

EXAMINATION OF CORPORATE CRIMINAL LIABILITY FOR MONEY LAUNDERING IN SOMALIA

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ABSTRACT

This study examines corporate criminal liability for money laundering in Somalia, focusing on the challenges and gaps within the country's legal and institutional frameworks. As financial crimes become increasingly complex and pervasive, addressing corporate involvement in money laundering is essential to safeguarding Somalia's economic stability and integrity. The study employs a doctrinal research methodology analyzing of Somalia's Anti-Money Laundering Act of 2016 and evaluating its effectiveness in holding corporations accountable for illicit financial activities. Through a review of existing literature, legislative documents, and case law, the research identifies critical limitations in enforcement, regulatory oversight, and inter-agency cooperation. The findings indicate that while Somalia has made progress in establishing an anti-money laundering legal regime, significant challenges remain, particularly in areas such as regulatory compliance, enforcement capacity, and inter-agency collaboration. Key recommendations include strengthening legal provisions to ensure alignment with international standards, investing in institutional capacities for detecting and prosecuting money laundering offenses, and fostering collaboration among enforcement agencies. The study concludes that a comprehensive approach to addressing corporate criminal liability for money laundering is essential for promoting transparency, accountability, and economic stability in Somalia's corporate sector. By implementing these measures, Somalia can enhance its financial systems' integrity, attract investment, and better participate in the global economy.

Key Word: Corporation, Money Laundering, Counter-Finance Terrorism, organized crime

Introduction

According to the United Nations Office on Drugs and Crime (UNODC) 2000 Convention (UNODC, 2004), money laundering involves converting or transferring an asset with

knowledge of its being derived from a criminal source, concealing the criminal source or helping the criminal involved in committing the crime¹.

International law regards two principal actors as far as liability for violation of rights is concerned, states and individuals.² States are the primary duty-holders for rights, as defined in treaties and conventions or in customary law. Corporate bodies have become important players in international affairs. This is because of the economic power they hold so much so that markets become more significant than states to the extent that they have become more powerful than some states, especially in developing countries.³ Multinational corporations, for example, have more economic power and influence over the states where they invest in. In turn, this economic power extends to other spheres that at times lead to violation of rights. Such power has long acted as their shield when justice comes calling. Individuals have, and continue to use corporations to achieve illegal ends. These have traditionally been illegal acts that only have an economic detriment such as fraud. However, the involvement of corporations in crimes has progressed to acts that violate human rights such as the right to life and the right to a clean and healthy environment. Corporations of recent have been involved in illicit activities including money laundering. This is because of the lack of direct criminal liability on corporations in many countries.⁴

Money laundering remains one of the most pervasive financial crimes globally, posing serious threats to economic stability, transparency, and security. In particular, it enables the concealment of proceeds from illicit activities such as corruption, terrorism financing, and drug trafficking. While traditionally associated with individual offenders, the increasing role of corporate entities in facilitating money laundering has necessitated a shift in focus to corporate criminal liability. This research examines the extent to which corporate bodies in Somalia can be held criminally liable for money laundering and explores the adequacy of the existing legal and institutional frameworks.

¹ UNODC, United Nations Convention against Transnational Organized Crime and the Protocols Thereto, 2004. Retrieved from Vienna, 5

² Ratner S, Corporations and Human Rights: A theory of Legal Responsibility, 113 *Yale Law Journal* 3, 2001, 461

³ Nciko A, The African Court and Corporate-related Human Rights Abuses in Africa: Making the Case for the African Union Law, 2018, 1

⁴ G Nora, Legal Personality of the Corporation and International Criminal Law: Globalization Corporate Human Rights Abuses and the Rome Statute' (2009) 1(1) *Queensland Law Student Review* 38.

In recent years, Somalia has made efforts to address financial crimes through the establishment of anti-money laundering legislation and regulatory institutions. However, given the fragile legal and governance structures, the enforcement of laws especially against powerful business entities remains a challenge. The lack of effective mechanisms to hold corporations accountable for laundering illicit proceeds undermines both national and international efforts to combat financial crime. As such, analyzing corporate criminal liability within the Somali context is both timely and essential.

Corporate criminal liability refers to the legal doctrine under which a company or corporation can be found liable for criminal acts committed by its agents or employees, acting on its behalf. This concept has gained prominence in international criminal justice systems, where it is increasingly recognized that corporations may not only benefit from, but actively participate in, criminal conduct. According to the Financial Action Task Force (FATF), jurisdictions are encouraged to impose criminal, civil, or administrative liability on legal persons for money laundering offences where appropriate⁵

In Somalia, the 2016 Anti-Money Laundering and Countering the Financing of Terrorism Act represents a step forward in regulating financial activities⁶. However, the law is limited in terms of enforcement provisions against corporate entities, particularly in areas such as beneficial ownership transparency, reporting obligations, and penalties. There is a growing concern that corporations especially in banking, real estate, and telecommunications may be used as conduits for laundering illicit funds due to the weak oversight and informal economic structures dominating the Somali market.

Furthermore, Somalia's institutional capacity to investigate and prosecute corporate crimes is limited. Agencies such as the Financial Reporting Centre (FRC), which is the country's Financial Intelligence Unit (FIU), lack sufficient autonomy and technical resources to conduct complex investigations into corporate money laundering. Similarly, the police and judiciary face challenges of corruption, insecurity, and lack of training in financial crime, thereby affecting the enforcement of corporate liability.⁷

⁵ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (updated March 2022) <https://www.fatf-gafi.org>

⁶ Anti-Money Laundering and Countering the Financing of Terrorism Act, Somalia, 2016.

⁷ United Nations Office on Drugs and Crime (UNODC), *Country Review Report of Somalia under the Implementation Review Mechanism of the United Nations Convention against Corruption* (2020).

Methodology

The study uses doctrinal research design, Doctrinal legal research design, often referred to as "doctrinal research," is a traditional and fundamental approach in legal research that focuses on analyzing, interpreting, and applying legal doctrines and principles. This method involves examining statutes, case law, legal texts, and other sources of law to understand the existing legal framework, resolve legal issues, and provide insights into the application of law. The study collected data using Primary sources which includes statutes, case law, and constitutions while secondary sources is collected using document Analysis: To review existing literature, legal texts, and reports on corporate criminal liability in money Laundering offences in Somalia . This is collected from government reports, regulatory guidelines, academic journals, and previous research studies.

Conceptual Clarification

Money laundering refers to the process of concealing the origins of money obtained through illegal means, typically by transferring it through legitimate businesses or foreign banks to make it appear legal. The Financial Action Task Force (FATF)⁸ defines money laundering as:

“The processing of criminal proceeds to disguise their illegal origin in order to legitimize the ill-gotten gains of crime.

According to Article 1(3) of the United Nations Convention against Transnational Organized Crime (2000)⁹ (Palermo Convention):

“Money laundering” means 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

A corporation is a legal entity that exists independently of its owners or shareholders. It is established under law and granted certain rights and obligations akin to those of a natural person, such as the ability to enter contracts, own property, sue and be sued. This concept of separate legal personality was firmly established in the landmark UK case *Salomon v A Salomon & Co Ltd*¹⁰, where the House of Lords affirmed that a company, upon incorporation, becomes a distinct legal

⁸ Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (FATF, 2023) <https://www.fatf-gafi.org> accessed 20 July 2025.

⁹ UN General Assembly, *United Nations Convention against Transnational Organized Crime* (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

¹⁰ *Salomon v A Salomon & Co Ltd* [1897] AC 22 (HL).

person separate from its members.

Corporations¹¹ are formed through a legal process known as incorporation, typically under a country's company or corporate legislation. Once incorporated, a company acquires perpetual succession, meaning it continues to exist despite changes in ownership or management. Corporate entities are governed by their internal documents such as the memorandum and articles of association and by the applicable national corporate law.

Corporations can also be held accountable under civil and criminal law. While traditionally viewed as immune to criminal prosecution, modern legal systems increasingly recognize corporate criminal liability,¹² especially in cases of financial crimes, such as money laundering and fraud. International legal instruments and domestic statutes, including those in Somalia, acknowledge the ability of corporations to be held responsible for criminal conduct.

The concept of corporate criminal liability has evolved significantly in modern legal thought, moving from the traditional notion that only natural persons could commit crimes to recognizing that corporations can be held criminally responsible for illegal acts, including money laundering. According to Wells¹³, the modern corporation, through its agents and organizational structures, can commit complex financial crimes, and legal systems must adapt to regulate such behavior effectively.

This aligns with the identification doctrine and the vicarious liability theory, both widely accepted in common law jurisdictions.¹⁴

Green¹⁵ notes that the rise of corporate criminal liability is also a response to economic globalization, where corporate entities exploit regulatory gaps to launder money across borders. In the Somali context, Mohamed¹⁶ underscores the lack of strong legal enforcement mechanisms and institutional capacity as a barrier to holding corporations accountable for financial crimes like money laundering.

Furthermore, Arlen¹⁷ emphasizes the importance of corporate compliance programs, suggesting

¹¹ Brenda Hannigan, *Company Law* (6th edn, Oxford University Press 2021).

¹² Organization for Economic Co-operation and Development (OECD), *Corporate Liability for Foreign Bribery: A Stocktaking Report* (OECD Publishing 2016) <https://www.oecd.org> accessed 20 July 2025.

¹³ Celia Wells, *Corporations and Criminal Responsibility* (2nd edn, Oxford University Press 2001).

¹⁴ *Ibid* n 13

¹⁵ Stuart P Green, *Lying, Cheating, and Stealing: A Moral Theory of White-Collar Crime* (Oxford University Press 2006).

¹⁶ Ali Mohamed, 'Challenges in Enforcing Anti-Money Laundering Laws in Somalia' (2020) 5(1) *Somali Law Journal* 45.

¹⁷ Jennifer Arlen, 'The Potentially Perverse Effects of Corporate Criminal Liability' (1994) 23(2) *Journal of Legal*

that liability frameworks should incentivize internal controls and reporting mechanisms. Her approach is particularly relevant to fragile legal environments like Somalia, where state institutions face significant limitations.

Internationally, the Financial Action Task Force¹⁸ (FATF) has been pivotal in shaping anti-money laundering (AML) regimes and recommending that countries criminalize money laundering with corporate liability provisions.

Legal Analysis Concerning Corporate Criminal Liability for Money Laundering

The criminal liability of corporations for money laundering in Somalia is a developing area of law that intersects with both national legislation and international obligations. While Somalia has taken steps to criminalize money laundering and promote corporate accountability, the legal and institutional frameworks remain underdeveloped and weakly enforced. This analysis critically evaluates the legal regime governing corporate criminal liability for money laundering in Somalia by examining its statutory foundation, institutional capacity, enforcement challenges, and alignment with international standards.

Somalia's primary legislative instrument addressing money laundering is the Anti-Money Laundering and Countering the Financing of Terrorism Act (AML/CFT Act), 2016¹⁹. This law criminalizes the laundering of proceeds from crime and mandates financial institutions and designated non-financial businesses to conduct customer due diligence, report suspicious transactions, and implement compliance mechanisms.

Notably, the AML/CFT Act is silent on the express criminal liability of corporate entities, although it implicitly encompasses both natural and legal persons under its provisions.

Further, the Somali Penal Code (1962)²⁰ does not explicitly recognize the criminal responsibility of corporations. The Code primarily focuses on natural persons and does not articulate doctrines such as vicarious liability or the identification theory, which are fundamental in holding corporations accountable under international standards. This legal gap poses a significant barrier to prosecuting corporate entities involved in money laundering, especially in the banking and real estate sectors where illicit financial flows are prevalent.

Studies 833.

¹⁸ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (FATF 2023) <https://www.fatf-gafi.org> accessed 20 July 2025.

¹⁹ Federal Government of Somalia, *Anti-Money Laundering and Countering the Financing of Terrorism Act* (2016).

²⁰ Somali Republic, *Penal Code* (Legislative Decree No. 5 of 16 December 1962).

Legal framework governing Corporate Criminal Liability for Money Laundering

1. International Legal Framework

At the international level, several key instruments recognize and require states to establish corporate liability for money laundering and other financial crimes.

(a) United Nations Convention Against Transnational Organized Crime (UNTOC) ²¹– 2000

The UNTOC, also known as the **Palermo Convention**, obliges State Parties to establish the liability of legal persons, including corporations, for participation in serious crimes involving an organized criminal group. Article 10(1) states: "Each State Party shall adopt such measures as may be necessary... to establish the liability of legal persons for participation in serious crimes." This includes liability that may be criminal, civil, or administrative in nature.

Article 6²² provides Criminalization of the Laundering of Proceeds of Crime:

This is the most important article on money laundering under UNTOC. It requires State Parties to criminalize money laundering activities and adopt legislative or other measures to ensure:

- i. The conversion or transfer of property, knowing that it is derived from criminal activity.
- ii. The concealment or disguise of the true nature, source, location, disposition, or ownership of such property.
- iii. The acquisition, possession, or use of property, knowing it was derived from a criminal offence.

Article 7:²³ Provides Measures to Combat Money Laundering

This article emphasizes preventive and regulatory measures such as:

- i. Establishment of a comprehensive domestic regulatory regime for financial institutions.
- ii. Development of a Financial Intelligence Unit (FIU).
- iii. Encouraging international cooperation for detecting and preventing money laundering.

b) United Nations Convention Against Corruption (UNCAC) – 2003

UNCAC ²⁴reinforces similar obligations in Article 26, urging States to take measures to establish corporate liability for corruption and money laundering, either criminal or non-criminal, and

²¹ United Nations Convention Against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

²² United Nations Convention Against Transnational Organized Crime, 2000, Article 6.

²³ Ibid Article 7

²⁴ United Nations Convention Against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.

ensure that such liability is effective, proportionate, and dissuasive.

Article 14²⁵ of the UNCAC provides a strong preventive framework for tackling money laundering. It obligates State Parties to institute a comprehensive domestic regulatory and supervisory regime aimed at detecting and deterring all forms of money laundering. This includes requirements for customer due diligence, record keeping, and the establishment of financial intelligence units (FIUs). The Article also emphasizes international cooperation and the exchange of financial information between national authorities to combat the laundering of corruption proceeds.

Furthermore, Article 14 promotes cross-border cooperation and encourages states to develop international and regional information-sharing networks. These mechanisms support the early detection and analysis of suspicious financial transactions. Through these measures, UNCAC seeks to plug the gaps exploited by corrupt actors and ensure that illicit financial flows can be effectively monitored and disrupted.

Article 23²⁶ is the principal article dealing with the criminalization of money laundering. It requires each State Party to adopt legislative and other measures to criminalize the laundering of proceeds derived from criminal offenses, including corruption. The scope is deliberately broad, including the conversion, concealment, acquisition, possession, or use of property known to be the proceeds of crime. Importantly, this article does not limit the predicate offences to corruption; it allows for a wide range of predicate crimes, enhancing flexibility in enforcement.

The article also supports the “autonomous offence” concept, meaning that prosecution for money laundering does not require prior conviction of the predicate offence. This is particularly important in transnational corruption cases, where evidence of the original crime may be difficult to obtain due to jurisdictional challenges.

(c) Financial Action Task Force (FATF) Recommendations

The FATF²⁷ 40 Recommendations serve as the global standard for anti-money laundering (AML) and combating the financing of terrorism (CFT). Recommendation 3 requires countries to criminalize money laundering consistent with international standards. Recommendation 26 further

²⁵ United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41 (UNCAC), art 14.

²⁶ UNCAC, art 23.

²⁷ Financial Action Task Force (FATF), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations* (FATF, 2023) <https://www.fatf-gafi.org> accessed 20 July 2025.

requires states to ensure that financial institutions are supervised and that corporate entities are held accountable for non-compliance.

FATF explicitly encourages corporate liability mechanisms and has developed evaluation processes to assess countries' implementation.

2. Regional Legal Framework

Money laundering poses a grave threat to financial stability and security across the Horn of Africa and beyond. Somalia, being part of the Intergovernmental Authority on Development (IGAD) and the African Union (AU),²⁸ is subject to various regional legal instruments and policy frameworks aimed at combating money laundering and other forms of organized crime. These frameworks serve to harmonize national legislation, strengthen enforcement mechanisms, and foster cooperation among states in the region. While Somalia's domestic anti-money laundering (AML) regime is still developing, regional frameworks play a critical role in shaping its legal and institutional responses to financial crimes.

A. African Union Convention on Preventing and Combating Corruption – 2003

The African²⁹ Union Convention on Preventing and Combating Corruption (AUCPCC), adopted in 2003 and entered into force in 2006, addresses the scourge of corruption and related crimes such as money laundering within the African context. The Convention obligates State Parties to implement legal and institutional frameworks to prevent, detect, and punish corruption and associated financial crimes.

One of the most important provisions concerning money laundering is Article 6,³⁰ which mandates each State Party to adopt legislative and other measures to criminalize and combat money laundering. Article 6(1) clearly defines money laundering as the conversion or transfer of property, knowing it is derived from crime, for the purpose of concealing or disguising its illicit origin. Furthermore, it covers the concealment or disguise of the true nature, source, location, movement, or ownership of property known to be derived from corruption or related offences. This provision ensures that laundering the proceeds of corruption and illicit enrichment is prosecuted as a

²⁸ African Union, *African Union Convention on Preventing and Combating Corruption* (adopted 11 July 2003, entered into force 5 August 2006) <https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption> accessed

²⁹ African Union, *African Union Convention on Preventing and Combating Corruption* (adopted 11 July 2003, entered into force 5 August 2006) <https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption> accessed 20 July 2025.

³⁰ *Ibid* Article 6

standalone offence.

Additionally, Article 14³¹ deals with measures to prevent and detect corruption in the private sector, which includes anti-money laundering safeguards. It requires State Parties to establish mechanisms such as financial auditing and transparency practices in private transactions. These are meant to reduce opportunities for money laundering by compelling private entities to maintain proper financial records and by ensuring accountability. The provision also supports the development of codes of conduct and business integrity policies within private sector institutions.

(b) Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)

The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) is a regional body established in 1999 to combat money laundering and the financing of terrorism through regional and international cooperation³². It operates under the style and standards of the Financial Action Task Force (FATF), which is the global standard-setter for AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism). ESAAMLG's core mandate includes the implementation of international AML/CFT standards, mutual evaluations of member states, and capacity building. The group plays a critical role in assisting countries in Eastern and Southern Africa to develop effective legal, regulatory, and operational frameworks against money laundering and terrorism financing.

A key activity of ESAAMLG is the **Mutual Evaluation Process**,³³ which involves periodic assessment of the compliance of its member states with the FATF Recommendations. These evaluations measure the effectiveness of domestic AML/CFT regimes in areas such as customer due diligence (CDD), suspicious transaction reporting (STRs), the role of financial intelligence units (FIUs), and the prosecution of money laundering offences. For example, ESAAMLG evaluated Somalia in the context of its limited regulatory capacity and ongoing conflict, noting significant deficiencies in its legal framework for financial transparency and reporting mechanisms. These mutual evaluations not only assess technical compliance but also serve as tools for countries to strengthen their financial integrity systems.

ESAAMLG has also promoted the development of national AML/CFT strategies and legislation

³¹ Ibid Article 14

³² Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), *Mutual Evaluation Report: Anti-Money Laundering and Counter-Terrorist Financing Measures – Somalia* (ESAAMLG 2022).

³³ ESAAMLG, *Second Round Mutual Evaluation Report – Somalia* (ESAAMLG, 2022) https://www.esaamlg.org/reports/view_me.php?id=517 accessed 20 July 2025

in line with FATF standards. It encourages member countries to enact laws that criminalize money laundering and terrorist financing and to establish effective supervisory and law enforcement institutions. Furthermore, it emphasizes the need for international cooperation and information exchange. Member states are encouraged to ratify and implement international instruments such as the United Nations Convention Against Transnational Organized Crime (2000) and the International Convention for the Suppression of the Financing of Terrorism (1999). By providing technical assistance and training, ESAAMLG also enhances the investigative, prosecutorial, and adjudicative capacities of member states in dealing with complex money laundering schemes.³⁴

(c) African Peer Review Mechanism (APRM) and AU Agenda 2063

the African Peer Review Mechanism (APRM), launched in 2003 under³⁵ the New Partnership for Africa's Development (NEPAD), is a voluntary instrument designed to promote good governance among African Union (AU) member states. Among its thematic areas are economic governance and management, which include combating illicit financial flows (IFFs) and money laundering. The APRM Country Review Reports consistently highlight the threat posed by money laundering to African economies, linking it to organized crime, corruption, tax evasion, and underdevelopment. It encourages states to strengthen legal, institutional, and financial frameworks that enable anti-money laundering (AML) enforcement.

The APRM's review mechanism provides peer learning and recommendations for member states to align their domestic policies with continental best practices in fighting money laundering. For instance, APRM reports have emphasized the need for African countries to **implement Financial Action Task Force (FATF)**³⁶ standards and engage in **mutual evaluations** through the regional FATF-style body, such as the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). These efforts are crucial in mitigating risks associated with weak banking oversight, unregulated remittance flows, and the misuse of corporate entities for laundering proceeds of crime

3. Domestic Legal Framework

Money laundering in Somalia has become an increasingly critical issue due to the country's complex security situation, weak regulatory structures, and the prevalence of illicit financial flows linked to terrorism financing and organized crime. Despite these challenges, Somalia has taken significant steps to establish a legal framework to combat money laundering and related offenses.

³⁴ Ibid n 33

³⁵ African Union, *African Peer Review Mechanism (APRM) Base Document* (2003) <https://www.aprm-au.org>

³⁶ Ibid n 35

The cornerstone of this framework is the Anti-Money Laundering and Countering the Financing of Terrorism Act (AML/CFT Act) of 2016, which aligns with international standards, particularly those set by the Financial Action Task Force (FATF). This legislation criminalizes the laundering of proceeds of crime, mandates reporting obligations for financial institutions, and establishes mechanisms for financial intelligence gathering and international cooperation.

a) Anti-Money Laundering and Countering the Financing of Terrorism Act – 2016

Section 33³⁷ establishes the maximum fines that can be imposed on individuals and corporate entities found guilty of money laundering. This section emphasizes that the financial penalties should be substantial enough to deter future offenses while considering the severity of the crime.

Section 34³⁸ provides for asset forfeiture, allowing the court to order the confiscation of assets obtained through money laundering. This provision enhances the punitive effect of financial penalties by ensuring that convicted corporations cannot retain the financial benefits of their unlawful activities.

The investigation stage is crucial for gathering evidence of money laundering activities. According to the Anti-Money Laundering Act of 2016, enforcement agencies, including the Financial Intelligence Unit (FIU), have the authority to investigate suspected money laundering offenses. **Section 11(1)**³⁹ of the Act empowers the FIU to receive and analyze reports of suspicious transactions from reporting entities, which is fundamental to initiating investigations.

Additionally, **Section 14**⁴⁰ provides that law enforcement agencies can conduct inquiries and obtain necessary information to establish whether a money laundering offense has occurred. This provision enables agencies to access financial records and other relevant documentation to support their investigations.

b.) Companies Act ,2019

³⁷ *Anti-Money Laundering Act 2016* (Somalia) s 33.

³⁸ *Anti-Money Laundering Act 2016* (Somalia) s 34.

³⁹ *Anti-Money Laundering Act 2016* (Somalia) s 11(1).

⁴⁰ *Anti-Money Laundering Act 2016* (Somalia) s 14.

The Somalia Companies Act 2019 provides the legal basis to formalize businesses, establish the Office of the Company Registrar, and streamline the rules for starting and regulating companies in Somalia. The law also provides the necessary foundation to make operational the online business registration system and help establish the basic requirements for corporate governance, financial and operational reporting by companies, shareholder rights, responsibilities of directors and the dissolution of firms⁴¹

Article 9 of the 2019 companies Act provides that businesses of companies shall be regulated.

Commercial and service provider companies that, in accordance with other laws and regulations of the country are required to get permission or authorization by other government agencies, upon obtaining a company registration certificate and business license shall not commence their business activities, before applying and obtaining the permission or/and authorization for the specially regulated business activities⁴²

c.) Somali Penal Code (1962)

Although the term “money laundering” is not explicitly used in the Somali Penal Code of 1962 given that the concept was not well developed internationally at the time of its drafting the Code nonetheless contains several provisions that can be interpreted as foundational to addressing crimes related to laundering illicit proceeds. The Penal Code⁴³ primarily criminalizes offences such as theft, fraud, corruption, embezzlement, and receiving stolen property, which often serve as predicate offences to money laundering. Thus, while not directly regulating the laundering of proceeds, the Code criminalizes the underlying activities that generate illicit assets.

Of particular relevance is Article 376⁴⁴ of the Somali Penal Code, which criminalizes the act of receiving or concealing items derived from a criminal offence, knowing or having reason to believe that the property was unlawfully acquired. This provision aligns with a core component of money laundering namely, the concealment of the source or origin of illegally obtained property. Similarly, Article 379⁴⁵ provides for penalties in cases of receiving stolen goods or objects related to a crime, which can be a component in the laundering process.

Furthermore, Articles 434 to 437⁴⁶ of the Code address crimes involving public officials, such as

⁴¹ Ibid n 1.

⁴² Article 9 of the 2019 Somalia companies Act

⁴³ Somali Penal Code, 1962

⁴⁴ Ibid 43 Article 376

⁴⁵ Ibid 43 article 379

⁴⁶ Ibid 43 article 437

corruption, abuse of office, and misappropriation of public funds. These crimes often result in illicit financial gains that may be subsequently laundered through legitimate business channels, real estate, or transfers to third parties. Although these articles focus on the initial criminal conduct, they indirectly support the foundation for prosecuting money laundering by establishing the illegality of the underlying funds.

Legal Issues of Corporate Criminal Liability for Money Laundering in Somalia

Despite the rising concern over illicit financial flows and transnational organized crime, Somalia's legal framework remains underdeveloped in addressing corporate criminal liability for money laundering. While the Anti-Money Laundering and Countering the Financing of Terrorism Act (2016) criminalizes money laundering and outlines obligations for financial institutions, it lacks explicit provisions on holding corporate entities (e.g., banks, telecoms, remittance companies) criminally accountable. Somalia's Penal Code (1962), being outdated and drafted before the modern concept of corporate criminal liability emerged, focuses solely on individual liability, thereby leaving a significant legal gap in prosecuting corporations involved in laundering criminal proceeds.⁴⁷

Additionally, enforcement of existing laws is severely hampered by institutional weaknesses, lack of judicial independence, poor financial oversight, and limited capacity of Somalia's Financial Reporting Centre (FRC).⁴⁸ The country's reliance on informal financial systems, such as Hawala, and the lack of stringent compliance mechanisms further complicate detection and enforcement. As a result, while corporations may facilitate or benefit from money laundering activities, they often escape legal accountability, undermining efforts to combat financial crime and weakening Somalia's obligations under international frameworks such as the United Nations Convention Against Transnational Organized Crime (2000) and FATF Recommendations.

Below are the following key legal issues:

- I. The Anti-Money Laundering (AML) legal regime in Somalia is still in its developmental stage, with the most significant legal instrument being the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Act of 2016. While this Act represents a crucial step towards financial accountability, it lacks clear and comprehensive provisions

⁴⁷ Financial Reporting Center official bulletin report , 2024

⁴⁸ Ibid n 47

on enforcement mechanisms, reporting obligations, and compliance standards, particularly for non-bank financial institutions such as remittance companies (Hawalas), which dominate Somalia's financial system. The legal regime does not fully conform to international standards such as those outlined by the Financial Action Task Force (FATF). Moreover, there is a notable absence of clear guidelines for corporate entities' obligations under the AML/CFT law, leading to weak compliance frameworks within private institutions. The lack of a functioning regulatory body with adequate authority and resources such as the Financial Reporting Centre (FRC) has further limited the law's implementation. As a result, Somalia remains vulnerable to illicit financial flows, informal banking practices, and cross-border money laundering.

- II. The current Somali legal framework provides limited and unclear provisions regarding corporate criminal liability, especially in relation to money laundering offences. While the Somali Penal Code of 1962 focuses primarily on individual liability, it does not explicitly recognize corporations as legal persons capable of committing crimes. Similarly, the AML/CFT Act of 2016 makes general references to institutions but lacks specific clauses on how corporate entities can be held criminally liable for engaging in or facilitating money laundering activities. This legal gap makes it difficult for prosecutors and regulators to effectively pursue cases against companies involved in illicit financial practices. Furthermore, Somalia lacks clear mechanisms for attributing criminal intent (*mens rea*) and conduct (*actus reus*) to corporate entities. There are no established doctrines such as corporate attribution, vicarious liability, or the "identification theory" that guide how a company's board members or employees' actions can be imputed to the corporation itself. This creates legal ambiguity and contributes to a low rate of corporate prosecution for financial crimes, despite increasing cases of illicit financial activities involving legal entities such as banks, telecom companies, and money transfer businesses.
- III. The enforcement agencies tasked with combating money laundering in Somalia including the Financial Reporting Centre (FRC), the Office of the Attorney General, the Central Bank of Somalia, and law enforcement bodies face significant challenges in fulfilling their mandates. These agencies suffer from limited technical capacity, insufficient funding, and lack of specialized training in investigating complex financial crimes involving corporate entities. As a result, there is a weak institutional response to detecting suspicious transactions

and initiating formal investigations against corporations. Another major finding is the poor coordination among relevant agencies. There is no centralized platform for data sharing, nor are there clear protocols for joint investigations. The absence of a functional beneficial ownership registry and limited digital infrastructure makes it difficult to trace illicit corporate transactions, especially those involving shell companies or informal financial networks. Additionally, due to institutional weaknesses and political interference, cases that do reach prosecution often lack strong evidentiary support, leading to low conviction rates for corporate money laundering offences.

Conclusion

In Somalia, the legal framework addressing corporate criminal liability for money laundering remains underdeveloped, despite the increasing threat posed by financial crimes involving corporate entities. While the Anti-Money Laundering and Countering the Financing of Terrorism Act (2016) marked a significant step toward criminalizing money laundering and imposing compliance obligations on legal persons, challenges persist. Key issues include the absence of clear statutory provisions establishing corporate liability, inadequate regulatory oversight, and the lack of enforcement mechanisms capable of holding corporations—especially financial institutions, remittance companies, and real estate firms accountable for laundering illicit funds.

Furthermore, the Somali Penal Code (1962) does not recognize corporate criminal liability, as it is premised on the traditional principle that only natural persons can commit crimes. This gap limits the prosecution of corporate actors and creates legal uncertainty in assigning liability to companies for financial crimes. Combined with weak institutional capacity, limited judicial independence, and fragmented financial intelligence systems, these shortcomings undermine the deterrent effect of anti-money laundering legislation. A comprehensive reform is needed to clearly define corporate liability, introduce sanctions specific to legal persons, and strengthen enforcement agencies to investigate and prosecute corporate involvement in money laundering effectively.

Recommendations

This study has explored the existing legal and institutional frameworks addressing corporate criminal liability for money laundering in Somalia. It has highlighted significant gaps in legislation, enforcement mechanisms, and institutional capacity that hinder effective prevention, detection, and prosecution of corporate actors engaged in money laundering. These recommendations are designed to address the specific challenges identified in the study and to build on the strengths of Somali regulatory framework.

- I. **Strengthening Legal Framework:** To strengthen the AML legal regime, the Somali government should revise the AML/CFT Act to clearly define the obligations of corporate entities and align the law with FATF's 40 Recommendations. The revised framework should include specific provisions on risk-based approaches, mandatory customer due diligence (CDD), and enhanced reporting requirements. Additionally, regulatory oversight should be strengthened, particularly through empowering the FRC with technical resources, autonomy, and enforcement powers. Further, awareness and capacity-building programs should be initiated for financial institutions, regulators, and law enforcement agencies to ensure consistent and informed application of AML regulations. A national compliance strategy, developed in collaboration with international partners, would ensure harmonization with global standards and improve Somalia's credibility in the global financial system.
- II. To address these gaps, Somalia should adopt specific legislation or amendments to existing laws recognizing corporate criminal liability as a distinct legal concept. The law should clearly define how a corporate body can be held liable for crimes committed by its directors, employees, or agents in the course of their duties. Principles such as strict liability, vicarious liability, and failure to prevent mechanisms can be incorporated to facilitate prosecution. In addition, the legal reforms should introduce proportional penalties for corporations, such as fines, forfeiture of assets, suspension of licenses, or even corporate dissolution in severe cases. A specialized prosecutorial unit within the Attorney General's Office focused on corporate and financial crimes could also enhance legal

accountability. This reform would bring Somalia closer to international standards and strengthen the country's efforts to deter money laundering at the corporate level.

- III. To enhance the effectiveness of enforcement agencies, there is a pressing need to strengthen institutional capacity through targeted investments in forensic auditing, financial intelligence gathering, and digital case management tools. Regular training programs in financial crime investigation and corporate law should be provided to investigators, prosecutors, and judges. The establishment of specialized financial crime units within law enforcement and the judiciary would also improve investigation and prosecution outcomes. Furthermore, the Somali government should develop an inter-agency coordination mechanism, possibly in the form of a National Financial Crimes Task Force, to streamline communication and joint operations. This task force should work closely with international partners such as the Financial Action Task Force (FATF), Interpol, and donor agencies to improve Somalia's compliance with global anti-money laundering norms. Lastly, enforcement agencies must be granted operational independence to investigate and prosecute cases without political pressure, ensuring accountability and public confidence in the rule of law.

