will never be publicly known. Whenever the directors need to make changes in the company, they simply take the file back to the registry for those changes to be endorsed, after which they take the file away again.

The business entity registration system in Kenya has thus collapsed under the weight of its own inefficiency and corruption.

Records concerning registered land

The maintenance of records concerning registered land has similarly been affected by both inefficiency and corruption. Land that has not been alienated in Kenya is classified either as government land or trust land. Government land is vested in the President, who has the power to make dispositions or grants of any estate or interest in that land to a private person. Trust land is vested in the local authority, which has jurisdiction over the land where it is located. The land is to be held by such authority for the benefit of local inhabitants.¹¹

Over time, the President has made several grants of government land to private persons. The disposition of government land in this manner has increasingly become a source of public disquiet, because it is often made on the basis of patronage and without regard to the public interest.

This direct power that the President has over public land has generally been interpreted as bestowing on him ownership of that land. Dispositions are usually by private arrangement, rather than public auction as envisaged by law. The alienation of public land, although an old practice in Kenya, reached new levels during President Moi's reign. Allocations have generally been made as a reward for political loyalty or to achieve political co-optation.

Initially, President Moi would personally sign the letters of allotment. There was a long queue of applicants who felt that they deserved compensation for supporting the establishment, and who sought the President's signature for parcels of public land. In the course of time, all unalienated land in townships

was allocated, without exhausting the demand. New methods of allotting land were devised. Persons in search of vacant public land conspired with heads of public institutions, like schools, hospitals and government farms, for land falling within these institutions to be declared vacant land. A portion of that land was then surveyed and the President was asked to make a grant of the land. Public toilets, public cemeteries, markets and even road reserves have all been the subject of allocation. Corrupt officials conspired to condemn government houses as unfit for occupation and then have the land allocated to them. In one case, the Nairobi City Council secretly sold 288 units of houses it owned in a prime area, without first requiring existing tenants to vacate. The new owners have found it impossible to evict the tenants. When all land owned by public institutions was exhausted, the search turned to public forests. The Karura Forest allocation is an example of the alienation of public forest land.¹²

The process of allocating public land created a cadre of middlemen with claims of sufficient political influence to link the supply with demand. Unsatisfied demand led to forgery of the letters of allotment. Over time, therefore, the letter of allotment came to be regarded as an instrument of conveyance. Because of fraud, several letters of allotment would be issued for one parcel of land, leading to multiple registrations. It is not unusual, in these circumstances, for a parcel of land to be claimed by several persons, each of whom has been issued with a title deed.

This mode of dealing with public land has led to a state of uncertainty and chaos concerning registered land. The government is no longer capable of discharging its duty of guaranteeing security of title over registered land.

The government, having started an arbitrary and wholly irrational land-allocation process, has opened floodgates of corruption at all levels, which it is unable to stop. The problem is now widespread and involves all ranks of public servants. Given the arbitrariness of the process, it often undermines not only the public interests of the government but also the very private interests of corrupt officials, who themselves fall victim to it.

Poor record keeping concerning land transactions, when coupled with the inadequacy or non-existence of records concerning business entities, creates an impenetrable mess, in which it is impossible to impose accountability. In a report on money laundering published in 1999, a Kenyan journal claimed that the Italian Mafia own many luxury hotels at the Kenya coast, but the lack of public information on ownership makes it difficult to prove (or disprove) this.¹³

Some common types of money laundering

It is not possible to discuss all the possible forms of money laundering in Kenya. These are only limited by opportunity and human imagination. A useful way of discussing money laundering in Kenya is by reference to the types of criminal activity that give rise to proceeds that may need to be laundered.

Laundering the proceeds of corruption

Corruption in Kenya takes many forms, all of which result in the loss of public funds or other resources. The government of Kenya lost more than Sh12 billion through fraudulent payments in the 1996–97 financial year alone. In the period 1990–95 it lost a total of Sh127 billion through corruption. These figures are said to represent the loss of one in every six shillings allocated by Parliament.¹⁴

The manner in which proceeds of corruption are laundered varies from case to case, and two illustrations will suffice.

The special conditions that typically form part of a grant include a bar to the sale or transfer of the land that is the subject of a grant, unless it is first developed. Generally, this condition is disregarded. A large number of the grantees are, therefore, land speculators.

During much of the 1990s, a scandal involving the alleged export of non-existent gold and diamonds occurred in Kenya. Other than the direct loss to the public, it had a profound negative effect on the economy. The Goldenberg scandal, as it is known, is discussed below.

*The Goldenberg scandal*¹⁵

The Goldenberg scandal is a series of financial scams involving high-ranking state officials, which, together, led to an estimated loss of US\$500 million by the government of Kenya. The actors in the scandal included George Saitoti (Kenya's long-serving Vice-President), Eric Kotut (then the Governor of the Central Bank of Kenya), E. Owayo (then the Commissioner of Geology and Mines), Wilfred Koinange, (then the Permanent Secretary to the Treasury), James Kanyotu (then the head of Kenya's security intelligence), and Kamlesh Pattni (a Nairobi trader in his early twenties, who was the mastermind of the scams).

Some time in 1987, Pattni made a proposal to the government to grant him exclusive rights to export gold from Kenya, where it only exists in small, uneconomic quantities. Its mining and sale have never interested the government. In the context of exchange controls, gold exports were handled on the black market, causing the government to lose foreign exchange revenue. Pattni's proposal was intended to formalise gold exports. This would, in turn, earn the government foreign exchange. As an incentive, Pattni proposed that the government should pay him 'export compensation' to give him sufficient profit margins to fight the black market trade. The government did not act on his proposal immediately.

In 1990, the government accepted a renewed proposal from Pattni, whose proposals now included diamonds as an item for export. Pattni also requested that he be allowed to set up his own commercial bank to handle the trade transactions. The government agreed to pay Pattni 35% of the value of his exports as compensation. However, it did not approve Pattni's proposal that he be allowed to set up his own financial institution to deal with the exports, but it would later grant this request as well.

In 1990, Pattni incorporated Goldenberg International Limited to handle the exports. Its directors were Pattni himself and James Kanyotu, the security intelligence head, who described himself as a farmer in the company's documents.

Three irregularities had occurred up to this stage: firstly, the export compensation level of 35% was in excess of the allowed legal limit of 20%. Secondly, giving Goldenberg exclusive rights to export gold contravened anti-monopolies legislation. Thirdly, Kenya has no known deposits of diamonds that could be the subject of export trade.

From 1991, Pattni went to work. He started sending invoices to the government for compensation, as agreed. His bankers, the First American Bank, produced records in evidence of payments that Pattni had received from the exporters. These were at variance with existing invoices. Oddly, the invoices and payments made to Pattni were in Kenyan shillings yet they purported to emanate from overseas transactions.

The Central Bank of Kenya queried the invoices. Through the direct intervention of the governor, Eric Kotut, the invoices were paid without these discrepancies being resolved. More invoices came, leading to more queries. Pattni

had, by now, increased the number of his bankers to include Citibank, NA and Kenya Commercial Bank, a parastatal bank.

In an attempt to deal with the query about the currency of payment, Pattni now produced evidence of payment in a cocktail of foreign currencies (dollars, sterling, Deutsche Marks and francs). More queries were raised: why was a single consignee remitting payment in so many different currencies?

In June 1992, the government suddenly allowed Pattni's request to start his own commercial bank. Pattni incorporated Exchange Bank, with himself and Kanyotu, the intelligence chief, as the directors. Now that he had his own bank, Pattni could easily avoid all the awkward questions raised by the Central Bank of Kenya.

It was later to emerge that Pattni was buying the foreign currency in the local market and, with the collusion of his bankers, representing it as foreign exchange earnings from the sale of gold and diamonds.

Goldenberg's exports were greatly overpriced. In 1991, a gram of gold cost about US\$12 (Sh342) in the world market. Pattni's gold was priced at US\$3,368 (Sh96,000) per gram.

Questions were raised about where the gold was being exported. Goldenberg's consignees, according to Pattni, were two Zurich-based companies, Servino Securities and Solitaire. Inquiries revealed that these firms did not exist. Pattni then claimed that exports, worth Sh13 billion (about US\$400,000,000), had been made to a company called World Duty Free, based in Dubai. This company, owned by a Pakistani called Ibrahim Ali, had an affiliate company in Nairobi called Kenya Duty Free. Ali had negotiated an agreement with the Kenyan government to run Kenya Duty Free shops in Nairobi and Mombassa. When contacted by local newspapers, Ali simply denied the allegations and did no more until 1999. In the meantime, Pattni was paid export compensation for these claimed exports.

In 1998, Pattni obtained orders of receivership against Kenya Duty Free and quickly took control of the shops in Mombassa and Nairobi.

In February 1999 an incensed Ali turned up in Nairobi and swore an affidavit, filed in Pattni's litigation, in which he made two sensational claims: first, that

the total loss by the Kenya government through Goldenberg was Sh68 billion and not any smaller sum, and, second, that the principal beneficiary in Goldenberg was President Moi. To the affidavit, he annexed evidence from painstaking investigations regarding Goldenberg that he had conducted over the years; this evidence backed up his claim.

For his efforts, Ali was arrested and quickly deported and has never been allowed back into the country.

Other than receiving money for non-existent exports, Pattni's Goldenberg was involved in more scandals. In the 1990s the government had an 'incentive package' for exporters, according to which it financed them to facilitate their trade. They would pay back the government once their overseas partners paid them. Goldenberg, naturally, claimed to be an exporter, and was paid Sh185,816,800 as pre-shipment finance for the gold and diamonds to be traded. This money was to be refunded through Delphis Bank (formerly the Nairobi branch of the Bank of Credit and Commerce International—BCCI). Pattni then negotiated a delay in refunding this money, to which the government acceded. By 1993, the Central Bank of Kenya had advanced Goldenberg a total of Sh7 billion in pre-shipment financing.

Meanwhile, in 1991, the government had introduced yet another instrument, called a forex certificate, which business people were allowed to buy. It was intended to make available convenient foreign exchange for exporters. Pattni invoiced his overseas consignees in Kenyan currency but claimed compensation from the government in foreign currency. Using the pre-shipment finances, Goldenberg amassed forex certificates, which it then redeemed at a premium.

The last instrument of which Pattni took advantage during this period was the export retention scheme. Introduced in 1992, this scheme allowed exporters to retain a portion of their foreign exchange earnings in special accounts. This would be available to them conveniently in subsequent transactions that needed foreign exchange.

The preferential treatment Goldenberg had always received was extended again. Whereas exporters of coffee and tea and other 'traditional' exporters were allowed to retain only 50% of their earnings, Goldenberg was allowed to retain its full 'earnings'. It is believed that Goldenberg amassed U\$75 million under cover of this scheme, put away in Exchange Bank.

The Central Bank of Kenya then advanced Pattni Sh13 billion, equivalent to US\$210 million, against an equivalent amount he said he had in a London account and which he would make available to the Kenyan government in foreign exchange. Pattni never made good on this promise.

Laundering the proceeds of Goldenberg

The Goldenberg scandal, as shown above, was in fact not one scandal but a series of financial scams that were distinct and separate from one another. The connecting thread through these various scandals was the involvement of Kamlesh Pattni, the mastermind. Thus, there was the export compensation for gold and diamonds, the original Pattni proposal, which led to a major loss by the government. Next, came the pre-shipment finance for gold and diamonds, which led to the loss of an unknown value by the government. This was followed by the export retention scheme, where an estimated loss of U\$ 75 million occurred and, finally, the spot contracts in which U\$ 210 million was lost.

Except for the proceeds of the spot contracts, little is known as to how the proceeds of the Goldenberg scandal were dealt with. Only the dealing in the proceeds of the spot contracts will, therefore, be discussed.

According to the Central Bank of Kenya,¹⁶ Pattni was advanced Shs13 billion (equivalent to US\$210 million) in the spot contracts as set out in Table 1.¹⁷

Table 1: Spot sale contract between Pattni and Central Bank of Kenya

Date	Expected amount in US\$
21/06/1993	24,000,000.00
21/06/1993	22,000,000.00
21/06/1993	20,000,000.00
21/06/1993	18,000,000.00
21/06/1993	16,000,000.00
30/06/1993	16,550,000.00
30/06/1993	17,900,000.00
30/06/1993	18,200,000.00
30/06/1993	18,700,000.00
30/06/1993	19,150,000.00
30/06/1993	19,500,000.00
Total	210,000,000.00

The money was paid into Exchange Bank, which Pattni had been licensed to open and of which he and Kanyotu, the security intelligence boss, were the two directors. What followed is a complex maze of transactions involving several companies through which the money was dealt with. It is not possible, in this space, to detail the transactions, which are presented in a slightly simplified form.

According to the Central Bank of Kenya, Exchange Bank in-

vested the equivalent of US\$71 million, out of these proceeds, in treasury bills. At this point in time, treasury bills were a very lucrative investment with interest rates exceeding 70% per annum. Exchange Bank invested a further US\$30 million in forex certificates, a financial instrument that has already been discussed above and which, because of the intended devaluation of the shilling by about 30%, made a lot of sense, the beneficiaries having had prior knowledge of the devaluation. Exchange Bank then advanced US\$23 million as loans to its customers. According to the Central Bank of Kenya, a further US\$14 million was the subject of a contract entered into between Pattni and the personal representatives of the estate of Mohammed Aslam, in London. Aslam had been an influential banker in Nairobi and the chairman and principal owner of the Pan-African Bank. Because of his political connections, Aslam came to be referred to as the 'President's banker', to reflect his close association with President Moi. When Aslam died mysteriously, his large estate included Pan African Bank (which was said to have a branch in Karachi, Pakistan), a country club about 100km from Nairobi known as Safariland Club, an insurance company and various other assets.

A sale agreement was entered into between representatives of various companies in which Aslam had had shares, on the one hand, and a company known as Pansal Limited, on the other, for the transfer to that company of all the assets formerly belonging to Aslam, for a consideration of US\$14 million. There must have been considerable hurry in completing this transaction since, at the time of signing the agreement, Pansal Limited had not even been incorporated.¹⁸ It was only incorporated much later, with two of Pattni's nominees as directors.

As part of this transaction, Pattni acquired the Pan African Bank, Safariland Club, and a company known as Uhuru Highway Development Limited, which owned a hotel, then under construction. Upon completion, the hotel would become known as the Grand Regency Hotel, arguably the most magnificent hotel in Kenya. In subsequent litigation over its ownership, the hotel was likened by the court to the Taj Mahal.

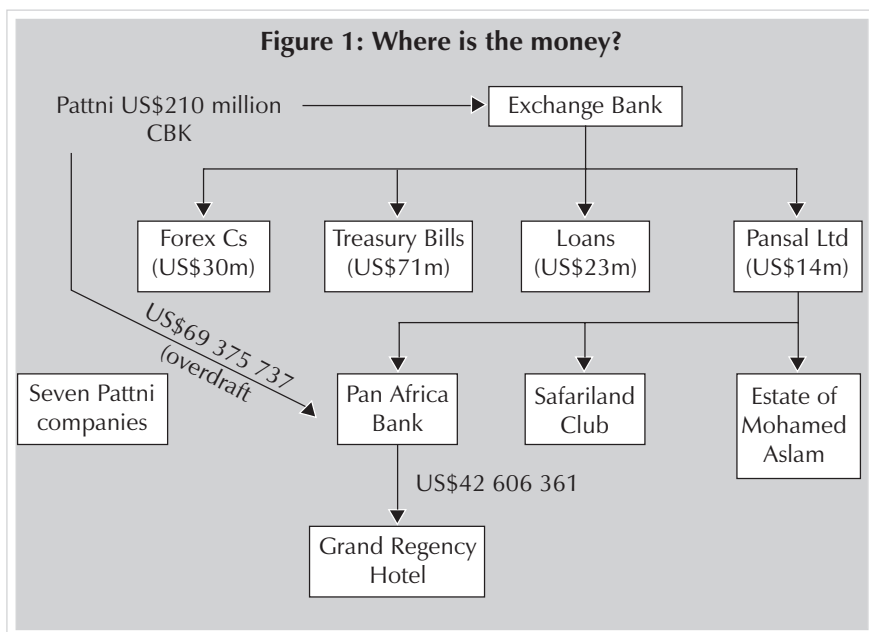
Having acquired the Pan African Bank, Pattni now controlled two banks, Exchange Bank and the Pan African Bank.

To finance the construction of the hotel, an overdraft facility was entered into with the Pan African Bank, which amounted, in the end, to US\$42 million. According to the Central Bank of Kenya, the Pan African Bank financed this by overdrawing its bank at the Central Bank of Kenya to the tune of US\$69 mil-

lion, the repayment of which Pan African Bank escaped through a fresh fraud against the Central Bank of Kenya. Briefly, that fraud worked as follows:

Pattni caused to be incorporated a total of eight limited companies, which either he or his nominees controlled. He then conceived a fraudulent scheme to obtain funds from the Central Bank of Kenya using his two banks and the eight companies by overdrawing the account of Pan African Bank at the Central Bank of Kenya and then covering the overdraft using fraudulent transfers in favour of that bank, issued by his other bank and the companies. Pattni would then carry out this fraudulent rotation of funds, all over again, to cover the overdraft created in the second bank.

Thereafter, Exchange Bank went into voluntary liquidation, no doubt having richly achieved the purpose for which it had been set up. Pan African Bank was eventually also closed, following massive donor pressure. The following chart summarises the movement of the US\$ 210 million in a simplified manner.



Epilogue

Pattni was eventually charged with the theft of the US\$210 million, together with the Governor of the Central Bank of Kenya, and other officials at the

Treasury. The case against them has never been decided, and has been the subject of endless interlocutory applications. Ten years on, the case is still in court.

The then-Vice President, George Saitoti, who was Minister for Finance when the scandal happened, was never charged despite much public pressure for him to be made accountable. Also, Kanyotu, the security intelligence boss, was never charged in court.

The Central Bank of Kenya, which lost the US\$210 million through the spot contracts and the further US\$69 through an overdraft given to Pan African Bank, sued Pattni and his companies for the recovery of the money. The Central Bank of Kenya eventually put pressure on Pattni to sign a charge in its favour, over the Grand Regency Hotel, which it says was built with its funds. Its efforts to sell the hotel, as the chargors, have been the subject of numerous successful judicial stops at Pattni's instance. In the complex litigation, Pattni has stonewalled the Central Bank of Kenya by counter-suing it. To further complicate the litigation Pattni has sued, together with the Central Bank of Kenya, the companies through which he acted in the Goldenberg scandal, and which he still controls.

Violent crime

Three forms of violent crime are prevalent in Kenya and provide substantial sources of money that may need to be laundered. These are:

- motor-vehicle theft;
- cattle rustling; and
- violent robbery.

These are discussed in turn.

Motor-vehicle theft

A survey carried out, relying on police and insurance sources, indicates that on average, 250 motor vehicles are stolen every year, mostly at gunpoint. Of these, 41% are saloon cars, 30% are light trucks and vans and the remaining 29% comprise a mixture of models. The survey estimates that the total loss, in monetary terms, from carjacking activities is Sh1.56 billion per year.¹⁹

The theft of motor vehicles is, arguably, a form of money laundering, since those who steal seek to resell or to use the vehicles in a disguised form, or dismantle the vehicles for sale as spare parts. Such theft in Kenya is often carried out violently and constitutes serious crime.

Most of the saloon cars stolen in Kenya are disposed of locally.²⁰ Formerly, some of were dismantled and sold as spare parts. However, after liberalisation, most types of spare parts are now relatively inexpensive, removing the incentive to dismantle stolen cars. Most of the stolen public-service vehicles (usually 18- or 25-seater vans) are also sold locally or in Tanzania. The vehicles are resprayed and fitted with different number plates. Large vehicles like buses are mostly sold in Tanzania. Four-wheel-drive vehicles are mostly sold in Uganda, southern Sudan, where elements in the Sudanese People's Liberation Army use them as military vehicles, and the Democratic Republic of Congo, where, again, they are used in the many conflicts in the sub-region.

An important question is how these vehicles, which bear Kenyan registration plates, are allowed to cross international borders. Vehicles destined for Tanzania cross the border by avoiding the established border point at Namanga and using a remote bush road. Nevertheless, others cross through the border point, apparently with the complicity of officials. The border with Uganda is better managed and there are no possibilities of avoiding official crossing points. The vehicles must, therefore, cross at Busia or Malava, the two border points between Kenya and Uganda, again with the complicity of border officials.

Kenya shares a 100-mile border with the Sudan. This consists of mostly arid land. The border is poorly patrolled, if at all. Vehicles destined for the Sudan, therefore, can move across the border with little possibility of detection.

How are the stolen vehicles sold in the local market dealt with? According to a Nairobi lawyer, who has acted for several persons charged with theft of motor vehicles, the process is as follows: the stolen vehicle is usually one of the most common models in the market. The gangs that steal vehicles establish businesses that buy motor vehicles that have been written off after being damaged in serious accidents. The vehicles are usually bought from insurance companies, complete with registration documents, including the log books and number plates. The stolen vehicles are fitted with the number plates of the salvage vehicles bought from insurance companies and transferred to innocent buyers, who buy under the belief that the log book for the salvage vehicle is genuine. In other cases, the number plate is fitted on a different model of vehicle

from the one that was damaged. The person who drives the stolen vehicle cannot claim innocence and would do so at the risk of being arrested.

Often, the dealer in salvage vehicles is an independent person who has a legitimate motor-vehicle repair business or a second-hand vehicle dealership alongside the one for stolen vehicles.²¹

This racket also involves freshly imported vehicles, whether new or secondhand. To avoid the payment of import tax and duty, some vehicle importers fit vehicles with the number plates of written-off vehicles. They then hold out these vehicles as genuine bearers of those registrations. For example, on 4 April 2002, police raided a warehouse in Nairobi's industrial area, where they discovered goods worth Sh500,000,000 that were hidden for tax evasion purposes. Among the goods were 13 new vehicles, hidden under drums and cartons.²²

High-ranking public officials control part of the motor-vehicle theft business. This works as follows: the government issues dummy registration plates for some of its motor vehicles for security purposes. Public officials, in collusion with registration officials, steal some of these plates, which are then fitted on stolen vehicles, or vehicles imported without paying applicable taxes. These officials often supply the guns to be used in vehicle theft.²³

Cartrack Limited, a local company involved in the post-theft recovery of vehicles, uses the same security system as its counterpart company in South Africa. Because of this, the company has, from time to time, recovered vehicles that have been stolen in South Africa and sold in Kenya. For example, on 12 November 2002, a Kenyan went on trial in a Nairobi court for being found in possession of an expensive car, stolen in South Africa. According to the prosecution, the Kenyan, a wealthy businessman, fitted the car with false number plates, having received it from South Africa as a stolen car.²⁴

Cattle rustling

Cattle rustled in Kenya are converted into meat for sale in the domestic and international market. The cattle are driven for hundreds of miles from the point of theft to where they are slaughtered.

The raiding of other communities for cattle is an age-old custom in Kenya. The Maasai people, who live in large parts of Kenya and Tanzania, for example, traditionally considered all cattle to belong to them. It was, therefore, their duty to acquire such cattle from other ethnic communities around them. Typi-

cally, cattle raiding in traditional society was carried out at night and relied on stealth. If the raiders were detected, they would retreat.

The influx of small arms (discussed below) has radically changed the nature of cattle rustling in Kenya. The northern two-thirds of Kenya is arid or semi-arid and is home to pastoralist communities. The population in these parts is sparse and is greatly surpassed by the thousands of animals each homestead keeps. Typically, pastoralist communities are nomadic and migrate within the large territories they occupy, in search of water and pasture for their animals. From time to time, they raid their neighbours to replenish their stocks of cattle.

The introduction of firearms into much of the arid and semi-arid parts of Kenya has led to an arms race among the communities living in the region. These arms have, in turn, changed the nature of cattle rustling. Human Rights Watch released a report on the effect of the small arms inflow into Kenya. The report noted that:

cattle rustling incidents have evolved into large-scale operations involving the theft, including in day light, of hundreds or sometimes thousands of cattle; the exchange of gunfire; rape and abduction; and, very often, the killing or wounding of people, including women and children.²⁵

The report noted one incident in February 2001, in which cattle raiders brandishing assault rifles and submachine-guns, killed 30 people and stole 15,000 head of cattle in a raid.

There have been attempts to determine the number of animals lost as a result of cattle rustling. According to Ilhakia Katumanga, a Kenyan former doctoral student at the University of Bordeaux, France, an average of 3,300 cattle are stolen in cattle rustling in northern Kenya per month.²⁶ The Human Rights Watch report estimates that 300,000 animals were stolen in northern Kenya in the late 1990s.²⁷

It is estimated that each stolen animal has a market value of Sh20,000. Applied to Katumanga's estimates, this means that cattle rustling generates Sh66 million per month. Applied to the estimates of Human Rights Watch, it works out to Sh60 billion for the period reported.

CATTLE RUSTLING AS A FORM OF MONEY LAUNDERING

Cattle rustling is now a commercial rather than cultural practice. According to Human Rights Watch:

stolen livestock have been sold, often across international borders, rather than being kept in communities. Non-pastoralist raiders and youths, in addition to herders themselves, have been drawn into cattle rustling.²⁸

A special report on cattle rustling in northern Kenya prepared by a local newspaper, *The Daily Nation*, claimed that cattle rustling is now controlled by a cartel of traders, politicians and administrators, who are making millions of shillings out of the business. The report claimed:

Some of the names being mentioned [as cattle rustlers] are known politicians, civil servants and administrators. These include top KANU officials and Special Branch officers.²⁹

The report claimed, further, that the cartel “hires youths and sometimes even members of the disciplined forces on leave, to carry out the dirty work”. Commercial rustlers finance the raids by providing transport for the raided animals and, importantly, the arms for use. The traders buy guns for use in the raids in the open market, where, “for Sh. 30,000/=, or two cows, one can get the latest AK-47 assault rifle”.³⁰ According to the report, the cartel sells the animals to slaughterhouses around the country and some are sold in the international market, mainly in the Middle East.

There is also evidence of political motives in cattle rustling. Cattle rustling is often carried out as part of political retribution against communities that are out of favour with the establishment.³¹ The motive of personal financial gain by the politicians who authorise the raid is usually understated but is actually the main reason why such raids are made in the first place. The establishment supports such raids, which are explained as a means of ‘teaching these communities a lesson’. The spoils of teaching the lesson go to the politicians.

In traditional society, cattle stolen from other communities was usually kept by the raiding community. In the commercialised form of cattle rustling, the cattle are sold in the Kenyan market, as noted above. The raiders, for example, typically drive cattle stolen from the Marakwet valley, to Kitale, about 100km away. They are then loaded onto waiting trucks. If they are intended for slaughter locally, they are transported mainly to Nairobi, a further 400km away, but also to other important urban centres. If they are intended for export, they are transported to Mombassa, 900km from Kitale, where they are slaughtered and then exported, mainly to the Middle East.³²

Cattle branding, for purposes of identification, has since fallen into disuse. It seems that that the administration has no great incentive to enforce the policy of identification of cattle since it has an interest in cattle rustling. It is, therefore, easy to move stolen cattle from one place to another without the risk of arrest. Commercial cattle rustlers usually act in complicity with law enforcement officials who, instead of arresting them, provide them with security.

Other forms of violent robbery

Fuelled by the increasing number of guns in Kenya, armed robberies have greatly increased in its cities, many of them targeting banks. For example, a bank lost Sh160,000,000 in a robbery in 1997, the largest loss in a robbery in Kenya.³³

Although many of these robberies do not lead to large financial losses, they are nevertheless of concern because of the serious injury, death and personal trauma associated with robbery. Rape is a dreaded accompaniment to some robberies.

Where do robbers take the money?

A substantial part of the money robbed from banks is paid to police officers, who offer the robbers protection. Increased security has often made it more difficult to rob banks. In order to succeed, the police have to be paid off to relax their security.³⁴ A significant portion of the proceeds of violent robbery is spent on relatively trivial pursuits. Informants said that robbers never bank any of the proceeds of their crime. Rather, they keep their money in all kinds of hideouts. The money therefore never gets into the financial system in the form in which it was stolen.³⁵

According to the informants, robbers typically invest their money in real estate, usually in downmarket Nairobi or in small towns on the outskirts of the city. They take particular care not to buy property in upmarket Nairobi, where they would stand out. Typically, the property is bought in the name of a woman companion. If it is residential property, the woman often resides there. If she does not stay on the property, she is, however, responsible for managing it and any other businesses the robber may establish. According to the informants, many robbers buy many such residential properties and install women companions to reside in the property and manage it. The different residences make it more difficult for the neighbours and the police to notice that the person is a robber.

According to the informants, robbers often establish retail businesses that generate a lot of cash. Such businesses include bars, butcheries and dry-cleaning

establishments. By far the most favoured business enterprise, among robbers, is passenger transport, popularly called the *matatu* business.

Profits from the business vastly vary and can be large. Often, there are bloody street fights between rival cartels for the control of *matatu* routes, and between the cartels and law enforcement officers. The police are often accused of exacting their own extortion from *matatu* operators and violent protests against the police are frequent. These cartels violently resist any form of government control.

Typically, a robber buys one or more vehicles, which join the large throng of existing vehicles on the road. It may not matter to him that the venture is not profitable, if it provides the required cover for his illegal activities. If the investment makes money, it is mixed with the proceeds of crime, which are thus laundered.

A possible attraction to investing in the *matatu* business is the fact that vehicles in Kenya can easily be bought for cash. Besides the formal motor-vehicle market, an even larger market of second-hand vehicles has developed in Kenya. Dealers hold open-air bazaars, which are completely informal and unregulated. The formal market (in which new vehicles are sold) has been in decline, while second-hand dealerships have been growing.

Some motor-vehicle dealers ask cash buyers to deposit the money into the dealer's account or to pay with a bank draft. However, the reason for this is not concern about the source of money but rather concern about the security of large amounts of cash once they are paid to the dealer. Banks do not ask questions of third parties who seek to deposit cash in the their customers' accounts. They assume that there must be a legal transaction behind the payment.³⁶

Motor-vehicle dealerships undeniably provide boundless opportunities for money laundering. Other than the local market, in which the use of cash is dominant, imports also provide an easy way of transferring money abroad. The money is easily explained as payment to a supplier of vehicles.

Where a robber invests in passenger transport, he may need spare parts for his vehicles from time to time. The theft of motor vehicles for spare parts supplies some of these needs.

Trade in narcotics

Kenya's trade partners

Kenya is believed to be mainly a trans-shipment centre for narcotics and psychotropic substances destined for markets in Europe and North America. There is increasing evidence, however, that a domestic market for drugs is developing, although it is still very small. From Pakistan (believed to be Kenya's leading trade partner in drugs), Kenya receives heroin and hashish. From India, it receives both heroin and mandrax. Heroin also comes into Kenya from Afghanistan. Cocaine comes from South America, mainly Colombia and Ecuador. Mandrax passing through Kenya is sold mainly in South Africa, believed to have the largest market for mandrax in the world. Other than Europe and North America, which provide the market for the bulk of the heroin, cocaine and hashish, an important market has developed in the Indian Ocean islands, including Mauritius and the Seychelles.

The players

Expression Today, a local journal that deals with issues of democracy, human rights and the media, conducted a detailed study on the trade in drugs in Kenya in February 1999.³⁷ The study claimed that trade in narcotics is ultimately controlled by highly-placed actors in the Kenyan state, who share in the profits, in return for political protection to the drug barons. The study named a number of people as some of the leading drug barons. These included Kamlesh Pattni (the mastermind of the Goldenberg scandal), Ibrahim Akasha (a Basel-based billionaire, since deceased), Nassir Ibrahim Ali (the same Pakistani national referred to earlier, who implicated President Moi in the Goldenberg scandal), and an assistant minister in President Moi's government. According to the report, the drug barons funded elections for the ruling party, KANU, in 1992 and 1997.

Akasha, the value of whose estate was estimated at Sh10 billion, and who owned property in Amsterdam, the Middle East and Asia, was publicly alleged to be the mastermind behind the hashish trade in Kenya. There were several public demonstrations against him in Mombassa, where he lived, but no action was ever taken against him. Eventually, on 3 May 2000, Akasha was assassinated in the red light district in Amsterdam.

A local newspaper, *The People Daily*, published an investigative story claiming that "some of Kenya's big names in business, politics, and the armed forces are behind the increasing trafficking of drugs and gun running".³⁸ The report fur-

ther claimed that members of President Moi's family were involved in drug trafficking, and added that only President Moi's personal intervention could change the situation.

Other than the international trade, there is also a local and regional trade in drugs, mainly cannabis sativa and *khat*. The latter is, however, not banned in Kenya and its trade is legitimate. Cannabis is grown in the Mount Kenya region of central Kenya, as well as in western Kenya. In the former, the crop was first grown on a small scale, but this eventually led to the establishment of large-scale Colombia-like estates in the 1990s. There are claims that hundreds of acres of forest were cleared in this area to make way for cannabis estates, owned by persons with political influence and guarded by armed police officers.³⁹

An important component of the cannabis trade is the cross-border trade between Kenya, Uganda and Tanzania. According to the head of the Anti-Narcotics Police Unit, there is more cannabis coming into Kenya from Uganda and Tanzania than is grown locally. He claims that the cannabis plantations in Mount Kenya have now been destroyed and that these do not provide any of the cannabis sold in Kenya. However, there is still a large social tolerance of cannabis growing in both Uganda and Tanzania and in these countries, the plant is grown openly. It is then sold in Kenya, where it is less easily accessible.⁴⁰

Laundering drug money

The principal method of laundering the proceeds of drugs coming into Kenya is through casinos.⁴¹ The more than 20 casinos in Nairobi are at odds with the economic realities of Kenya. In a country that has recently faced major economic hardships, which have led to massive bankruptcies, it is inexplicable how so many casinos can do legitimate business in Nairobi. A Kenyan fugitive, Said Masoud Mohammed, who jumped bail in a drug-related trial in Nairobi, is said to own one of the casinos in Nairobi.⁴²

The proceeds of drug sales are laundered in various ways, depending on the amount of money involved. Relatively small dealers usually set up retail businesses. Women dealers usually set up cash retail businesses like hair salons, massage parlours and boutiques. Whatever business is set up, it will usually have an export or import component. If, for example, a drug dealer sets up a clothes shop, she will usually have an import component to the business. Foreign travel for the purpose of buying drugs will be explained as travel for bringing in fresh orders of merchandise. Often, instead of bringing in the proceeds of crime in cash, the dealer imports items for the business. Export components

in such businesses include curios, horticultural products and agricultural produce. Therefore, a drug dealer may set up a motor-vehicle dealership, export drugs, and import motor vehicles using the proceeds of the drug sales. Exports, other than providing a cover for any proceeds that may be received from abroad, also provide a cover for the drugs themselves, which may be hidden in the exported items.⁴³

Small- and medium-scale dealers typically spread their money across many banks. In this way, the amounts look small and do not attract adverse attention. For example, a Kenya Airways hostess jailed for 20 years in November 2002 after being found in possession of 27kg of heroin at the Jomo Kenyatta International Airport, had four different accounts in several banks in Nairobi. She had a tailoring business as a front, and was also an importer of clothes for sale in Nairobi.

Large sums of money derived from drug sales are smuggled between countries.⁴⁴ The carriers of the cash bribe their way out of any trouble in which they land, or make prior arrangements with security personnel to avoid such trouble. The *Expression Today* report claims that the Jomo Kenyatta International Airport has twice been hit by “major heists involving millions of shillings being brought into Kenya” as proceeds of drug sales.⁴⁵

Large dealers also set up retail businesses that serve as fronts for their illegal activity. For example, the late billionaire, Ibrahim Akasha, a reputed drug dealer, had a business empire in Mombassa consisting of hotels, high-cost residential premises, petrol stations and commercial real estate.

Expression Today identified several ways in which proceeds of drug sales are laundered in Kenya. Treasury bonds issued by the government of Kenya are cited as providing an easy money laundering opportunity. In January 1999, for example, the government issued three billion shillings’ worth of bonds to the Kenyan market. All that one needed to do was to open an account and buy at least Sh50,000 worth of such bonds. Commercial banks, through which bids for bonds must be placed, ask very few questions about the source of the money being invested in the bonds. The successful investment of money in treasury bonds has, of itself, a laundering effect, as subsequently the money will be accounted for as proceeds of investments in government securities.

According to the report, the proceeds of drug sales are also invested in real estate:

from the coastal holiday resorts— especially Malindi, inhabited by Italians and [the] South Coast [of mainland Mombassa] dominated by Pakistani and German nationals—launderers have found Kenya's forex bureaux a haven for illicit money transfers.⁴⁶

The report further claimed that organised crime syndicates are involved in buying land in Mombassa and developing holiday facilities, using the proceeds of crimes committed in Europe.

Several informants said that they believe that proceeds of drugs are, at least in part, invested in upmarket property developments and contribute to the continued investments in this sector. Property at the coast, especially in Malindi, has remained fairly expensive notwithstanding the collapse of business in the coastal towns. In part, this is explained by the demand for coastal property created by money laundering activities.⁴⁷ The *Expression Today* report corroborates this.

The use of forex bureaux in money laundering is also identified in the report, which claims that Pakistani-run bureaux in Nairobi “use the ‘hundi’ system of informal electronic transactions enabling money to be transferred from the Asia-Pacific region”. For example, on 14 July 1999, a couple running an unlicensed forex bureau, Sterling Forex Bureau, were arrested while attempting to leave the country with currency worth Sh50 million. They claimed, on arrest, that the money belonged to two Kenyan officials, whom they refused to name.

The report claims that some of the ‘foreign investors’ in Kenya are in fact money launderers who use the system as a screen to benefit from multiple tax breaks.

In most cases, says the report, drug dealers pay for property transfers in cash. However, it concludes that there is hardly ever a need to do so in Kenya, since no law prohibits the deposit of the proceeds of crime in a bank.

According to Mickel Edwerd, of the United Nations Drugs Control Programme (UNDCP) in Nairobi, there has been increasing resort to postal money orders for purposes of money laundering. According to him:

criminal organisations are increasingly using postal money orders to transfer huge income generated from illicit activities into foreign countries, very often in those who apply bank secrecy.

However, the UNDCP has now facilitated the signing of a memorandum of understanding between the police and post office authorities in Kenya. This is aimed at combating the use of post offices for money laundering.⁴⁸

The influx of small arms

The movement of arms in Kenya

The long period of conflict experienced by the counties that border Kenya (Ethiopia and the Sudan to the north, Uganda to the west, and Somalia to the east) led to a stockpiling of arms, predominantly small arms, in those countries. During the Cold War, the arms were brought in by the United States and the Soviet Union, in competition with each other. Since then other sources of arms have been developed, including China, Bulgaria and other Central and Eastern European countries.⁴⁹

The fall of governments in Ethiopia (1991), Rwanda (1994), Somalia (1991), and Uganda (1979 and again in 1986), led to a large number of the arms that had been in government hands falling into private hands.

Other sources of arms are governments in the sub-region that arm rebels in order to destabilise other countries. For example, Uganda has been accused of arming the SPLA in the Sudan and rebels in Rwanda.

In the meantime, Kenya has developed its own capacity to manufacture bullets, with the assistance of the Belgian government. The manufacture of these bullets is, however, the subject of complete secrecy. It is not known how many are produced or how they are used.⁵⁰

Kenya has been identified as a centre for the trans-shipment of arms throughout the East African sub-region. Local newspapers have repeated claims that arms are illegally trans-shipped with the knowledge and blessing of top government officials.

Studies show that the movement of small arms in Kenya is wholly informal and difficult to detect or control. Whereas it is difficult to own a gun legally in Kenya, it is estimated that there are 40,000 arms illegally held.⁵¹ The arms are supplied mainly by impoverished people, displaced from situations of conflict in other countries, who sell them for subsistence. Prices vary greatly, but Kenya is a preferred market because the prices are relatively high compared with other neighbouring countries.

Effect of small arms

As a result of the ready availability of small arms, the security situation has worsened considerably. Guns are often used to commit violent crimes and fatalities are frequent. The high level of crime is reported to have fueled a demand for legal guns, which, however, the government is reluctant to supply.

In northern Kenya, the availability of guns has led to openly militarised communities. There has been an arms race between the various communities living in these regions. Cattle rustling, which in traditional society was a mild problem, has now evolved into a source of widespread conflict, leading to high fatality levels.

The presence of arms in the hands of criminals has exposed security officials to great personal danger and criminals often use the arms against the police. The police are making more mistakes in their use of firearms, because of the increased necessity to use them.

The proliferation of small arms has undermined legitimate political structures and avenues for the peaceful resolution of disputes. Small arms have given criminal enterprise a higher priority as an economic activity. Small arms have also greatly undermined the ability of the countries in the sub-region to build peace: Often conflicts in which small arms are used assume an international dimension involving communities in different countries.⁵²

The players

According to the Human Rights Watch report, wealthy people (in addition to impoverished subsistence dealers) import and sell guns to criminal networks in Kenya. These dealers also serve as brokers for large-scale supplies to other parts of Africa. Further, arms dealers who broker arms to other parts of Africa live in Kenya and may also be supplying the country as well.⁵³

The special report on drug trafficking that linked the practice to President Moi's family further claimed that the people involved in drug trafficking are also responsible for the importation of guns into the country.⁵⁴

A Nairobi narcotics defence lawyer believes that casinos in Kenya serve as fronts for arms dealers, in addition to laundering the proceeds of crime. He pointed out a specific casino, which, he said, has been linked to both drug trafficking and the arms trade.⁵⁵

The *Expression Today* report claimed that Eldoret Airport, newly built at Eldoret in the west of Kenya (believed to be a favourite town of President Moi's) was responsible for busting the Burundi arms embargo. Clearly, therefore, some arms must be coming into the sub-region through this airport.⁵⁶

Some arms in transit to other parts of Africa in fact end up in the local market because of the complicity of corrupt officials.

A covert arms market is believed to exist in Eastleigh in Nairobi. Outside Nairobi, the markets are more open, especially in the northern parts of Kenya.

Conclusion

This study has attempted to paint, with the broadest possible strokes, the picture in Kenya concerning money laundering activities. Breadth has necessarily compromised depth and an initiative to discuss, in depth, each of the identified forms of money laundering is clearly necessary.

As demonstrated, a large number of the criminal activities generating money that may need to be laundered, are undertaken, or supported, by elements within the Kenyan state. The Kenyan state, therefore, patronises and protects not only grand corruption but also cattle rustling, the trade in small arms and narcotics, as well as robbery, all of which generate large sums of money. The necessity to launder money, and the methods chosen for laundering reflect the laxity in law enforcement, resulting from official protection.

Income generated from these illegal activities helps to keep the Kenyan state in power. Crime is, therefore, a necessary part of politics as is money laundering.

Measures to tackle money laundering would, it follows, have to address the way politics is conducted in Kenya.

Kenya's strategic location and relatively well developed sea and air transport infrastructure, as well as her close commercial and family ties with India, Pakistan and Britain, make the country an important transit point for drug trafficking. The lax law enforcement environment also makes the country an excellent money laundering destination.

A large part of the Kenyan economy is informal or is in the process of becoming so. Record-keeping in the informal sector is largely absent, and money

laundering would be difficult to detect in such an environment. An aspect of this informality is the widespread use of cash to transact legitimate business, which makes it easy to introduce cash, earned from crime, into the financial system.

Record keeping by public authorities is in considerable chaos and has effectively imposed a secrecy, in the conduct of business transactions, which the law never intended. There is an absence of a regulatory framework against money laundering, although it is understood that the Kenyan government is trying to develop legislation to support one. Kenya, a country that has been victim to terrorist attacks, is in urgent need of such a framework, if only to address the threat of terrorism.

Notes

- 1 See M Mati and J Githongo, Judicial decisions and the fight against corruption in Kenya, an unpublished paper contributed to the *International Commission of Jurists state of the rule of law report*, Nairobi, 2001.
- 2 Transparency International, *Urban bribery index*, Transparency International (Kenya), Nairobi, 2002, p 13.
- 3 See, for example, the Constitution of Kenya Review Commission *Main Report of the Constitution of Kenya Review Commission*, 18 September 2002, p 163, which summarises the views expressed to the Commission by the public regarding the judiciary.
- 4 *Republic v. Attorney General ex parte Kipng'eno arap Ng'eny* (Unreported)
- 5 *Stephen Mwai Gachengo v The Republic* (HC Misc. Applic. No. 302 of 2000). (Unreported.)
- 6 See, for example, Ahmednasir Abdullahi, The judiciary in Kenya: Who is to reform it?, *The Advocate*, Law Society of Kenya, Nairobi, 2002 p.2.
- 7 *Republic v The Constitution of Kenya Review Commission ex parte Justices Moijo ole Keiwua and Joseph Juma* (High Court Misc. Applic. No. 110 of 2002)
- 8 See, for example, Kenya Human Rights Commission, *Quarterly human rights report*, 3 Kenya Human Rights Commission, Nairobi, 2002.
- 9 The discussion on the Companies Registry is based on a personal visit and interviews with registry staff conducted as part of the research on the nature and extent of money laundering in Kenya, referred to above.
- 10 The files of these companies were initially unavailable for public scrutiny. It took great public pressure, including a parliamentary question, for the files to reappear. Even then, they were useless for identifying the real allottees of the companies, because the directors were not disclosed. See, for example, Emman Omari, Karura: Katana names firms only, *Daily Nation*, 13 November 1998, p1, in which, in answer to a question in Parliament, the Minister for Lands, Katana Ngala, released names of the 67 companies allocated land in Karura, without details of who owned them. This information was useless and left members of Parliament no better informed than before.
- 11 Constitution of Kenya, section 115.
- 12 Based on several interviews with a Nairobi lawyer, during August 2002.
- 13 Argwings Odera, How drug money is laundered in Kenya, *Expression Today*, 11 February 1999, p 6.
- 14 Mutahi Ngunyi, Liberalising a bandit economy, *Daily Nation*, 9 July 2000.

- 15 The discussion on the Goldenberg scandal is based on research done by G Warigi, *Fools' gold: Goldenberg and the worst criminal financial scam in Kenya's history*, Transparency International (Kenya), Nairobi, 2001 (unpublished).
- 16 This is according to court documents filed in the dispute between Pattni and the Central Bank of Kenya over the hotel in HCCC No. 29 of 1995, *Uhuru Highway Development Limited v. Central Bank of Kenya*, which is pending determination
- 17 Ibid.
- 18 The contract was signed on 25 January 1993 but Pansal Limited was only incorporated on 10 March 1993, almost two months later.
- 19 Ngunyi, *op cit*.
- 20 This discussion is based on a personal interview with an employee of Cartrack Kenya Limited, a local company involved in the post-theft recovery of motor vehicles.
- 21 Based on a personal interview with a Nairobi lawyer who frequently undertakes criminal defence work. The lawyer said he once acted for a client who was jailed for possession of 16 engines stolen from cars.
- 22 See Stephen Muiruri, Shs. 500,000,000 goods held in tax swoop, *Daily Nation*, 5 April 2002, p 52.
- 23 According to a personal interview with a Nairobi motor vehicle dealer, July 2002.
- 24 See note 20 above.
- 25 Human Rights Watch, *Playing with fire*, May 2002, p 23.
- 26 Ibid, p 24. See also Ngunyi, *op cit*.
- 27 Human Rights Watch, *op cit*, p 24.
- 28 Ibid.
- 29 *Daily Nation*, Cartel is funding cattle rustling, 20 July 1999, p 22.
- 30 Ibid.
- 31 See, for example, Human Rights Watch, *op cit*, p 24.
- 32 Interview with a Nairobi lawyer, who was born in Marakwet area.
- 33 See Ngunyi, *op cit*.
- 34 According to a Nairobi lawyer. This assertion was confirmed in an interview with a manager at Standard Chartered Bank, 28 July 2002.

- 35 One informant, a Mombassa lawyer, said he was approached by Tanzanian robbers operating in Kenya, to retrieve Sh9,000,000 hidden in a cave.
- 36 Interview with the bank manager at Standard Chartered, Haile Selassie Avenue Branch, Nairobi, 8 August 2002.
- 37 Argwings Odera, Kenya turned into haven for drug barons, *Expression Today*, 11 February 1999, p 1. This discussion relies heavily on the findings of that study. The author wishes to express his gratitude for this.
- 38 Mukhalo wa Kwayera, *People Daily*, Nairobi, 2001
- 39 Interview with Michael Jakobam, Head of the Kenya Anti Narcotics Police Unit, Nairobi, July 2002.
- 40 Ibid.
- 41 Personal interviews with a criminal lawyer specialising in drug-related defence work and the senior staff of Transparency International (Kenya). A written request to obtain official statistics on the number of casinos in Kenya for the purposes of this research was made to the Betting Control Board, which declined to provide the information.
- 42 Personal interview with the defence lawyer.
- 43 Ibid.
- 44 Odera, *supra* note 13, p 3.
- 45 Ibid.
- 46 Ibid.
- 47 Correspondence via e-mail with Michael Edwerd of UNDCP, Nairobi, July 2002
- 48 Human Rights Watch, *op cit*.
- 49 Ibid.
- 50 Ibid.
- 51 Ibid.
- 52 Ibid.
- 53 Ibid.
- 60 Ibid.
- 61 Personal interview, Nairobi, July 2002.
- 62 Kwayera, *op cit*.