



# LAUNCH OF THE MONEY LAUNDERING AND TERRORISM FINANCING NATIONAL RISK ASSESSMENT REPORT



## Message from the Cabinet Secretary for the National Treasury and Planning



Hon. (Amb.) Ukur Yatani, EGH

**The results of the risk assessment will guide the Government's response in combating money laundering, terrorism financing and proliferation financing (ML/TF/PF)**

I am pleased to present a report of the first Money Laundering (ML) and Terrorism Financing (TF) National Risk Assessment (NRA) conducted by Kenya.

I appointed the Taskforce on the National Risk Assessment on Money Laundering and Terrorism Financing, coordinated by the Financial Reporting Centre, to conduct the NRA exercise. The NRA is intended to identify and assess the vulnerabilities, level and trends of Money Laundering and Terrorism Financing (ML/TF) in the country, as well as proposes measures for mitigating the identified risks.

In conducting the NRA, we adopted a whole of Government approach, whereby Ministries, Departments and Agencies (MDAs) involved in the fight against ML and TF participated in the assessment. The private sector, represented by different areas vulnerable to ML and TF, also participated in the exercise, thus enabling the country to obtain and benefit from the widest possible range of information and views on the areas assessed.

Kenya is a major regional business and travel hub, and a gateway to the neighbouring East African economies. Further, Kenya has well-developed trade links to the rest of the world. This geo-positioning facilitates legitimate commerce and has enabled the country to grow economically. It however also exposes the country to ML/TF risks.

The NRA Report is thus intended to inform the Government on the country's ML/TF risks and vulnerabilities; to identify the sectors that carry a potentially higher or lower risk as well as guide the Government's response to the identified risks.

The results of the risk assessment will guide the Government's response in combating money laundering, terrorism financing and proliferation financing (ML/TF/PF), and will in particular assist MDAs in assigning responsibilities for dealing with these vices on the basis of the identified threats and vulnerabilities. The NRA findings also provide a basis for allocation of resources in combating ML/TF in a more efficient manner and in implementing a risk-based anti-money laundering action and countering the financing of terrorism approach.

I take this opportunity to thank all the stakeholders who participated in this important national exercise. The Government of Kenya is committed to implementing the recommendations of the NRA as set out in the resultant NRA Action Plan.

We need to remind ourselves that it is only through our collaborative efforts that we will ensure that Kenya remains a hostile location for illicit financial activities, thus upholding the integrity of our financial system and protecting our citizens.

## Message from the Director General, Financial Reporting Centre and the Coordinator of the Money Laundering and Terrorism Financing National Risk Assessment and Secretary to Anti-Money Laundering Advisory Board

Money laundering remains a significant concern for Kenya because it facilitates and conceals crime and can distort markets and the broader financial system. Kenya is particularly vulnerable to all forms of illicit financial flows because of the ingenuity of its citizens, the status of the country as a regional trade hub, and the fact that it has a relatively sophisticated financial system and a favourable environment for technological innovations.

The National Risk Assessment on Money Laundering and Terrorism Financing (ML/TF) exercise (NRA) was conducted over the period 2020 -2021 using the standardized World Bank's NRA tool and methodology. The global outbreak of the COVID-19 presented unique challenges in conducting the NRA exercise, but participants were able to overcome the same.

The NRA has assisted the country in identifying the gaps and deficiencies in



Capt. (Rtd.) Saitoti ole Maika, MBS

Kenya's legal, regulatory and institutional framework for Anti-Money Laundering, Combating the Financing of Terrorism, and Combating Proliferation Financing

(AML/CFT/CPF). The NRA has also enabled the country to prepare for the ongoing 2nd Round of Mutual Evaluation that majorly focuses on the understanding of ML/TF risks, as well as the application of risk-based measures. The outputs of the NRA exercise include this NRA Report, which details the ML/TF risk profiles and a corresponding National AML/CFT/CPF Strategy and Action Plan to address and implement the outcome of the NRA exercise.

I would like to express my gratitude to the Cabinet Secretary, the National Treasury and Planning, for appointing the Financial Reporting Centre as the Coordinator of this important national exercise. In addition, I would like to thank the World Bank for availing the NRA tool and methodology that enabled us undertake the NRA, and also for their training and guidance on the use of the NRA tool.

Finally, I thank the NRA Taskforce and participating institutions and personnel from both the public and private sectors for their dedication and effort, which have enabled us to successfully complete this exercise and launch Kenya's first Money Laundering and Terrorism Financing National Risk Assessment Report.

## Message from the Cabinet Secretary, Ministry of Interior and Coordination of National Government and Chairperson of the Counter Financing of Terrorism Inter-Ministerial Committee



Dr. Fred O. Matiang'i, EGH

**The NRA Report will facilitate the development of a national framework for implementing counter measures against financing of these deadly disruptions to Kenyan lives and livelihoods.**

The Government is today launching the Money Laundering and Terrorism Financing National Risk Assessment 2021 (NRA) Report. The NRA has, amongst others, identified the terrorism financing activities which pose a threat to our people.

Kenya continues to face security threats from terror attacks, which when they happen, lead to the loss of lives and disruption of our economic activities. The NRA Report will facilitate the development of a national framework for implementing counter measures against financing of these deadly disruptions to Kenyan lives and livelihoods. As a result, we envisage early detection of terrorist financing activities, leading to the disruption of funding to terrorist organizations and the subsequent prosecution of offenders perpetrating terrorism financing.

Terrorism financing is a dynamic phenomenon. Those involved continuously seek to devise new ways of sourcing and utilizing funds to carry out terrorist attacks, while at the same time trying to avoid detection. The ability to source, move, store and use funds often entails the use of financial channels and instruments in order to support terrorism activities and operations such as facilitating procurement of weapons or facilitating movement. The NRA Report is therefore very important because it has assessed and ranked the vulnerabilities of various sectors of the economy. This will enable us devise commensurate measures to protect our financial system from being abused for such terrorist activities.

In realization that terrorism is a global phenomenon that extends beyond the boundaries of nations and even regions, Kenya contin-

ues to play its role as a responsible member of the international community through the implementation of the relevant international frameworks, particularly the International Convention for the Suppression of the Financing of Terrorism and United Nations Security Council Resolutions 1267 and 1373, which requires member countries to criminalise the financing of terrorism and impose disruptive measures such as asset freezes, travel bans and arms embargo on entities considered a threat to global peace and security.

The Counter Financing of Terrorism Inter-Ministerial Committee, which I Chair, is responsible for implementing the United Nations Security Council Resolutions relating to the suppression of terrorism financing and the prevention and suppression of dealings of weapons of mass destruction, as well as formulating and supervising the implementation of the national strategy and action plan on counter financing of terrorism. The outcomes of the NRA will therefore provide very useful guidance to the Committee and indeed all stakeholders involved in the fight against terrorism financing, in drawing up policy directions and implementing appropriate measure to curb these activities.

The NRA Report will enable us apply targeted action against terrorism and terrorist financiers by allocating adequate resources through a risk-based approach. The financial services sector players and other non-financial businesses will also find this Report useful in preventing their businesses from being abused by terrorist elements and sympathisers.



## Money Laundering and Terrorism Financing National Risk Assessment for Kenya

### 1.0 Background

In March 2019, the Cabinet Secretary for the National Treasury and Planning established the Taskforce on the National Risk Assessment on Money Laundering and Terrorism Financing (NRA Taskforce) via Gazette Notice No. 2577. The mandate of the NRA Taskforce was amongst others, coordinating and conducting the National Risk Assessment (NRA) exercise including the identification and assessment of the level and trends of money laundering (ML), terrorism financing (TF) and proliferation financing (PF) in the country.

#### 1.1 The specific objectives of the NRA exercise were, among others, to:

- assist the Government competent authorities to assign responsibilities for combating money laundering, terrorism financing and proliferation financing (ML/TF/PF) to the relevant line Ministries/Government Agencies on the basis of the identified risks and vulnerabilities;
- assist in prioritising and allocating anti-money laundering and combating financing of terrorism (AML/CFT) resources efficiently so as to ensure that a larger proportion of resources are allocated to areas that present higher ML/TF risks;
- feed into the institutional AML/CFT risk assessments that reporting institution (financial institutions and designated non-financial businesses and professions) to assist them in assessing the adequacy of their internal AML/CFT controls including the application of risk-based approach;
- enhance compliance with the international AML/CFT obligations, thus ultimately improving the country's global standing and international relationships with other countries and multilateral agencies;
- prepare Kenya for the ongoing 2nd Round of Mutual Evaluation by the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG), where strong focus is placed on the general understanding of the ML/TF risks facing the country and the application of a risk-based approach to mitigate the identified risks; and
- assist the country in formulating national AML/CFT Strategy and Action Plan.

#### 1.2 Kenya utilized the World Bank tool to conduct the NRA. The NRA exercise is a self-assessment process through which a country deepens its understanding of its unique ML/TF/PF landscape. It involves making judgments about ML/TF/PF threats, vulnerabilities and consequences. The NRA tool defines ML/TF risks as a combination of national threats and vulnerabilities. Threats, for example, may include individuals, groups of people, objects or activities by criminals or terrorists, which can cause harm to the state, society or economy. Understanding ML/TF threats is key to understanding the environment in which predicate offences (i.e., underlying criminal activities) are committed and how proceeds of crime are generated, moved, utilised or integrated back into the financial system. Vulnerabilities are those things that can be exploited by the threats or that may support or facilitate its activities.

#### 1.3 The NRA exercise was carried out over a period of two (2) years 2020 – 2021. The NRA Taskforce comprised 30 public sector organizations, including the relevant line Ministries, financial sector supervisors, law enforcement, prosecutorial and investigative agencies. Additionally, more than 30 private sector organizations were involved for liaison purposes. In total, 140 public and private sector nominees participated in the NRA exercise, out of which 70 participants represented the private sector.

### 2.0 NRA Key Findings

#### 2.1 Geo-Position

The results showed that Kenya is a major regional business and travel hub and a gateway to the neighbouring East African economies with well-developed trade links to the rest of the world. This geo-positioning has facilitated legitimate commerce and enabled the country to grow economically. However, the nature and volumes of trade conducted in Kenya and the inter-connectedness with its regional and global trading partners have also exposed the country to ML/TF risks. The country is also well connected with strong internet penetration which has promoted innovation, adoption of new technologies and growth of *fintech*. These were assessed as pre-disposing factors which have also increased the country's ML/TF vulnerability in terms of abuse of the financial system by both local and transnational criminal networks.

#### 2.2 Overall ML Threat

The overall ML threat for the country was assessed as *Medium* with a potential for increase in the future. On the other hand, the national money laundering vulnerability was assessed as *Medium High*. Banking industry was assessed as the sector with the highest impact on the national ML vulnerability, largely due to the important role played by commercial banks in the economy. Real estate, money remittance providers (MRPs), SACCOs, legal professionals and (second hand) motor vehicle dealers' sectors were also assessed as posing *High* risk to the country's national AML/CFT/CPF vulnerability. This is attributed not only to the threats facing these sectors in general, but also to the fact that these sectors have relatively weaker frameworks on ML/TF/PF oversight.

#### 2.3 DNFBP

The assessment found the legal sector highly vulnerable for ML/TF abuse largely due to the role played by lawyers in relation to their client's transactions. Whereas the FATF Recommendations are not applicable to motor vehicle dealers, the NRA found that motor vehicle dealers' industry, especially the second-hand dealership, is highly vulnerable to ML/TF abuse in the country. In this regard, the NRA report recommends that AML/CFT requirements should be applied on lawyers and motor vehicle dealers.

#### 2.4 Common ML Method

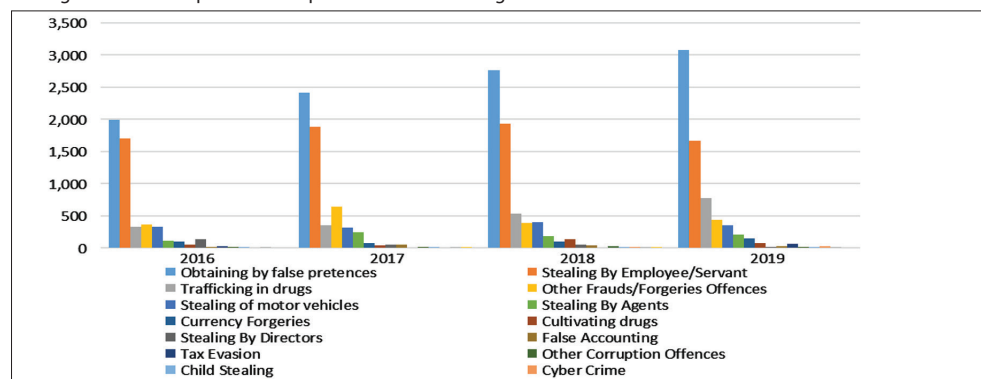
The common methods of laundering money in Kenya were assessed to entail opening 'suspicious' bank accounts and making periodic cash deposits which do not correspond to the suspect's known sources of income. In a number of related incidences, there are no withdrawals from the bank accounts despite receiving huge sums of money which obviates a presumption of innocence. The other methodology used involved procurement corruption where officials are influenced and/or enticed into flouting the rules and inflating the prices of goods and services being procured.

#### 2.5 Predominant Predicate Offences

The assessment showed that fraud and forgery, corruption, drug trafficking, environmental crimes and tax evasion are the predominant predicate offences to money laundering in the country. The individuals involved acquire massive wealth by laundering the proceeds of crime through proxies who conceal and disguise the source of funds used to procure the assets involved. To avoid detection, deposits are made in tranches below the reporting threshold to evade the attention of the authorities and guidelines placed by Regulators which require that an account holder declares the source of such money. The other major proceeds generating predicate offences include homicide, offenses against morality, offenses against persons (such as assault, affray and creating disturbances), robbery, breakings, theft of stock, stealing, theft by servant, vehicle and other theft and other penal offenses.

#### 2.6 ML predicate offence

The Figure below compares the ML predicate offence categories between 2016 and 2019.



Source: DCI data, 2020

### 2.7 Money Laundering Risks

Based on the foregoing, the money laundering predicate offenses were categorized as either posing High risk, Medium risk or Low risk to the country as follows:

- High-risk predicate offenses** - fraud and forgery related offences, include obtaining by false pretense, currency forgery, false accounting, stealing (including stealing by directors, agents, employees/servants, stealing of motor vehicles and motorcycles); drug related offences including cultivation, trafficking, possession and handling of dangerous drugs; corruption and economic crimes that majorly relate to bribery (soliciting and accepting), demanding by false pretense, unexplained wealth, embezzlement of public funds and other corruption offenses.
- Medium-risk predicate offenses** - environmental and wildlife crimes which relate to illegal wildlife trade, killing of wildlife, illegal possession of wildlife and illegal trade in wastes/polluting products; cybercrime offences, tax related offences, money laundering and offences relating to counterfeiting and piracy of products. The medium rating for these predicate types is attributed to the fact that the formal sector of the economy has structural mechanisms for detecting and preventing the abuse of the financial system for money laundering purposes.
- Low-risk predicate offenses** - human trafficking and smuggling of persons.



### 2.8

#### Terrorism financing

The general perception is that terrorism financing (TF) risk in Kenya is generally *High* given the past incidences of terrorist attacks. However, a number of aggressive counter-measures have been employed by the Government to combat terrorism and to counter violent extremism in the country. The Government has also consistently lobbied for the inclusion of Al-Shabaab as a designated terrorist entity under the United Nations Security Council Resolution 1267, as an Al-Qaeda affiliate. This demonstrates the appreciation of the security threats posed by terrorists, including Al-Shabaab. The overall terrorism financing (TF) threat in Kenya was assessed as *Medium*, and the overall vulnerability for TF was assessed as *Medium Low*.

### 2.9 Money Laundering Investigations

The assessment revealed that the number of money laundering investigations in the country are low despite the relatively larger number of reported cases relating to predicate offences. Additionally, most investigations and prosecutions are conducted without considering parallel financial investigations alongside the predicate offences. The NRA Report accordingly encourages law enforcement agencies to enhance money laundering investigations and prosecutions and to prioritise the identification, tracing and confiscation of proceeds and instrumentalities of crime, including the pursuit and confiscation of property of corresponding value where applicable.

### 2.10 Statistics

The assessment revealed that generally, the data management systems (including storage and retrieval) employed by various agencies do not facilitate ease of access and use of the collated information while in some cases, the information is not stored at all. The assessment further found that some organizations use different formats to categorize and/or classify similar pieces of information. For instance, individuals who are accused by law enforcement agencies of the offence of poaching are sometimes prosecuted for the crime of killing animals instead of poaching and vice versa. These non-unified case classifications impede collation, interoperability and analysis of the available data leading to inconsistent reporting mechanisms.

### 2.11 Sports Betting

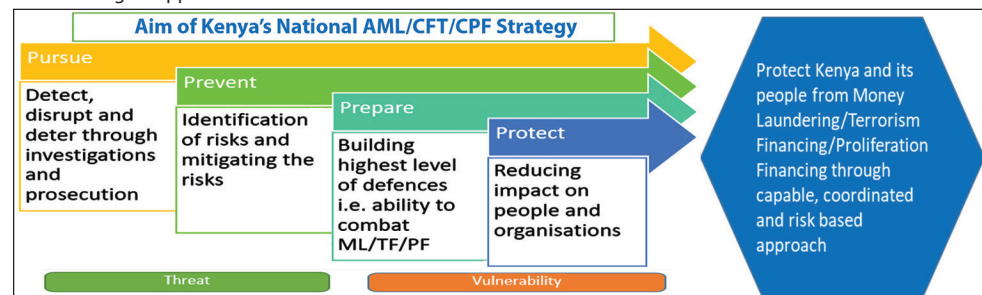
The NRA Report notes that Kenya's good mobile money infrastructure is one of the factors influencing sports betting in the country. The potential for money laundering risks in sports betting was assessed as *Low* for betting individuals. However, the risks for money laundering was assessed to be *High* for the owners of the betting firms. This is because the ownership of sports betting firms is predominantly foreign-based with locals playing a minority role, and the betting mainly undertaken against international sporting activities. The ML risk was also noted where proceeds from sports betting could be commingled with funds from predicate crimes and passed out as genuine winnings with a possible collusion on who takes the winnings which are later either reverted into the syndicate or transferred outside the country.

### 3.0 National AML/CFT Strategy

#### 3.1 Based on the outcomes of the NRA, the Government has developed the National AML/CFT Strategy with the following strategic objectives:

- to enhance AML/CFT legal, regulatory and policy framework in the country;
- to strengthen AML/CFT preventive measures;
- to strengthen monitoring and supervision of reporting institutions;
- to strengthen investigation and prosecution on ML/TF by the law enforcement agencies;
- to enhance outreach and general public awareness on ML/TF risks;
- to enhance capacity of competent authorities on AML/CFT; and
- to establish and implement a robust combating proliferation of weapons of mass destruction (CPF) legal and regulatory framework in the country.

#### 3.2 The Government will achieve the listed strategic objectives by tackling threats and reducing vulnerabilities through the following 4P-approach:



### 3.3 National AML/CFT/CPF Action Plan

The Government will implement the recommendations of the NRA exercise and the National AML/CFT Strategy through the National AML/CFT/CPF Action Plan.

### 4.0 Conclusion

The outcomes of the NRA exercise will enable the Government to prioritize its AML/CFT/CPF activities and efficiently allocate available resources. Within the financial services sector, enhancing supervisory procedures and practices, effectiveness of compliance systems and knowledge of staff are among the activities that will be prioritized. This is because an effective AML/CFT framework requires financial institutions and their employees to be knowledgeable on the AML/CFT laws and their obligations to facilitate compliance with the provisions of POCAMLA.

#### 4.1 The recommendations of the NRA Report will improve the effectiveness of the existing AML/CFT/CPF framework, thereby promoting legitimate commerce including attracting investors seeking to invest in jurisdictions with sound financial systems. This would create a positive ripple effect to our economy.