The Nexus Between the Advent of COVID-19 and the Increasing Rate of Financial Crimes in Kenya; An Empirical Review

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Abstract— Financial crimes are as old as human civilization and mankind dealings in finances; the main distinction over time is the level of organization and sophistication. Financial crimes have ceased being crimes in isolation and now exist as combined financial crimes or even in concurrence with non-financial crimes. The advent of COVID-19 in 2020 saw a drastic decrease in physical interactions; all Nations pooled their resources and commitment towards dealing with and mitigating against the effects of this novel virus. With this divided attention, organized crimes managed to thrive, re-inventing themselves to unimaginable levels; effortlessly easing themselves into existing Organizational frameworks by taking advantage of the existing pandemonium. Presently, as most services migrate to the online platform, the Organized crime Enterprise is reaping big as endless possibilities for deception and exploitation are legitimately unfolding. Countries with less sophisticated internal controls and not so strong prudential regulations find themselves in a quagmire; that even with clear indications of the existence of financial crimes, they are clearly inept of dealing with the vice; disarrayed by the drastic rate at which such crimes are transforming, while others due to moral hazard abandon their responsibility to the Citizenry, settling for the 'advantages' that subsequently, directly or indirectly accrue to them.

Index Terms— Finacial Crime, COVID-19, Forensic Accounting, E-Money, Fraud.

1 Background of Financial Crimes

Pasco [1] distinguishes financial crimes from other crimes and criminal activity by pointing out the use of fraud in committing those crimes. [1] explains that such crimes require more planning, intricate concealment of the means and fruits of the crime, and, in most cases, more than one individual to effect the crime. Apparently, such crimes are perpetrated over time, and have to be presented in a historical or chronological format in court making the majority of evidence collected to prove criminal financial violations circumstantial in nature. [2] explain the four basic elements of fraud; first it involves a false representation of a material nature, second is scienter or knowledge that the representation is false or reckless disregard for the truth. Then comes reliance or the fact that person receiving the representation reasonably and justifiably relied on it and finally, damages or financial damages resulting from all of the above. Fraud just like fire which requires enablers (heat, fuel and oxygen), has its 'enablers' that are explained by the fraud triangle which consists of perceived pressure, perceived opportunity, and some way to rationalize the fraud as acceptable [3]. Fraud, when perpetrated against an individual or an organization may eventually be discovered accidentally or procedurally. [4] explain that it may be through accidental discovery that something is missing, an allegation, complaint, or a rumour of fraud brought by a third party or an exception from an expectation of a person senior to the suspect.

A forensic accounting investigator's intuition or general suspicion that something is wrong may be another source and so do results from an audit or results from controls- especially. antifraud controls. As [5] explain, modern financial crime embraces a much greater diversity both in term of ethnicities and geographically; with the lack of borders due to globalization combined with technological advancement, technical distinctions are now much more illusory. Undisputed however, is the magnitude and the impact of the economic cost resulting from damages of fraud to any Nation, including Kenya. As [5] reiterate, economic crime is an enormous social problem whose consequences are often not fully realized by the public at large.

2 Theories on Financial Crimes

Unlike non-financial crimes, white-collar crimes or financial crimes are committed by the elite in the society, relatively well-educated and socially well-adjusted people. [2] point out two types of financial fraudster; calculating criminals and situation-dependent criminals but also add the emerging type, the power brokers. Calculating criminals who normally have higher than average intelligence are high risk takers, lack feelings of anxiety and empathy and have an "external locus of control. Situation dependent criminals on the other hand act as a result of desperation to save themselves, their families, or their companies from a catastrophe. Power brokers use a combination of predator characteristics and the circumstances of their positions to commit financial crimes; these are financial crimes committed by those in top management positions resulting in loses of colossal amounts.

Criminology, by incorporating some of the theories from both sociology and psychology tries to explain why people commit crimes. Distinctive though is that some biological theories such as those proposed by Charles Goring of England

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and another by Ernest A. Hooton, an anthropologist which imply that criminals have low intelligence may not be germane for financial crimes as much as they are applicable to non-financial crimes.

As explained by [5], criminology uses three schools to explain crimes; Positivist School whose proponents were Cesare Lombroso and his followers, Enrico Ferri and Raffaele Garofalo formulated that degeneracy called atavism causes criminality, and classified criminals into three categories: Pseudocriminals who commit involuntary crimes such as self-defense, Criminaloids or those predisposed to crimes because of environmental causes and finally Habitual criminals or those criminals who chose to be because of environmental or biological factor. On the other hand, Conflict School follows the theories of Karl Marx, a nineteenth century sociologist and considers crime as a class struggle between the lower and upper classes for political and economic power. The classical school whose proponents are Cesare Beccaria and Jeremy Bentham emphasizes a society composed of individuals. As the Society imposes laws to regulate the conduct of individuals within the society, individuals form a society for the purpose of obtaining life, liberty and happiness but they have to give up some liberties and be responsible to society for their actions and deeds; hence conduct is a choice by the individual and punishment is used to deter bad conduct and should fit the crime.

Sociological theories can be classified into four; Control theory which comprises of many theories but the earliest proponent was Durkheim and explores the importance of order and conformity to rules for social solidarity; how commitment, attachment, involvement and beliefs to society's rules determine an individual's behaviour. The cultural deviance theory elucidates that since in a heterogeneous society laws represent the majority or dominant cultures, there is bound to be a conflict of cultures demonstrated by crime. The strain theory explores different ways in which individuals react to stain; innovation which explains deviant behaviour as a response to blocking individual's goals by society, ritualism which refers to individuals adhering to society's rules but at a lower degree, retreatism or individuals dropping out of society due to inability to achieve the goals that society wishes for them. Rebellion or those who disagree with cultural and social structure hence seek to replace them and finally conformity as most people accept society's goals and the means to achieving them. The labelling theory which also expands on the symbolic interaction theories suggests that police, courts, and other agencies promote criminal behaviour by use of labelling. Though the labels need not be true, positive or negative labels bring those who have been labelled together and mostly determines how they behave.

Critical criminology whose proponents are Ralf Dahrendorf and George Vold. Dahrendorf applies critical theories to criminology explaining that crime and deviance were caused by conditions of inequality; the domineering class versus the dominated class. On the other hand, radical criminology whose main spokesman was Richard Quinney in summary explains that those in power make laws to benefit and maintain their power while restraining those who are not in power hence the effort to change the status-quo is reflected by crime.

These theories may be applicable world over depending on the prevailing circumstances such as individual characteristics, biological predispositions and environmental factors. Specific to this study and specifically with Kenya in mind are those criminals who chose to be because of environmental factors. This is partly explained by the radical and critical criminology theories, and on the backdrop of the fraud triangle which explains that pressure, opportunity and ability to rationalize the crime as the enablers of fraud, financial crimes are increasing at an alarming rate in Kenya. Perpetrators are becoming more ''innovative'' in acquiring more and more resources in a concealed effort to acquire and consequently express the power that comes with it.

3 Empirical review:

3.2 Financial crimes in Kenya before and after the advent of COVID-19

The history of Kenya is distinctly strewn with numerous financial crimes that spread over a wide period of time spanning from the time of independence but increasingly becoming more intricate in the recent times. Financial scandals have robbed the economy of highly required resources. Most of these scandles fizzle out from the scrutiny of the public as soon as they are uncovered and consequently the Government takes up the matter. It not in the public domain either if responsibility and subsequent prosecution has been conducted and those responsible put to task; this is important for public confidence. The Some of these scandals are derived from the study by the Partnership for African Social and Governance Research [6] indicated in table 1.

Table 1; Examples of illicit funds flow in Kenya

Scandal	**Estimated Amount Involved**
Helicopter Servicing Contract	KES 360 million*
Navy Ship Deal	KES 4.1 billion*
Contracting Hallmark International Scandal	US$ 3 million*
The Construction of Nexus	US$ 36.9 million *
The Passport Equipment System Deal	GBP 20 million*
Education Scandal	US$ 1 million*
Grand Regency Scandal	GBP 5 billion*
2009 Triton Oil Scandal	US$ 98.7 million*
Goldenberg Scandal	US$ 2.1 billion**
Tokyo Embassy Property Scam	KES 1.57 billion**
National Youth Service Scam 2 (2018)	KES 9 billion**
Anglo Leasing	KES 4.4 billion***
National Youth Service Scam 1 (2015)	KES 791 million***
Eurobond 1 (2016)	KES 215 billion***
Maize and Fertilizer Scam (2018)	KES 1.9 billion****

Source: *Report on Corruption in Kenya, 2005 by WikiLeaks; ** Kenya Forum, 2013; ***Wafula, P., 2016; ****Murbi, 2015.

PwC Kenya Economic Crime and Fraud Survey [7] indicates figures that show an increase in economic crimes from 2018 to 2020, in some cases the Kenyan situation being grimmer as compared to the Global incidence rates. Tax fraud, procurement fraud, money laundering and sanctions and finally bribery and corruption are such areas of great concern. The study also indicates that most of the corporate fraud was committed by the staff (53%) either lower, middle or top management; 27% and 36% of the fraud was by external and internal perpetrators respectively. Collaboration between the external and internal perpetrators accounted for 32% of the incidence of fraud. This was a clear divergence from the findings done by PwC in 2018 which indicated that internal perpetrators accounted for 62% and external 30% of crime incidences. This points to a clear indication of the increasing diversity of the financial Crime Enterprise in Kenya.

According to the Partnership for African Social and Governance Research [6] in a study on illicit financial flows in Kenya, there are indications that Kenya has been losing an average of KES 40 billion every year through illicit financial flows since 2011; if the pronouncement by top government officials in recent occasions is to be put into consideration however then these amounts are hugely understated. This study also states that the vulnerabilities in Kenya's Financial Systems leading to illicit financial flows include among others, cash-based informal financial systems where only a small section of the population have bank accounts, insurance policies and other forms of financial securities making efforts to trace illicit financial flows from Kenya difficult. This has greatly changed though over the years as an increasing number of individuals have access to these services. An increased number of people have adopted m-money which is traceable over different databases, but these challenges still persist as financial crimes such as money laundering become more sophisticated.

PwC Kenya Economic Crime and Fraud Survey [7] explains how the Central Bank of Kenya in an attempt to fight corruption and illicit flow of money in the economy replaced the 1,000-shilling note in 2019. Despite the success declared by the CBK, this may have been circumvented to some extend by Organized Financial Crime entities as some of the legal tender wittingly found its way out of the Country and back for replacement under different circumstances. The Central Bank of Kenya also enforced relevant provisions of the Proceeds of Crime and Anti-Money Laundering Act ("POCAMLA") and regulations, demanding financial institutions to demonstrate that their compliance programmes are adequate and effective in an attempt to counter laundering of proceeds of crime in the financial sector. The impact of this largely is yet to be felt as more and more revelations of financial fraudulence emanating from within the financial Institutions themselves arise.

Whereas most of the documented loses are those related to the public coffers, individual Citizens also lose a lot of funds to financial crimes which cumulatively affect the entire economy. Coupled with other financial crimes and non-financial crimes which are carried out to either perpetuate or frustrate any efforts made to cease the activities of money laundering, organized crime units make the challenge even more complex. The fact that organized crime involvement in the legitimate economy is increasing makes it difficult to even account for this part of income [8].

The advent of COVID-19 lead to the migration of most transactions to the online platform therefore necessitating the widespread use of mobile banking (which includes mobile transfers, mobile payments; m-money, transaction and non-transaction enabling services) and online banking [9]. [9] further expain that the abuse of m-money stems from risk categories: anonymity, elusiveness, rapidity, and poor oversight. Poor oversight in turn creates conditions that increase the likelihood of abuse emerging from the other three risk factors. According to [10], some vulnerabilities in Kenya's Financial Systems consists of among others, weak banking regulatory and supervisory frameworks, weak international cooperation in complying with preventive measures such as Anti-money laundering/combating the financing of terrorism (AML/CFT) and a non-transparent financial system. As [11] puts it, the battle against money laundering in Kenya is also dispirited by continual violations of the AML laws by banks either unintentionally or knowingly. With the advent of COVID-19, most of the transactions in Kenya have moved from being physical to online and facilitated by M-pesa, T-Kash and other m-money options. It is therefore very likely that notwithstanding the type of scheme abetting financial crimes, the intricate illegal transactions are most likely facilitated by either the banking industry, mobile phone service providers or both such as in the case of mobile banking.

The policy brief by the Global Initiative Against Transnational Organized Crime [12] provides four major ways in which the pandemic would affect organized crime (and associated illicit market activity); explaining how some criminal groups have quickly used this opportunity to scale up their activities as the attention of police forces and policy makers is diverted elsewhere; to the novel virus. In Kenya, one of the most public of the scandals after advent of COVID-19 was the Kenya Medical Supplies Authority (KEMSA) dubbed as the 'COVID-19 millionaires' where it is alleged that some government officials and employees of KEMSA pilfered $400m meant for procuring the highly required equipment and supplies for fighting the pandemic. As captured in a report by Transparency International-Kenya [13], the health sector had several previous scandal such as theft of KShs 8.1 million donated by the Global Fund for TB programmes, embezzlement of Kshs 160 million donated by GAVI for essential vaccines to children, managed Equipment Services Project Scandal (AfyaGate) resulting in losses amounting to over Kshs 19.8 billion from 2015 to 2018, manipulation of the Integrated Financial Management System (IFMIS) (Mafyahouse scandal) leading to a loss of Kshs 5 billion and looting of over Kshs.10 Billion from the National Hospital Insurance Fund (NHIF), among others. If the claims by the Global Fund on fraud committed by KEMSA is anything to go by then it is evident that there are many more scams that have not been identified yet; what we see is the tip of the iceberg. These Government contract frauds illustrate how different schemes in organized crimes can be executed, resulting in enormous financial loses to an economy. More unanticipated though is the speed with which the the COVID-19 millionaires scandal was hatched and implemented, taking advantage of the urgency of the situation. This pointed to not only the negative effect of the novel virus on the procurement process but also the distortion of the supply chain and the increased ease with which information could readily be accessed and online transactions done. The reduced checks or increased ease with which the checks could be circumventing before validating transactions was evident as individuals took advantage of the ministry of health guidelines which included social distancing giving online transactions a headway.

Money laundering may be one of the organized financial crimes most widely mentioned in Kenya by individuals and in the media although with so much concealment; it also remains largely indefinite whether those mentioned are finally held accountable by law. Money laundering is particularly a fluid financial crime as it can be initiated, perpetuated and concealed through different schemes and also through other financial crimes. For the crime to be perpetrated at some point personal information has to be accessed. Apart from those who willingly participate in it, there are those whose personal details such as identity, phone and bank account information are acquired through theft, robbery, counterfeiting or other illegal means including hacking. Such information can also be acquired from unsuspecting clients of prostitution and pandering where they willingly give the information or it is stolen and then finds its way to Organised Crime Enterprises. Through resulting identity theft, forgery and uttering, the perpetrators may continuously use this information, colluding with fraudsters in the banking institutions and calculatedly give the impression that the owners have either given consent or are aware and are accruing financial benefits from it. Such details can be used in many schemes such as credit card fraud, Medicare fraud, Corporate raiding and loan sharking with the objective of facilitating money laundering. Corrupt Churches and Non-profit Organization are the other Institutions that not only can be conduits of financial crimes but more specifically can be used for facilitating money laundering activities. Furthermore, in Kenya there have been numerous reports of unsuspecting clients of M-Pesa having lost money through scams perpetuated by the employees of the provider colluding with Agents who offer the services. It is unbelievable for instance how an individual X can be allowed to withdraw colossal amounts of money on a single day using different names, with their identity numbers using M-Pesa from a single agent. Even more shocking is a situation where while doing a transaction using M-pesa, a notification pops up and disappears within seconds showing the client that their M-Pesa account has been used for a transaction of huge amounts of money elsewhere.

The level of sophistication with which these activities are done; the anonymity, elusiveness, rapidity coupled with poor oversight leaves the disgruntled clients helpless. The expanding and continuing Criminal Enterprise is a clear indication of increase in financial crimes; more cells of crime are emerging in the economy. The ease of accessing personal information of unsuspecting Kenyans keeps increasing as most transactions migrate to the online platforms; necessitated by the advent of COVID-19. More worrying though is the fact that these enterprises seem to enjoy 'protection' from high places and have in place some of the best legal minds, just in case something comes up. Most of those who are directly or indirectly involved in organized crimes; the Principals, Accessories, Conspirators and perpetrators escape the law through bribery or frustrating the prosecution process using the huge amounts of resources at their disposal, especially in developing economies. Coupled with weak investigative and prosecutorial functions, this only makes it worse reducing such economies to playgrounds of organized crime enterprises. Additionally, as [11] puts it, principals and implementers of Anti money laundering regulation may pursue their own goals and fail to deliver the expected oversight role due to the agency problem. Money laundering being a crime of concealment, its scope of activity is not precisely known [5]. Although the appearances eventually break down, this is long after extensive damages have been done both at the microeconomic and macroeconomic level.

3 Summary and Conclusion

The advent of COVID-19 negatively affected the economies world-wide. Many households lost their livelihoods as people lost their jobs and businesses came to a standstill due to the regulations put in place to control the spread of the novel virus. As economies try to recover, the most common viewpoint is the reduction in physical interactions. This has necessitated the migration to the online platform hence making the masses more vulnerable to financial crimes. It is clear that even after the virus will have been put under control in the future, the possibility of reverting to pre-COVID-19 state is non-existant. Many Countries are yet to develop or/and implement policies that can safeguard the access and/or use of personal information making citizens vulnerable to this threat. Furthermore, the efforts being put in place such as the directive by the Communication Authority of Kenya (CAK) on updating and storing of mobile phone details of users by telecommunication service providers though well intended, may lead to bigger loop-holes in the fight against financial crimes as all details of individuals including copies of identification and pictures in some cases can now be acquired on a single click of the mouse. Without clear regulations and rigorous enforcement of rules governing the access and use of this information, some rogue employees who have been facilitating this vice may now be more motivated. Organized financial crime enterprises are reinventing themselves and taking advantage of the increased use of online platforms and the use of m-money in transactions. In some cases, they are easing themselves into the Organizational structure and management of Institutions hence can access unsuspecting victims, their information and signatures with ease; taking their operations to the next level. As this enterprise increasingly becomes more lucrative, and with the general increasing sense of hopelessness in developing Countries such as Kenya, more and more people are getting attracted to financial crime, making it even more complicated for Governments to effectively deal with this challenge. If recent pronunciations by Senior Government officials in Kenya on money laundering and Organized crime is anything to go by then this is worrying at the moment.

4 Recommendations

1) Close collaborations with Countries and International agencies who are way ahead in deterring Organized Financial Crimes and Cybercrimes is very crucial. The Government should allocate enough resources to allow innovation and invest in programmes that can allow them to be pro-active and stay ahead of the activities of financial crime enterprises
2) Governments should adequately invest in the investigative and prosecuting machinery by acquiring the relevant technology and skilled human resource, specifically for financial crimes in order to ensure efficient and effective investigations, litigation and eventual sentencing of perpetrators. The multi-agency approach should be made effective and efficient; the character of those involved in the process should be beyond reproach.
3) Governments should make Financial crimes extremely 'costly' in order to deter potential perpetrators. This can be made by netting extensive fines and jail terms to perpetrators and extensively publicizing their actions in the crime commited.
4) Development and effective implementation of policies on Whistle blowers' and witness protective custody should be given more weight. The processing, handling and support should be impermeable in order to elicit trust and therefore willingness to disclose relevant information.
5) Public awareness on basics of internet/online and mobile phone use safety and security should be provided to Citizens and realtime online services availed where they can seek guidance on such matters.
6) Heads of Institutions in which financial crimes are facilitated should be held individually culpable in addition to the Institution's financial liability. The presence of an antifraud program for prevention and detecting fraud is important to all Institutions, however the commitment of top management to enforce and live by it is crucial.

References

[1] Gregory, A. Pasco (2013) Criminal Financial Investigations, 2nd Edition.
[2] Golden, T.W., Skalak, S., Clayton, M. (2006) A Guide to Forensic Accounting Investigation.
[3] Albrecht, C.C., Albrecht, W. (2005) Fraud Examination
[4] Singleton, T., et al. (2006) Fraud Auditing and Forensic Accounting
[5] Silverstone, H., Sheetz, M. (2006) Forensic Accounting and Fraud Investigation for Non-Experts, 2nd ed
[6] Partnership for African Social and Governance Research (2018) - Illicit Financial Flows in Kenya: Mapping of the Literature and Synthesis of the Evidence. Accessed on www.pasgr.org
[7] PwC Kenya Economic Crime and Fraud Survey (2020), Fraud and Economic Crime – opportunity in the face of adversity. Accessed om www.pwc.co/ke
[8] Manning, G. A. (2005) Financial Investigation and Forensic Accounting, 2nd ed.
[9] Pierre-Laurent Chatain, Andrew Zerzan, Wameek Noor, Najah Dannaoui, and Louis de Koke (2011), Protecting Mobile Money against Financial Crimes; Global Policy Challenges and Solutions, Foreword by Bob Christen, The Bill & Melinda Gates Foundation; World Bank.
[10] Njoroge, P. 2016. "The role of banks and the securities markets in curbing the movement of illicit financial flows". Remarks by Dr. Patrick Njoroge, Governor of the Central Bank of Kenya, at the 2nd Annual General Meeting and Conference of African Organization of Public Account Committees (AFROPAC), Nairobi, 30 August 2016
[11] Mochere, S. N. (2020). Money laundering in the banking sector: A critical analysis of the enforcement procedures in Kenya [Thesis, Strathmore University]. https://su-plus.strathmore.edu/handle/11071/1
[12] Crime and contagion: The impact of a pandemic on organized crime (2020), A policy brief by the Global Initiative Against Transnational Organized Crime (March,2020). Accessed on https://africacenter.org/security-article/crime-and-contagion-the-impact-of-a-pandemic-on-organized-crime-global-initiative-against-transnational-organized-crime/
[13] Transparency International Kenya (2020), Tracking COVID-19: A report on transparency and accountability in government's response to the COVID-19 pandemic. Accessed on https://tikenya.org/report-on-tracking-of-COVID-19-transparency-accountability-by-the-government/
[14] Cusack John, Runana Mary & M' Crystal Ursula (2020), Financial Crime Threat Assessment Kenya. Accessed on www.thefinancialcrimenews.com